

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY,

AND

NASSAU CANDY DISTRIBUTORS, INC.

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UNIFORM PROJECT AGREEMENT

(SALES TAX EXEMPTION AND  
MORTGAGE RECORDING TAX EXEMPTION ONLY)

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DATED AS OF November 1, 2019

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## UNIFORM PROJECT AGREEMENT

THIS UNIFORM PROJECT AGREEMENT (hereinafter, the “Project Agreement”), is made as of the 1st day of November, 2019, by and between the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, Mineola, New York 11501 (the “Agency”), and NASSAU CANDY DISTRIBUTORS, INC., a limited liability company organized and existing under the laws of the State of New York, having an office at 530 West John Street, Hicksville, NY 11801 (the “Company”).

### WITNESSETH:

WHEREAS, 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, as in effect as of the date hereof (as hereinafter defined), 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 industrial, manufacturing, warehousing, commercial, research and recreation 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, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Agency on behalf of the Company has undertaken a project (the “Original Project”) consisting 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, 422 and 424) (the “Land”), (2) the renovation of the existing approximately 160,426 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 Company 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) with respect to the foregoing, including 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 Company or such other entity as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Company has requested that the Agency undertake a project (the “Expansion Project” and together with the original Project, collectively, the “Project”) consisting of (A) the construction, installation and equipping of an approximately 20,000 square foot addition to the Original Building (the “Expansion Space” and together with the Original Building, collectively, the “Building”) located on the Land), which Land is more particularly described on Schedule A attached hereto, and (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 “Additional Financial Assistance”); and (C) the amendment of certain Transaction Documents (as defined in the Lease Agreement) in connection therewith; and

WHEREAS, the Company is the tenant under an amended and restated lease agreement dated as of January 30, 2014 (as amended, the “Overlease”) between Overlandlord, as successor landlord, and the Company, as tenant, pursuant to which the Company leases the Land and the Building (collectively, the “Facility”) from the Overlandlord; and

WHEREAS, the Agency is the holder of a leasehold interest in the Facility pursuant to a certain assignment and assumption agreement, dated January 1, 2014 (the “Assignment”), between the Company and the Agency (with the consent of the Overlandlord), which conveys to the Agency all right, title and interest of the Company in and to the Overlease; and

WHEREAS, the Agency subleases its interest in the Facility to the Company pursuant to a Sublease Agreement dated as of January 1, 2014 between the Agency and the Company, as amended by Amendment No. 1 to Sublease Agreement dated as of December 2, 2014, as further amended by Amendment No. 2 to Sublease Agreement dated as of December 23, 2015, and as further amended by Amendment No. 3 to Sublease Agreement of even date herewith, each between the Agency and the Company (as amended, modified, supplemented or restated from time to time, the “Lease Agreement”); and

WHEREAS, the Agency, the Overlandlord and the Company entered into a Payment in Lieu of Taxes Agreement, dated as of January 1, 2014, as amended and restated by an Amended and Restated Payment in Lieu of Taxes Agreement, dated as of December 1, 2015, and further Amended and Restated Payment in Lieu of Taxes Agreement, dated as of December 29, 2017 (as amended, modified, supplemented or restated from time to time, the “Existing PILOT Agreement”), with respect to the Facility; and

WHEREAS, simultaneously herewith the Agency and the Company have entered into an Amended and Restated PILOT Agreement with respect to the Facility to amend, inter alia, the terms of the payments to be made thereunder; and

WHEREAS, the payment and performance of the Obligors' respective obligations under the Amended and Restated PILOT Agreement are secured by a Mortgage and Assignment of

Leases and Rents dated as of January 1, 2014 (as amended, modified, supplemented or restated from time to time, the “PILOT Mortgage”) from the Company, the Overlandlord and the Agency, as mortgagor, to the County of Nassau (the “PILOT Mortgagee”), its successors and assigns, as mortgagee, pursuant to which the Agency, the Overlandlord and the Company granted a first mortgage lien on the Facility to the PILOT Mortgagee; and

WHEREAS, the Agency desires to appoint, and confirm the prior appointment of, the Company as agent of the Agency to undertake the acquisition, construction, renovation, installation and equipping of the Expansion Project and to grant sales tax exemption in connection therewith; and

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York (the “RPTL”), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control;

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

#### ARTICLE I. DEFINITIONS

Section 1.1 Definitions of Terms. The words and terms as used in this Project shall have the same meanings as used in the Lease Agreement, unless the context or use indicates another or different meaning or intent.

#### ARTICLE II. FINANCIAL ASSISTANCE AND RECAPTURE OF BENEFITS

Section 2.1 In accordance with the Resolution and the Cost-Benefit Analysis (or such other equivalent document or report, as determined by the Agency) (the “CBA”), attached hereto as Exhibit A, disclosed by the Agency at its public hearing for the Project (the “Public Hearing”), the Company further: (i) covenants, with respect to the Sales Tax Exemption, that it shall comply with this Project Agreement, specifically, but not limited to, Section 2.3 hereof; (ii) confirms that the Mortgage Recording Tax Exemption (as defined in Section 2.7 hereof) shall not exceed an amount based upon Maximum Mortgage Principal Amount, as more fully described in Section 2.7 hereof (it being understood and agreed that nothing herein shall prohibit the Company from obtaining a mortgage or mortgages in a greater amount if it pays the excess Mortgage Recording Tax applicable over the Maximum Mortgage Recording Tax Exemption); and (iii) confirms that real property tax abatement to be provided to the Company shall conform to those disclosed within the CBA at the Public Hearing for the Project and as contained within the PILOT Agreement, a form of which PILOT Agreement is attached hereto as Exhibit A.

Section 2.2 PILOT Agreement. The parties hereto have executed or will execute the Amended Company Lease Agreement, Leaseback Agreement and PILOT Agreement. As provided in the Amended PILOT Agreement, the Company agrees to make PILOT Payments (in

addition to paying all special ad valorem levies, special assessments or special district taxes and service charges against real property in the jurisdiction where the Facility is located.

Section 2.3      Sales Tax Exemption.

(a)      The Agency hereby appoints and confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project. Such appointment was made by the Agency pursuant to the Resolution and this Project Agreement.

(b)      The Company, as agent for the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Authorizing Resolution to acts reasonably related to the acquisition, construction, renovation, rehabilitation and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (x) the completion of the Expansion Project, or (y) June 1, 2021 (“Termination Date”); provided, however, that the Agency may extend the Company’s agent appointment at its discretion upon the written request of the Company 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.

(c)      Agency’s Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, any Agent or any third party that any Sales Tax Exemption is available under this Project Agreement.

(d)      Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company, subject to the terms and conditions of this Project Agreement, to act as its agent in connection with the Project Facility for the purpose of effecting purchases and leases of certain items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency’s authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this Project Agreement shall be subject to the following limitations:

(i)      The Sales Tax Exemption shall be effective only for a term commencing on the date hereof and expiring upon the earliest of (A) the termination of this Project Agreement, (B) the Termination Date (as same may be extended), (C) failure of the Company to file Form ST-340, as described in Section 2.5 below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 2.6 or (E) the date upon which the Company received the Maximum Sales Tax Exemption.

(ii)      The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default beyond the applicable notice and cure periods under any material covenant in this Project Agreement (or related document) until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Project Agreement.

