

## **Nassau Candy Distributors, Inc., Consent & Amendment Approving Resolution**

A regular meeting of the Nassau County Industrial Development Agency (the “Agency”) was convened in public session, electronically, pursuant to Executive Order No. 202.11 - Continuing Temporary Suspension And Modification Of Laws Relating To The Disaster Emergency - by Governor Andrew M. Cuomo of the State of New York on May 7, 2020 at 6:45 p.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

### PRESENT:

Richard M. Kessel	Chair
Lewis M. Warren	Vice Chair
Anthony Simon	2 <sup>nd</sup> Vice Chair
Timothy Williams	Secretary
Chris Fusco	Assistant Secretary
Amy Flores	Treasurer
John Coumatos	Assistant Treasurer

### ABSENT:

None

### THE FOLLOWING PERSONS WERE ALSO PRESENT:

Harry Coghlan	Chief Executive Officer / Executive Director
Danielle Oglesby	Chief Operating Officer/ Deputy Executive Director
Anne LaMorte	Chief Financial Officer
Catherine Fee	Director of Business Development/Chief Marketing Officer
Colleen Pereira	Administrative Director
Carlene Wynter	Compliance Assistant
Thomas D. Glascock, Esq.	General Counsel
Andrew D. Komaromi, Esq.	Bond/Transactional Counsel

The attached resolution no. 2020 - 33 was offered by Richard Kessel, seconded by Anthony Simon:

Resolution No. 2020-33

RESOLUTION OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY AUTHORIZING ADDITIONAL FINANCIAL ASSISTANCE AND  
CERTAIN AMENDMENTS/SUPPLEMENTS IN CONNECTION WITH ITS  
STRAIGHT-LEASE TRANSACTION WITH NASSAU CANDY  
DISTRIBUTORS, INC.

WHEREAS, the Nassau County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, on or about December 5, 2013, NASSAU CANDY DISTRIBUTORS, INC. (the "Applicant") presented an application for financial assistance (the "Original Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Original Project") consisting, inter alia, of the following: (A)(1) the acquisition of an interest in a parcel of land located at 300 Duffy Avenue, Hicksville, Town of Oyster Bay, Nassau County, New York (Section: 11; Block: 327; Lots: 406, 408, 412 and 422) (the "Land"), (2) the renovation of the existing approximately 127,000 square foot building (collectively, the "Original Building") on the Land, together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Original Equipment"), all of the foregoing for use by the Applicant as a manufacturing, warehouse and distribution facility in connection with its wholesale confectionery business (collectively, the "Original Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) (the "Original Financial Assistance") with respect to the foregoing, in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, on or about December 9, 2015, pursuant to an application for financial assistance dated September 28, 2015 (as amended, the "2015 Amendment Request"), the Applicant presented an application to amend the Original Project to permit: (A) the construction, installation and equipping of an approximately 26,216 square foot addition to the Original Building; (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, in the form of a potential exemption or partial exemption from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "2015 Financial Assistance"); and (C) the amendment of certain Transaction

Documents (as defined in the Lease Agreement) in connection therewith (collectively, the "2015 Project"); and

WHEREAS, on or about December 19, 2017, pursuant to an application for financial assistance dated October 17, 2017 (as amended, the "2017 Amendment Request"), the Applicant presented an application to amend the Original Project to permit: (A) the construction, installation and equipping of an approximately 7,210 square foot addition to the Original Building on Lot 424 (together with the Original Land, the "Land"); (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, in the form of a potential exemption or partial exemption from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "2017 Financial Assistance"); and (C) the amendment of certain Transaction Documents (as defined in the Lease Agreement) in connection therewith (collectively, the "2017 Project"); and

WHEREAS, on or about October 19, 2019, pursuant to an application for financial assistance dated September 9, 2019 (as amended, the "2019 Amendment Request"), the Applicant presented an application to amend the Original Project to permit: (A) (1) retention of an interest in the Land, (2) renovations to the Original Building and the construction of an approximately 20,000 square foot addition to the building, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "2019 Equipment"), all of the foregoing for use by the Applicant as its headquarters and main manufacturing, warehouse and distribution facility for the Applicant's wholesale confectionary business (collectively, the "Project Facility"); (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes, and real property taxes (but not including special assessments and ad valorem levies) (the "2019 Financial Assistance"); and (C) the amendment of certain Transaction Documents (as defined in the Lease Agreement) in connection therewith (collectively, the "2019 Project"); and

WHEREAS, in connection with the Original Project Facility the Agency entered into a straight-lease with the Applicant and granted the Original Financial Assistance; and

WHEREAS, in connection with the 2015 Amended Request the Agency entered into certain amendments of the straight-lease and granted the 2015 Financial Assistance; and

WHEREAS, in connection with the 2017 Amended Request the Agency entered into certain amendments of the straight-lease and granted the 2017 Financial Assistance; and

WHEREAS, in connection with the 2019 Amended Request the Agency entered into certain amendments of the straight-lease and granted the 2019 Financial Assistance; and

WHEREAS, in connection with the 2019 Financial Assistance, the Agency approved sales tax abatements in an amount not to exceed \$236,224 and appointed the Applicant to act as its agent to complete the acquisition, construction and equipping of the Facility which appointment expires on June 1, 2021; and

WHEREAS, pursuant to a letter dated April 24, 2020, the Applicant has now requested the Agency to approve an additional sales tax benefit in an amount presently estimated to be \$90,000 (the “2020 Financial Assistance”) which represents an additional \$1,100,000 investment (“Sales Tax Increase”) to be used for the installation of solar panels on the Project Facility (the “2020 Additional Improvements”); and

WHEREAS, to provide for the Sales Tax Increase, the Agency and the Applicant will enter into a certain Amendment or Supplement to the Uniform Project Agreement (the “Supplement Agreement”), by and between the Agency and the Applicant; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Applicant has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the Sales Tax Increase and the 2020 Additional Improvements; and

WHEREAS, the Agency now desires to make its determination to proceed with the Project and to grant the 2020 Financial Assistance, subject to the terms hereof.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease.