(iv) The Sales Tax Exemption shall only be utilized for items which shall be purchased, incorporated, completed or installed for use only by the Company at the Facility or in connection with the Project (and not with any intention to sell, transfer or otherwise dispose of any such item to a Person as shall not constitute the Company), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any item unless such item is used solely by the Company at the Facility or in connection with the Project.

(v) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company, without the prior written consent of the Agency.

(vi) By execution by the Company of this Project Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(vii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination.

(viii) The Company agrees that the aggregate amount of Sales Tax Exemption realized by the Company and by all Agents of the Company, if any, in connection with the Facility shall not exceed in the aggregate the Maximum Sales Tax Exemption.

Section 2.4 Procedures for Appointing Subagents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent, including, but not limited, to the individuals and entities described on **Schedule A** attached hereto (a "Subagent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Project Agreement, it must complete the following steps:

(i) The Company shall have the right to amend **Schedule A** from time to time and shall solely be responsible for maintaining an accurate list of all parties acting as Subagent for the Agency. The Company's right to appoint Subagents is expressly conditioned upon updating of **Exhibit B** hereto, along with, for each Subagent, the Company must complete and submit Form ST-60 to the Agency, attached hereto as **Exhibit B**. An Authorized Representative of the Agency will sign the Form ST-60 and return the same to the Company. Following receipt of the signed Form ST-60, the Company must file such Form ST-60 within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity. The Company acknowledges and agrees that it shall be the Company's sole and exclusive responsibility to file a completed Form ST-60 with

respect to any Subagent and the failure to timely do so could result in an Event of Default and Recapture Event (as hereinafter defined).

(ii) The Company shall ensure that each Subagent shall observe and comply with the terms and conditions of this Project Agreement.

(iii) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Subagent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Company nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY A SUBAGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(iv) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form ST-123, attached hereto as **Exhibit C-1**, for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state,

“I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the NASSAU CANDY DISTRIBUTORS, INC., 2019 Project located at 300 Duffy Avenue, Hicksville in the Town of Oyster Bay, County of Nassau, IDA Project Number **2803-19-10A**”.

For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an “Invoice Rider” (a copy of which is attached hereto as **Exhibit C-3**) can be utilized for record keeping purposes. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the

date thereof. For each Subagent the Form ST-123 shall be completed as follows: (i) the “Project information” section of Form ST-123, attached hereto as **Exhibit C-2**, should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Subagent; (ii) the date that the Subagent was appointed as indicated on the Form ST-60; and (iii) the “Exempt purchases” section of Form ST-123 should be completed by marking “X” in box “A” only.

All contracts entered into by the Company and all subagents thereof as agent for the Agency shall include the language contained within **Schedule B** attached hereto. **Failure by the Company and/or any subagent thereof to include such language may disqualify the agent status and sales tax exemptions derived by virtue of this Project Agreement. The Company, for itself and on behalf of all duly appointed subagents, hereby agrees that all contracts entered into by the Company and any subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.**

Section 2.5 Form ST-340 Filing Requirement. The Company shall annually a statement with the State Department of Taxation and Finance (the “Commissioner”) an “Annual Report of Sales and Use Tax Exemptions” (NYS Form ST-340, a copy of which is attached hereto as **Exhibit D**) regarding the value of Sales Tax Exemption the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). On or before February 10<sup>th</sup> of each year, the Company shall provide a copy of same to the Agency. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency and/or Recapture of Agency Benefits as described in Section 2.8 hereof.

Section 2.6 GML Provisions Relating to State Sales Tax Savings.

(a) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Subagents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the “GML Provisions”), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Project Agreement and the GML Provisions, the GML Provisions shall control.

(b) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, State Sales Tax Savings taken or purported to be taken by the Company, any Subagent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption or which are for property or services not authorized or taken in cases where the Company, any Subagent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Project Agreement. The Company shall, and shall require each Subagent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Subagent that it requests. The failure to pay over such amounts to the Subagent shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the



Company under Article 28 of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

Subject to the provisions of subsection (i) above, in the event that the Company or any Subagent shall utilize the Sales Tax Exemption in violation of the provisions of this Project Agreement, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company or any Subagent (as applicable).

(c) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 2.6(c).

Section 2.7 Mortgage Recording Tax Exemption. Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law. The Agency hereby grants to the Company exemption from mortgage recording taxes for one or more Mortgages securing an aggregate principal amount not to exceed Maximum Mortgage Principal Amount of \$26,225,000.00, or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing of the Project and any future financing, refinancing or permanent financing of the costs of the Project of \$196,687.00 (the "Mortgage Recording Tax Exemption"); it being understood and agreed that nothing herein shall prohibit the Company from obtaining a mortgage or mortgages in a greater amount if it pays the excess Mortgage Recording Tax applicable over the Maximum Mortgage Recording Tax Exemption. The Company represents and warrants (1) that the real property secured by the Mortgage is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

Section 2.8 Grant of Security Interest. This Project Agreement shall constitute a "security agreement", as such term is defined in the Uniform Commercial Code adopted in the State, as the same may from time to time be in effect (the "UCC"). The Company hereby grants the Agency a first-priority security interest in all of the right, title and interest of the Company in the Equipment acquired by or on behalf of the Company or any Sub Agent of the Company using the Sales Tax Exemption, and conveyed to the Agency by the Bill of Sale and in all additions and accessions thereto, all replacements and substitutions therefor, all books, records and accounts of the Company pertaining to the Expansion Space, and all proceeds and products thereof (collectively, the "Collateral"), as security for payment of the rental payments and all

other payments and obligations of the Company hereunder, and the Agency is authorized to file financing statements with respect to such Collateral without the Company executing the same. If an Event of Default shall occur under this Project Agreement or any other Transaction Document, or such prior Security Interest granted in connection with the Original Project Facility, the Agency shall have, in addition to any and all other rights and remedies set forth in this Project Agreement, and may exercise without demand, any and all rights and remedies granted to a secured party under the UCC, including, but not limited to, the right to take possession of the Equipment and any other personal property that constitute part of the Collateral, and the right to advertise and sell the same, or any part thereof, pursuant to and in accordance with the UCC. The Company agrees that any notice of public or private sale with respect to such Collateral, or any part thereof, shall constitute reasonable notice if it is sent to the Company not less than ten (10) days prior to the date of any such sale. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute, deliver and/or file any instruments or statements necessary or convenient to perfect and continue the security interest granted herein.

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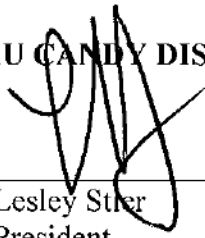
*[Signature Page to Uniform Project Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
Harry Coghlan  
Chief Executive Officer / Executive Director

**NASSAU CANDY DISTRIBUTORS, INC.**

By:   
\_\_\_\_\_  
Lesley Stier  
President



**SCHEDULE A**

**LIST OF APPOINTED AGENTS<sup>1</sup>**

1. **NASSAU CANDY DISTRIBUTORS, INC.**
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

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<sup>1</sup> FOR EACH AGENT APPOINTED BY THE COMPANY, A NYS FORM ST-60 MUST BE COMPLETED AND FILED BY THE COMPANY WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE IDA UNIT INDICATING THE APPOINTMENT OF SUCH AGENT OF THE COMPANY.

## SCHEDULE B

### MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE

“This contract is being entered into by **[NAME OF COMPANY OR NAME OF SUBAGENT]** (the “Agent”), as agent for and on behalf of the **NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”), in connection with a certain project of the Agency for the benefit of **NASSAU CANDY DISTRIBUTORS, INC.**, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 300 Duffy Avenue, Hicksville, Town of Oyster Bay, Nassau County, New York (Section: 11; Block: 327; Lots: 406, 408, 412, 422 and 424) (the “Premises”). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Uniform Project Agreement by and between **NASSAU CANDY DISTRIBUTORS, INC.** and the Agency, dated as of November 1, 2019. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

**EXHIBIT A**

**COST BENEFIT ANALYSIS AND FORM OF PILOT AGREEMENT**

[Attached]

# Economic and Fiscal Impact

NASSAU CANDY DISTRIBUTORS:  
AMENDMENT III

Nassau County  
Industrial Development Agency

OCTOBER 2019

PREPARED BY:



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Saratoga Springs, NY 12866  
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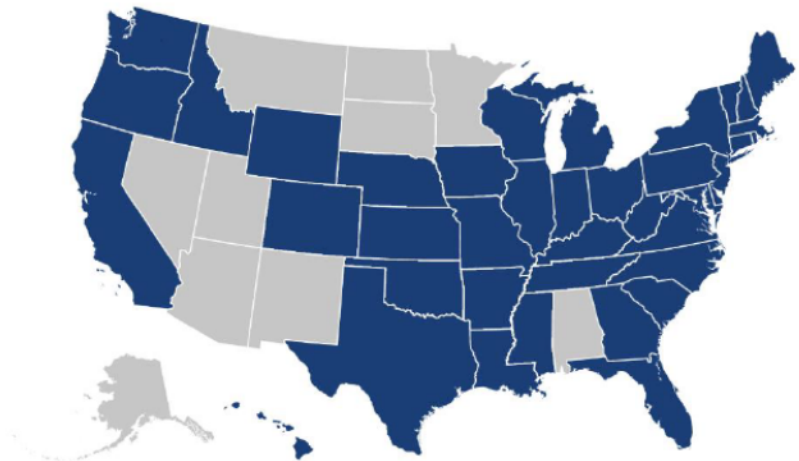
# ABOUT CAMOIN ASSOCIATES

Camoin Associates has provided economic development consulting services to municipalities, economic development agencies, and private enterprises since 1999. Through the services offered, Camoin Associates has had the opportunity to serve EDOs and local and state governments from Maine to California; corporations and organizations that include Lowes Home Improvement, FedEx, Amazon, Volvo (Nova Bus) and the New York Islanders; as well as private developers proposing projects in excess of \$6 billion. Our reputation for detailed, place-specific, and accurate analysis has led to projects in 32 states and garnered attention from national media outlets including Marketplace (NPR), Forbes magazine, The New York Times and The Wall Street Journal. Additionally, our marketing strategies have helped our clients gain both national and local media coverage for their projects in order to build public support and leverage additional funding. We are based in Saratoga Springs, NY, with regional offices in Portland, ME; Boston, MA; Richmond, VA and Brattleboro, VT. To learn more about our experience and projects in all of our service lines, please visit our website at [www.camoinassociates.com](http://www.camoinassociates.com). You can also find us on Twitter [@camoinassociate](https://twitter.com/camoinassociate) and on **Facebook**.

## THE PROJECT TEAM

Rachel Selsky  
*Vice President, Project Principal*

Jessica Ulbricht  
*Analyst, Project Staff*



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# ECONOMIC & FISCAL IMPACT

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY: **NASSAU CANDY, AMENDMENT III**



TOTAL NUMBER OF  
JOBS CREATED:

**85 JOBS**



## Assistance

PILOT  
20-year

SALES TAX  
EXEMPTION  
\$236,224

MORTGAGE  
TAX  
EXEMPTION  
\$49,800

Annual Earnings:  
\$4.1 MN

Annual Sales:  
\$12.2 MN

## Construction:

\$1.4  
MILLION  
earnings



\$3.7  
MILLION  
sales

Increase in County  
Revenues From Property:

**\$977,046**

Total PILOT  
Payments: **\$10.6 MN**

Total Otherwise  
Applicable  
Property Taxes:  
**\$9.6 MN**



Average Annual  
Sales Tax Revenue:

**\$30,580**



NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY



# EXECUTIVE SUMMARY

The Nassau County Industrial Development Agency (the "Agency") received an application for assistance from Nassau Candy Distributors, Inc. (the "Applicant") for a proposed construction of an addition to the existing building (the "Project") at 300 Duffy Avenue, Hicksville, Town of Oyster Bay, NY (the "Site"). The Project being proposed by the Applicant is a facility expansion that would provide 20,000 square feet of new space for the expanded distribution of specialty confectionary and gourmet foods. The Agency commissioned Camoin 310 to conduct an economic and limited fiscal impact analysis of the Project on Nassau County (the "County").

The Applicant proposes to increase its existing employment commitment to the IDA from 363 to 400 full-time equivalent positions, an increase of 37 employees from the current commitment. Camoin 310 concluded that all 37 of the additional jobs and associated economic activity would be "net new." This study analyzes the impact that the Project and these 37 net new jobs would have on the County economy and on municipal revenue sources.

The following is a summary of our findings from this study.

Summary of Benefits to County	
Construction Phase Jobs	20
Construction Phase On-Site Jobs	13
Construction Phase Earnings	\$ 1,394,144
Construction Phase On-Site Earnings	\$ 971,461
One-Time Sales Tax Revenue to County	\$ 10,369
Annual Jobs	65
On-Site Jobs	37
Annual Earnings	\$ 4,111,566
On-Site Earnings	\$ 2,338,095
Average Annual Sales Tax Revenue to County	\$ 30,580
Average Annual PILOT Payment	\$ 530,996

- ◆ The construction of the addition to the building would result in approximately 20 net new construction jobs generating about \$971,000 in direct new earnings on-site and an additional nearly \$423,000 in indirect earnings.
- ◆ Upon completion of the Project, there would be approximately 65 net new jobs in the County, including the 37 net new on-site jobs. The new annual direct on-site earnings associated with the Project equal approximately \$2.3 million and another nearly \$1.8 million in indirect earnings throughout the County.
- ◆ The Applicant has negotiated terms of an amended PILOT agreement with the Agency, which includes an increase in the payments under the existing 20-year PILOT followed by the Applicant paying tax on the full value of the property. Under this amended PILOT agreement, the Applicant would pay over \$10.6 million over the 20-year PILOT term.

Summary of Costs to County	
Sales Tax Exemption	\$ 236,224
Mortgage Tax Exemption	\$ 49,800
Loss (Gain) of Property Tax Revenue	\$ (977,046)

Source: Applicant IDA Application, Camoin 310

## CAMOIN 310

- ◆ Through negotiations with the Agency, the Applicant could have access to a Sales Tax Exemption and Mortgage Recording Tax Exemption valued at \$236,224 and \$49,800, respectively. However, if we assume that the Project would not occur absent IDA benefits, these figures are not actually “costs” to the affected tax jurisdictions since no future revenue stream would exist without the exemptions.
- ◆ The schedule of payments to be made by the Applicant under the amended PILOT agreement would be \$977,046 more than the PILOT payments generated by the Site if the Project were not to occur (i.e. if the Site continued to make tax payments according to the existing PILOT agreement). In other words, the amended PILOT represents a benefit to the affected jurisdictions averaging \$48,852 per year.