Section 2. The Agency hereby ratifies, confirms and approves actions heretofore taken by the Executive Director and the staff of the Agency with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with the requirements of the Act, Article 8 of the Environmental Conservation Law (the “SEQR Act”) and the regulations adopted pursuant thereto (the “Regulations” and together with the SEQR Act, collectively, “SEQRA”), and all other Applicable Laws that relate thereto.

Section 3. The Agency determines that the Applicant's request with respect to previously approved and unchanged Project is a Type II Action pursuant to SEQRA involving “retrofit of an existing structure and its appurtenant areas to incorporate green infrastructure” (6 NYCRR §617.5(c)(3)) and therefore no Findings or determination of significance are required under SEQRA.

Section 4. The Agency hereby approves the (i) Amendment of the 2019 Project to permit the 2020 Additional Improvements, (ii) approves the Sales Tax Increase, (iii) authorizes the execution and delivery of the Supplement Agreement and such other related documents as may be necessary or appropriate to effect the Sales Tax Increase and (iv) the appointment of the Applicant as agent of the Agency to complete the acquisition, construction and equipping of the Facility which appointment shall now expire at the earlier of (a) the completion of the 2020 Additional Improvements or (b) June 1, 2021; provided, however, such appointment may be

extended at the discretion of the Agency, upon the written request of the Applicant if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

Section 5. The Agency has considered the request made by the Applicant and hereby finds and determines that the requested consent will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Nassau County, New York, and improve their standard of living, and thereby serve the public purposes of the Act.

Section 6. The execution and delivery of the Supplement Agreement and all documents, instruments and agreements required to effectuate the proposed 2020 Additional Improvements and Sales Tax Increase (collectively, the “Amendment Documents”), being substantially in the forms used for prior similar transactions, are hereby authorized and approved. The Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency are each hereby authorized, acting individually or jointly, to execute, acknowledge and deliver the Amendment Documents. The execution and delivery of the Amendment Documents by any one of said officers shall be conclusive evidence of due authorization and approval.

Section 7. The Chairman, Vice Chairman, Chief Executive Officer/Executive Director Chief Operating Officer and Administrative Director of the Agency are each hereby designated an Authorized Representative of the Agency and each of them is hereby authorized and directed, acting individually or jointly, to execute and deliver any and all consents, agreements, papers, instruments, opinions, certificates, affidavits and other documents required in connection with the Amendment Documents (collectively, the “Consent Documents”), and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, including, without limitation, taking any necessary action to obtain consent of any other person or party necessary with respect to execution, delivery and approval of the Consent Documents, The execution and delivery of the Consent Documents by any one of said officers shall be conclusive evidence of due authorization and approval.

Section 8. The authorizations set forth in this Resolution are subject to the conditions that (i) the Applicant shall reimburse the Agency for all costs and expenses incurred by the Agency in connection with the transactions contemplated herein, including, without limitation, the Agency's consent and amendment fees and all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Harris Beach PLC.

Section 9. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Amendment Documents and the Consent Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time; provided, however, that no covenants, stipulations, obligations or agreements of the Agency contained in this Resolution, any Amendment Document or any Consent Document shall give rise to any pecuniary liability of the Agency or a charge against its general credit or shall obligate the Agency in any way except to the extent that the same can be paid or recovered from the Project Facility or the sale or liquidation of the Project Facility or revenues therefrom.

No covenant, stipulation, obligation or agreement herein contained or contained in any Amendment Document or any Consent Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Amendment Document or any Consent Document shall be liable personally on the Amendment Documents or the Consent Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 10. The Chairman and Chief Executive Officer/Executive Director of the Agency are each hereby authorized to approve modifications to the terms approved herein which are not inconsistent with the intent and substance of this Resolution, such approval to be evidenced by the execution by any one of such officers of the Amendment Documents and/or the Consent Documents containing such modifications.

Section 11. This Resolution shall take effect immediately.

The adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Richard Kessel	VOTING Aye
Lewis M. Warren	VOTING Aye
Anthony Simon	VOTING Aye
Timothy Williams	VOTING Aye
Chris Fusco	VOTING Aye
Amy Flores	VOTING Aye
John Coumatos	VOTING Aye

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK

) SS.:

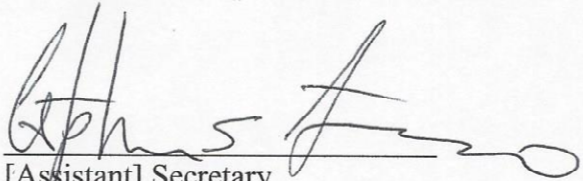
COUNTY OF NASSAU

We, the undersigned [Vice] Chairman and [Assistant] Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on May 7, 2020 with the original thereof on file in our office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 5 of the Public Officers Law (the "Open Meetings Law") as modified pursuant to Executive Order No. 202.11 - Continuing Temporary Suspension And Modification Of Laws Relating To The Disaster Emergency - by Governor Andrew M. Cuomo of the State of New York, said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our respective hands and affixed the seal of the Agency this 7th day of May, 2020.

  
[Assistant] Secretary

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[Vice] Chairman

(SEAL)

STATE OF NEW YORK

) SS.:

COUNTY OF NASSAU

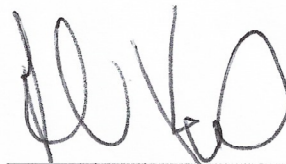
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[Assistant] Secretary



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[Vice] Chairman

(SEAL)