# ECONOMIC IMPACT ANALYSIS

The estimates of direct economic activity generated during the construction phase and building occupation as provided by the Applicant were used as the direct inputs for the economic impact model. Camoin 310 used the input-output model designed by Economic Modeling Specialists, Inc. (EMSI) to calculate total economic impact. EMSI allows the analyst to input the amount of new direct economic activity (spending or jobs) occurring within the County and uses the direct inputs to estimate the spillover effects that the net new spending or jobs have as these new dollars circulate through the Nassau County economy. This is captured in the indirect impacts and is commonly referred to as the "multiplier effect." See Attachment A for more information on economic impact analysis.

## CONSTRUCTION PHASE IMPACTS

The Applicant anticipates that private sector investment in the construction of the Project will cost over \$4.9 million. The Applicant estimates that 50% of construction materials and labor would be sourced from within Nassau County, totaling \$2,463,875 in in-County sales from the construction of the project.

Construction Phase Spending		
Total Construction Cost	\$	4,927,749
Percent Sourced from County		50%
Net New Construction Spending	\$	2,463,875

Source: Applicant, Camoin 310

Using \$2,463,875 in direct sales as an input to the EMSI model, Camoin 310 determined that there would be 20 total jobs created, approximately \$1.4 million in wages earned, and nearly \$3.7 million in total sales generated in the County over the course of the construction period.<sup>1</sup>

Economic Impact - Construction Phase			
	Direct	Indirect	Total
Jobs	13	7	20
Earnings	\$ 971,461	\$ 422,683	\$ 1,394,144
Sales	\$ 2,463,875	\$ 1,204,787	\$ 3,668,661

Source: EMSI, Camoin 310

\*Applicant estimates 300 construction related jobs, however we estimate 20 based on \$2,463,875 of new in county spending.

Based solely on information in the application, the construction schedule of 7-9 months, as estimated by the Applicant, should allow the Agency to reach the conclusion that there is a likelihood of accomplishing the Project in a timely manner. Although we are not construction experts, nothing has come to our attention that would cause us to reach a contrary conclusion.

<sup>1</sup> Indirect impacts represent money spent by businesses on purchases of goods and services within the local economy, creating additional employment and earnings. It also includes the spending by employees in the local economy.

CAMOIN 310

## BUILDING OCCUPATION AND OPERATION IMPACTS

The table below outlines the impact that the additional jobs associated with the Applicant will have on Nassau County in terms of direct, indirect, and total impacts on employment and wages. Within three years of Project completion there will be 400 full time equivalent positions at the facility, an increased commitment from 363. Thus the 37 additional jobs are considered the "direct" jobs created by the Project. The following table considers the economic impact of those 37 jobs on the Nassau County economy in terms of permanent jobs, and annual earnings and sales.

Annual Economic Impact - Occupation Phase			
	Direct	Indirect	Total
Jobs	37	28	65
Earnings	\$ 2,338,095	\$ 1,773,471	\$ 4,111,566
Sales	\$ 7,570,056	\$ 4,631,037	\$ 12,201,093

Source: EMSI, Camoin 310

The 37 net new on-site jobs will create a total of 65 jobs, resulting in annual earnings of over \$4.1 million and generating annual sales of over \$12.2 million.



# FISCAL IMPACT ANALYSIS

In addition to the economic impact of the Project on the local economy, there would also be a fiscal impact in terms of annual property tax and sales tax generation. The following section of the analysis outlines the impact of the completion of the Project on the local taxing jurisdictions in terms of the cost and/or benefit to municipal budgets.

## PAYMENT IN LIEU OF TAXES (PILOT)

The Applicant is currently subject to a 20-year payment schedule that was developed based on the assessed value of the existing facility and was previously amended in 2017. The Applicant has applied to the Agency for an additional amended Payment In Lieu of Taxes (PILOT) agreement to provide financial assistance, including an amended exemption from real property taxes.

The amended PILOT terms are shown in the table below.

Tax Payments with Amended PILOT	
Year	Amended PILOT Payments
1	\$ 380,984
2	\$ 460,473
3	\$ 482,148
4	\$ 482,148
5	\$ 542,257
6	\$ 542,257
7	\$ 542,257
8	\$ 542,257
9	\$ 542,257
10	\$ 542,257
11	\$ 542,257
12	\$ 542,257
13	\$ 542,257
14	\$ 542,257
15	\$ 542,257
16	\$ 551,259
17	\$ 560,409
18	\$ 569,712
19	\$ 579,170
20	\$ 588,783
Total	\$ 10,619,913
Average	\$ 530,996

Source: Nassau County IDA, Camoin 310

## CAMOIN 310

**TAX POLICY COMPARISON**

Without the amended exemption from real property taxes, the Applicant will continue to make PILOT payments based on the existing PILOT agreement. The following table outlines the tax payments to be made by the building owner under the existing agreement.

Tax Payment With Existing PILOT	
Year	Existing PILOT Payment
1	\$ 380,984
2	\$ 460,473
3	\$ 482,148
4	\$ 482,148
5	\$ 482,148
6	\$ 482,148
7	\$ 482,148
8	\$ 482,148
9	\$ 482,148
10	\$ 482,148
11	\$ 482,148
12	\$ 482,148
13	\$ 482,148
14	\$ 482,148
15	\$ 482,148
16	\$ 490,152
17	\$ 498,288
18	\$ 506,560
19	\$ 514,969
20	\$ 523,517
<b>Total</b>	<b>\$ 9,642,867</b>
<b>Average</b>	<b>\$ 482,143</b>

Source: Nassau County IDA, Camoin 310

## CAMOIN 310

The table below calculates the benefit (or cost) to the affected taxing jurisdictions as the difference between the amended PILOT payments associated with the Project and the existing PILOT payments that would continue to be made without the Project. Over the course of the proposed PILOT term, the average annual collection by local jurisdictions would be \$48,852 more in PILOT revenue under the amended agreement as compared to the PILOT revenue without the Project under the existing agreement. The total benefit to the affected taxing jurisdictions of the PILOT agreement over twenty years would be \$977,046.

Tax Policy Comparison						
	A		B		C	
Year	Property Tax Payment Without Project		PILOT Payment		Benefit (Cost) To County of Project (Col. B - Col. A)	
1	\$	380,984	\$	380,984	\$	-
2	\$	460,473	\$	460,473	\$	-
3	\$	482,148	\$	482,148	\$	-
4	\$	482,148	\$	482,148	\$	-
5	\$	482,148	\$	542,257	\$	60,109
6	\$	482,148	\$	542,257	\$	60,109
7	\$	482,148	\$	542,257	\$	60,109
8	\$	482,148	\$	542,257	\$	60,109
9	\$	482,148	\$	542,257	\$	60,109
10	\$	482,148	\$	542,257	\$	60,109
11	\$	482,148	\$	542,257	\$	60,109
12	\$	482,148	\$	542,257	\$	60,109
13	\$	482,148	\$	542,257	\$	60,109
14	\$	482,148	\$	542,257	\$	60,109
15	\$	482,148	\$	542,257	\$	60,109
16	\$	490,152	\$	551,259	\$	61,107
17	\$	498,288	\$	560,409	\$	62,121
18	\$	506,560	\$	569,712	\$	63,152
19	\$	514,969	\$	579,170	\$	64,201
20	\$	523,517	\$	588,783	\$	65,266
Total	\$	9,642,867	\$	10,619,913	\$	977,046
Average	\$	482,143	\$	530,996	\$	48,852

Source: Nassau County IDA, Camoin 310

### OTHER EXEMPTIONS

The PILOT program would offer the Applicant savings in terms of property tax benefits, but there are other benefits to working with the Agency including a sales tax exemption on construction materials and furniture, fixtures and equipment and a mortgage recording tax exemption.

Summary of Costs to County	
Sales Tax Exemption	\$ 236,224
Mortgage Tax Exemption	\$ 49,800
Loss (Gain) of Property Tax Revenue	\$ (977,046)

Source: Applicant IDA Application, Camoin 310

The additional incentives offered by the County would benefit the Applicant but would not negatively affect the County because, without the Project, the County by definition would not be receiving any associated Sales Tax revenue.

## CAMOIN 310

## SALES TAX REVENUE

### CONSTRUCTION PHASE

The one-time construction phase earnings described by the total economic impact of the construction work would lead to additional sales tax revenue for the County. It is assumed that 70%<sup>2</sup> of the construction phase earnings would be spent within Nassau County and that 25% of those purchases would be taxable.

One-Time County Sales Tax Revenue Construction Phase	
Total New Earnings	\$ 1,394,144
Amount Spent in County (70%)	\$ 975,901
Amount Taxable (25%)	\$ 243,975
County Sales Tax Rate	4.25%
New County Tax Revenue	\$ 10,369

Source: Nassau County, Camoin 310

As a result of the construction phase employment, the County would receive approximately \$10,369 in new sales tax revenue from the economic impacts of the construction of the Project.

### ONGOING BUILDING OCCUPATION

The additional earnings described by the total economic impact of the ongoing occupation would lead to additional sales tax revenue for the County. It is assumed that 70% of the earnings would be spent within Nassau County and that 25% of those purchases would be taxable.

Annual County Sales Tax Revenue Employee Earnings	
Total New Earnings	\$ 4,111,566
Amount Spent in County (70%)	\$ 2,878,096
Amount Taxable (25%)	\$ 719,524
County Sales Tax Rate	4.25%
New County Tax Revenue	\$ 30,580

Source: Nassau County, Camoin 310

Under these assumptions, the County would receive approximately \$30,580 each year in new tax revenue from the economic impacts of the Project.

<sup>2</sup> A retail leakage analysis of Nassau County suggests that a vast majority of the goods and services that employees will be purchasing are available within the county (food, clothing, vehicles, computers, etc.), but there still will be some outside spending on travel and through purchases made online and in neighboring counties. Based on third party proprietary retail spending data, 70% is a reasonable assumption for the amount of in-county spending. (Source: ESRI)

## ATTACHMENT A: WHAT IS ECONOMIC IMPACT ANALYSIS?

The purpose of conducting an economic impact study is to ascertain the total cumulative changes in employment, earnings and output in a given economy due to some initial “change in final demand”. To understand the meaning of “change in final demand”, consider the installation of a new widget manufacturer in Anytown, USA. The widget manufacturer sells \$1 million worth of its widgets per year exclusively to consumers in Canada. Therefore, the annual change in final demand in the United States is \$1 million because dollars are flowing in from outside the United States and are therefore “new” dollars in the economy.

This change in final demand translates into the first round of buying and selling that occurs in an economy. For example, the widget manufacturer must buy its inputs of production (electricity, steel, etc.), must lease or purchase property and pay its workers. This first round is commonly referred to as the “Direct Effects” of the change in final demand and is the basis of additional rounds of buying and selling described below.

To continue this example, the widget manufacturer’s vendors (the supplier of electricity and the supplier of steel) will enjoy additional output (i.e. sales) that will sustain their businesses and cause them to make additional purchases in the economy. The steel producer will need more pig iron and the electric company will purchase additional power from generation entities. In this second round, some of those additional purchases will be made in the US economy and some will “leak out”. What remains will cause a third round (with leakage) and a fourth (and so on) in ever-diminishing rounds of industry-to-industry purchases. Finally, the widget manufacturer has employees who will naturally spend their wages. Again, those wages spent will either be for local goods and services or will “leak” out of the economy. The purchases of local goods and services will then stimulate other local economic activity. Together, these effects are referred to as the “Indirect Effects” of the change in final demand.

Therefore, the total economic impact resulting from the new widget manufacturer is the initial \$1 million of new money (i.e. Direct Effects) flowing in the US economy, plus the Indirect Effects. The ratio of Total Effects to Direct Effects is called the “multiplier effect” and is often reported as a dollar-of-impact per dollar-of-change. Therefore, a multiplier of 2.4 means that for every dollar (\$1) of change in final demand, an additional \$1.40 of indirect economic activity occurs for a total of \$2.40.

Key information for the reader to retain is that this type of analysis requires rigorous and careful consideration of the geography selected (i.e. how the “local economy” is defined) and the implications of the geography on the computation of the change in final demand. If this analysis wanted to consider the impact of the widget manufacturer on the entire North American continent, it would have to conclude that the change in final demand is zero and therefore the economic impact is zero. This is because the \$1 million of widgets being purchased by Canadians is not causing total North American demand to increase by \$1 million. Presumably, those Canadian purchasers will have \$1 million less to spend on other items and the effects of additional widget production will be cancelled out by a commensurate reduction in the purchases of other goods and services.

Changes in final demand, and therefore Direct Effects, can occur in a number of circumstances. The above example is easiest to understand: the effect of a manufacturer producing locally but selling globally. If, however, 100% of domestic demand for a good is being met by foreign suppliers (say, DVD players being imported into the US from Korea and Japan), locating a manufacturer of DVD players in the US will cause a change in final demand because all of those dollars currently leaving the US economy will instead remain. A situation can be envisioned whereby a producer is serving both local and foreign demand, and an impact analysis would have to be careful in calculating how many “new” dollars the producer would be causing to occur domestically.

CAMOIN 310



# Leading action to grow your economy

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**THIRD AMENDED AND RESTATED  
PAYMENT IN LIEU OF TAXES AGREEMENT**

**THIS THIRD AMENDED AND RESTATED PAYMENT IN LIEU OF TAXES AGREEMENT** (this "Agreement"), made as of November 26, 2019 by and among NASSAU CANDY DISTRIBUTORS, INC., a corporation organized and existing under the laws of the State of New York, having an address at 530 West John Street, Hicksville, NY 11801 (the "Company"), 300 DUFFY REAL ESTATE, LLC, a limited liability company organized and existing under the laws of the State of New York, having an address at 530 West John Street, Hicksville, NY 11801 (the "Overlandlord" and together with the Company, the "Obligors"), and the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 1 West Street, 4th Floor, Mineola, NY 11501 (the "Agency"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease Agreement (as hereinafter defined).

WITNESSETH

**WHEREAS**, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I 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**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

**WHEREAS**, the Agency on behalf of the Company has undertaken a project (the "Original Project") consisting 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, 422 and 424) (the "Land"), (2) the renovation of the existing approximately 160,426 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 Company 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) with respect to the



foregoing, including 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 Company or such other entity as may be designated by the Company and agreed upon by the Agency; and

**WHEREAS**, the Company has requested that the Agency undertake a project (the "Expansion Project" and together with the original Project, collectively, the "Project") consisting of (A) the construction, installation and equipping of an approximately 20,000 square foot addition to the Original Building (the "Expansion Space" and together with the Original Building, collectively, the "Building") located on the Land, which Land is more particularly described on Schedule A attached hereto, and (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 "Additional Financial Assistance"); and (C) the amendment of certain Transaction Documents (as defined in the Lease Agreement) in connection therewith; and

**WHEREAS**, the Company is the tenant under an amended and restated lease agreement dated as of January 30, 2014 (as amended, the "Overlease") between Overlandlord, as successor landlord, and the Company, as tenant, pursuant to which the Company leases the Land and the Building (collectively, the "Facility") from the Overlandlord; and

**WHEREAS**, the Agency is the holder of a leasehold interest in the Facility pursuant to a certain assignment and assumption agreement, dated the Closing Date (the "Assignment"), between the Company and the Agency (with the consent of the Overlandlord), which conveys to the Agency all right, title and interest of the Company in and to the Overlease; and

**WHEREAS**, the Agency subleases its interest in the Facility to the Company pursuant to a Sublease Agreement dated as of January 1, 2014 between the Agency and the Company, as amended by Amendment No. 1 to Sublease Agreement dated as of December 2, 2014, as further amended by Amendment No. 2 to Sublease Agreement dated as of December 23, 2015, and as further amended by Amendment No. 3 to Sublease Agreement of even date herewith, each between the Agency and the Company (as amended, modified, supplemented or restated from time to time, the "Lease Agreement"); and

**WHEREAS**, the Agency, the Overlandlord and the Company entered into a Payment in Lieu of Taxes Agreement, dated as of January 1, 2014, as amended and restated by an Amended and Restated Payment in Lieu of Taxes Agreement, dated as of December 1, 2015, and further Amended and Restated Payment in Lieu of Taxes Agreement, dated as of December 29, 2017 (as amended, modified, supplemented or restated from time to time, the "Existing PILOT Agreement"), with respect to the Facility; and

**WHEREAS**, the Agency and the Company wish to further amend and restate the terms of the Existing PILOT Agreement with respect to the Facility to amend, inter alia, the terms of the payments to be made thereunder as hereinafter set forth; and

**WHEREAS**, the payment and performance of the Obligors' respective obligations under this Agreement are secured by a Mortgage and Assignment of Leases and Rents dated as of January 1, 2014 (as amended, modified, supplemented or restated from time to time, the "PILOT Mortgage") from the Company, the Overlandlord and the Agency, as mortgagor, to the County of Nassau (the "PILOT Mortgagee"), its successors and assigns, as mortgagee, pursuant to which the Agency, the Overlandlord and the Company granted a first mortgage lien on the Facility to the PILOT Mortgagee; and

**WHEREAS**, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York (the "RPTL"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control;

**NOW, THEREFORE**, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, the Company, the Overlandlord and the Agency covenant and mutually agree as follows:

Section 1. Tax-Exempt Status of Facility.

(A) Application. (1) The Company shall complete, and the Agency shall file, an amended application for tax exemption pursuant to Section 412-a of the RPTL (the "Application"). The Application shall be filed with the assessor for each of the various taxing entities having jurisdiction over the Facility, including, without limitation, the County of Nassau (the "County") and each city, town, village and school district within which the Facility is located (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and each individually as a "Taxing Entity"). Subject to filing by the Agency of the Application and acceptance thereof by the appropriate tax assessor(s), the parties intend that the amended schedule of PILOT Payments (as such term is hereinafter defined) set forth in this Agreement shall become effective for Year 5 of the term of this Agreement as set forth in Section 2(B) below, meaning that the parties intend that the amended schedule of PILOT Payments shall take effect on January 1, 2020 for the General Tax portion of the PILOT Obligations and July 1, 2019 for the School Tax portion of the PILOT Obligations (the "Amended Abatement Commencement Date").

(2) The Obligors hereby waive any claim or cause of action against the Agency, and release the Agency from any liability to the Obligors, arising from any denial of an exemption from real property taxes and assessments, except to the extent that such denial results solely from the willful failure of the Agency, after demand by the Obligors, to file the completed Application for tax exemption as set forth in this Agreement.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law of the State of New York and Section 412-a of the RPTL may not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement and the other Transaction Documents, the Obligors will be required to pay all special assessments and special

ad valorem levies levied and/or assessed against or with respect to the Facility, subject to Section 2(B)(3) hereof.

(C) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Company, the Overlandlord or the Agency on the Facility or the rental paid pursuant to the Lease Agreement or the occupancy of or any interest of the Company, the Overlandlord or the Agency in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any such taxes, assessments or charges shall be paid by the Obligors as and when due. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid as and when due directly by the Obligors and shall not be credited against nor be affected in any manner by any payment in lieu of real property taxes and assessments in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

(A) Taxes and Existing PILOT Payments. Prior to the PILOT Commencement Date (as defined in the Existing PILOT Agreement), the applicable real property taxes and assessments levied and/or assessed against or with respect to the Facility shall be payable in full by the Obligors to the applicable Taxing Entity as if the Agency were not the holder of a leasehold interest in the Facility or otherwise involved in the Project.

Prior to the Amended Abatement Commencement Date, the applicable payments in lieu of real property taxes and assessments set forth in the Existing PILOT Agreement shall be payable in full by the Obligors in accordance with the terms of the Existing PILOT Agreement.

(B) PILOT Payments. (1) From the PILOT Commencement Date through and including the last day of the twentieth (20th) fiscal tax year thereafter (such date, the "Abatement Expiration Date"), the Obligors shall make payments in lieu of real property taxes and assessments levied and/or assessed by the Taxing Entities against the Facility (collectively, the "PILOT Payments") as follows, subject to the provisions of Section 2(B)(3) hereof:

<b>Year</b>		<b>Amount</b>
1	for the fiscal tax year commencing on the PILOT Commencement Date (i.e., the 2015/16 School Year and the 2016 General Year)	\$380,984
2	for the fiscal tax year commencing on the 1st anniversary of the PILOT Commencement Date (i.e., the 2016/17 School Year and the 2017 General Year)	\$460,473
3	for the fiscal tax year commencing on the 2nd anniversary of the PILOT Commencement Date	\$482,148
4	for the fiscal tax year commencing on the 3rd anniversary of the PILOT Commencement Date	\$482,148
5	for the fiscal tax year commencing on the 4th anniversary of the PILOT Commencement Date	\$542,257

6	for the fiscal tax year commencing on the 5th anniversary of the PILOT Commencement Date	\$542,257
7	for the fiscal tax year commencing on the 6th anniversary of the PILOT Commencement Date	\$542,257
8	for the fiscal tax year commencing on the 7th anniversary of the PILOT Commencement Date	\$542,257
9	for the fiscal tax year commencing on the 8th anniversary of the PILOT Commencement Date	\$542,257
10	for the fiscal tax year commencing on the 9th anniversary of the PILOT Commencement Date	\$542,257
11	for the fiscal tax year commencing on the 10th anniversary of the PILOT Commencement Date	\$542,257
12	for the fiscal tax year commencing on the 11th anniversary of the PILOT Commencement Date	\$542,257
13	for the fiscal tax year commencing on the 12th anniversary of the PILOT Commencement Date	\$542,257
14	for the fiscal tax year commencing on the 13th anniversary of the PILOT Commencement Date	\$542,257
15	for the fiscal tax year commencing on the 14th anniversary of the PILOT Commencement Date	\$542,257
16	for the fiscal tax year commencing on the 15th anniversary of the PILOT Commencement Date	\$551,259
17	for the fiscal tax year commencing on the 16th anniversary of the PILOT Commencement Date	\$560,409
18	for the fiscal tax year commencing on the 17th anniversary of the PILOT Commencement Date	\$569,712
19	for the fiscal tax year commencing on the 18th anniversary of the PILOT Commencement Date	\$579,170
20	for the fiscal tax year commencing on the 19th anniversary of the PILOT Commencement Date	\$588,783

(2) From and after the Abatement Expiration Date, and until the Agency's interest in the Facility is conveyed to the Company pursuant to the terms of the Lease Agreement and the Facility has been returned to the tax rolls as fully taxable property, the Obligors shall make PILOT Payments (defined in Section 2 hereof) equal to one hundred percent (100%) of the amount of real property taxes and assessments that would have been levied and/or assessed against or with respect to the Facility as if the Facility were owned by the Company and/or the Overlandlord and the Agency were not otherwise involved in the Project.

"PILOT Obligations" shall mean all amounts required to be paid by the Obligors under this Agreement, including, without limitation, those amounts set forth in Sections 2.A and 2.B hereof.

(3) Any provision of this Agreement to the contrary notwithstanding, the amount of PILOT Payments set forth in Section 2(B)(1) hereof for each fiscal tax year from the Amended Abatement Commencement Date through the Abatement Expiration Date, shall be

reduced (but not below \$0) by the amount, if any, of special assessments and special ad valorem levies assessed against or levied upon the Facility for such fiscal tax year (collectively, "Special Assessments"), whether by the Nassau County Tax Assessor's Office or otherwise, which Special Assessments would otherwise be payable by the Obligors pursuant to this Agreement. The amount of any such reduction of a PILOT Payment shall be set forth on the applicable PILOT bill issued with respect to such fiscal tax year, if any, but the failure of the Obligors to receive such bill shall in no event affect the Obligors' obligation to pay such PILOT Payment. In the event that (i) the amount of Special Assessments for a particular fiscal tax year exceeds the amount of the PILOT Payment for such fiscal tax year (such excess is hereinafter referred to as an "SA Credit"), or (ii) the amount of PILOT Payments for a particular fiscal tax year are not reduced by the amount of Special Assessments for such fiscal tax year (the amount of such Special Assessments is hereinafter referred to as an "SA Reduction"), then the amount of such SA Credit or SA Reduction, as the case may be, shall be carried over as a credit for the following fiscal tax year(s); provided, however, that if there is an unused SA Credit at the end of the term of the PILOT Payments hereunder, then the Obligors shall not be entitled to (a) take such SA Credit against any further payments hereunder or against real property taxes assessed against the Facility, or (b) an extension of the term of this Agreement.

(C) Payments. (1) Amounts due and payable under this Agreement shall be payable to the Treasurer of the County of Nassau (the "Treasurer"), One West Street, 1st floor, Mineola, NY 11501, or at such other address as the Treasurer may notify the Obligors of in writing.

(2) All PILOT Payments hereunder shall be allocated among the affected tax jurisdictions in proportion to the amount of real property and other taxes and assessments that would have been received by each Taxing Entity had the Project not been tax exempt due to the status of the Agency. This provision constitutes the formula for the calculation of the amounts of the PILOT Payments for each Taxing Entity as required by Section 859-a(6) of the General Municipal Law.

(D) Due Dates; Interest; and Penalties. (1) The Obligors may be billed for PILOT Payments as if the Facility were on the tax rolls at the time when taxes for each Taxing Entity are due.

(2) If any payment required under this Agreement is not made on or before the due date thereof, such payment shall be delinquent and the unpaid amount(s) shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Entities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for a late charge equal to the greater of (a) five (5%) percent of the unpaid amount for the first month, and for each month, or part thereof, that the payment is delinquent beyond the first month, an additional late charge equal to one (1%) percent per month of the total amount payable; and (b) the late charge applicable from time to time to real property tax levies and assessments that are not paid when due. The Obligors covenant and agree to pay all such late charges, interest and penalties when due.

(3) Anything contained in this subparagraph to the contrary notwithstanding, the Obligors shall have the obligation to make all payments of PILOT

Obligations (other than payments of penalties, if any), in (a) two equal semi-annual installments on or prior to the date which is five (5) Business Days prior to January 1 and July 1 for the General Tax portion of the PILOT Obligations, and (b) two equal semi-annual installments on or prior to the date which is five (5) Business Days prior to October 1 and April 1 for the School Tax portion of the PILOT Obligations, as applicable, of each year of the term of the Lease Agreement or on such other due dates as may be established by the Agency or the Treasurer from time to time during the term of the Lease Agreement.

(4) Duplicate copies of bills for the PILOT Obligations shall be sent to the Bank at the address set forth in Section 11(B) of this Agreement promptly after such bills are issued to the Obligors.

(E) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that the Agency's interest in the Facility, or any portion thereof or interest therein, is sold, transferred, assigned or otherwise disposed of by the Agency in accordance with the Lease Agreement, the transferees thereof will thereafter pay the real property taxes and assessments on such Land and the Building and any Additional Facilities (as hereinafter defined) located on the Land, or on such portion of the Land, that was sold, transferred, assigned or otherwise disposed of, as may be required by applicable law.

(F) Sale; Company's Obligation. In the event that the Agency sells, transfers, assigns or otherwise disposes of its interest in the Facility to any party other than the Company, the Company's obligation for PILOT Obligations shall be prorated to the date of the closing of the transaction and thereupon all obligations of the Company for payment of PILOT Obligations shall cease, but the Agency shall take such steps with the transferee or assignee other than the Company to assure that each of the Taxing Entities shall suffer no loss of revenue until the Facility can be placed back on the tax rolls as fully taxable real property and taxes levied and billed therefor.

Section 3. Effective Date; Duration of Agreement. This Agreement shall become effective as set forth in Section 1 above and shall continue in effect until the earlier of (i) the termination of this Agreement pursuant to the terms of the Lease Agreement or of this Agreement, or (ii) the date on which the Assignment and the Lease Agreement are terminated pursuant to the Lease Agreement or this Agreement and the Facility has been placed back on the tax rolls as taxable property.

Section 4. Events of Default. The following shall constitute an "Event of Default" under this Agreement:

A. Failure by the Obligors to make any payment specified herein and the continuance of such failure for a period of fifteen (15) days after receipt by the Obligors of written notice from the Agency, the County and/or any Taxing Entity.

B. Failure by the Obligors to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days after receipt by the Obligors of written notice thereof from the Agency

or, if such default is capable of being cured but cannot be cured within such thirty (30) day period, the failure of the Obligor to commence to cure such default within such thirty (30) day period and to prosecute such cure to completion; provided, however, in no event shall such additional cure period exceed sixty (60) days.

C. The occurrence of an Event of Default under the Assignment, the Lease Agreement or any other agreement between the Agency and the Company.

If the Obligor fails to make any payments pursuant to this Agreement when due, the amount or amounts so in default shall continue as an obligation of the Obligor until fully paid.

Upon the occurrence and during the continuance of an Event of Default hereunder, the Obligor shall be required to make PILOT Payments as if the Facility were owned by the Company (or the Overlandlord) and the Agency was not otherwise involved in the Project, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the Taxing Entities in which the Facility is located.

Upon the occurrence and continuance of an Event of Default hereunder, (i) the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments of PILOT Obligations in default from the Obligor, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and attorneys' fees and expenses) and interest at the rate charged by the respective Taxing Entities on overdue payments of taxes, and (ii) the Agency shall have the right to terminate the Assignment and the Lease Agreement at any time, and the Company shall accept such termination and any tender of reconveyance from the Agency of its interest in the Facility.

The Agency, in enforcing payment by the Obligor of the PILOT Obligations, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. Further, no payment by the Agency or receipt by the Agency or a Taxing Entity of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency and/or any Taxing Entity may accept any check or payment as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not the Obligors make such payments. The Obligors hereby agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

The Agency, the Overlandlord and the Company hereby acknowledge the right of the County, as beneficiary of this Agreement (on behalf of itself and all other Taxing Entities), to pursue any appropriate remedies, including an action or proceeding in the courts, to recover directly from the Obligors any payments of PILOT Obligations in default hereunder and/or to exercise its rights and remedies under the PILOT Mortgage. The Obligors shall promptly notify the Agency of any action or proceeding brought, or other measure taken, by a Taxing Entity to recover such payments in default hereunder. It is understood that the right of any Taxing Entity herein acknowledged is in addition to, and shall not impair, the Agency's own rights arising from a breach of this Agreement.

In the event that any interest in to the Facility is conveyed by the Company or title to the Facility is conveyed by the Overlandlord to any other party prior to expiration of the term of the Lease Agreement (other than transfers expressly permitted under the Lease Agreement or otherwise consented to by the Agency), this Agreement shall, at the option of the Agency, become null and void and any remaining tax abatement hereunder shall be canceled.

The rights, powers and remedies of the Agency and the County under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which the Agency or the County may have against the Obligors pursuant to this Agreement or the other Transaction Documents, or existing at law or in equity or otherwise. The respective rights, powers and remedies of the Agency and the County hereunder may be pursued singly, concurrently or otherwise, at such time and in such order as the Agency or the County may determine in its sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Event of Default with respect to the Obligors shall not be construed to be a waiver of any subsequent Event of Default by the Obligors or to impair any remedy, right or power consequent thereon.

Section 5. Additional Facilities. If any structural additions or change in use shall be made to the buildings or other improvements included in the Facility subsequent to the date hereof (other than the construction of the Expansion Space), or if any additional buildings or improvements shall be constructed on the Land (such change of use, new structures, structural additions, buildings and improvements being referred to hereinafter as "Additional Facilities"), the Obligors agree to increase the PILOT Obligations hereunder in an amount, as determined by the Agency or a tax assessor selected by the Agency, equal to the increased tax payments, if any, that would have been payable on such increase if this Agreement were not in effect. Nothing herein shall constitute the Agency's consent to the construction of any such additions or additional buildings or improvements or to such change of use.



Section 6. Change of Law. In the event the Facility, or any part thereof, is declared to be subject to taxation for real property taxes or assessments by an amendment to the Act, other legislative change or a final judgment of a court of competent jurisdiction, the obligations of the Obligors hereunder shall, to such extent, be null and void. If the Obligors have already paid any amounts under this Agreement for any period that the Obligors are required to pay taxes or assessments because of such amendment, legislative or final judgment (collectively, "Prior Payments"), then the Obligors shall look to the Taxing Authorities for repayment of the Prior Payments or a credit in the amount of the Prior Payments against taxes payable to the relevant Taxing Entity but in no event shall the Obligors look to the Agency for a refund of the Prior Payments.

Section 7. Waiver of Tax Exemption. The Obligors, in recognition of the benefits provided under this Agreement, and for so long as the Lease Agreement is in effect, hereby expressly waive any rights they may have for any exemption under Section 45-b of the RPTL or any other exemption under any other law or regulation (except, however, for the exemption provided under Article 18-A of the General Municipal Law) with respect to the Facility.

The Obligors, in recognition of the benefits provided under this Agreement and the Lease Agreement, hereby expressly waive the right to institute judicial or other review of an assessment of the real property with respect to the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time. In addition, the Obligors hereby represent and warrant that they have stipulated to the discontinuance (with prejudice) of all pending tax certiorari proceedings, if any, with respect to the Facility on or before the date hereof. Notwithstanding the foregoing, during the last three (3) years of the term of this Agreement, the Obligors shall have the right to institute judicial or other review of the assessed value of the real property with respect to the Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Obligors' obligations hereunder, including, without limitation, the Obligors' obligation to make the PILOT Payments when due. Such judicial or other review shall only be for purposes of setting the assessed value of the Facility as though the Facility was on the tax rolls of each Taxing Entity as taxable real property but shall have no effect on this Agreement or the tax-exempt status of the Facility during the term of this Agreement.

Section 8. Delivery of PILOT Statement. The Obligors shall deliver to the Comptroller of the County of Nassau, on or before the dates set forth for payment of the PILOT Obligations in Section 2 hereof, in each year during the term of the Lease Agreement, a verified statement setting forth the amount of such payments and the dates of such payments.

Section 9. Limited Obligation. The obligations, covenants and agreements of the Agency hereunder shall not constitute or give rise to an obligation of the State of New York, the County, or any city, town, village or school district within which the Facility is located and neither the State of New York, the County, nor any such city, town, village or school district shall be liable thereon, and further, such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency.

Section 10. No Waiver. Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Obligors under this Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Obligors' defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Obligors' obligations hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Obligors or receipt by the Agency of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any check or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

Section 11. Notices.

A. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given on the earlier of (1) three (3) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (2) the date on which delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

B. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

To the Agency:

Nassau County Industrial Development Agency  
One West Street  
4<sup>th</sup> Floor  
Mineola, NY 11501  
Attention: Harry Coghlan, Executive Director

With a courtesy copy to:

Harris Beach PLLC  
333 Earle Ovington Blvd.  
Suite 901  
Uniondale, New York 11553  
Attention: Andrew Komaromi, Esq.

To the Obligors:

c/o Nassau Candy Distributors, Inc.  
530 West John Street  
Hicksville, NY 11801  
Attn: Joe Vanella

With a courtesy copy to:

Forchelli Deegan Terrana, LLP  
333 Earle Ovington Boulevard, Suite 1010  
Uniondale, NY 11553  
Attn: Daniel P. Deegan, Esq.

To the Bank:

TD Bank, N.A.  
324 South Service Road  
Melville, NY 11747

Section 12. Change of Address. The Agency, the Overlandlord or the Company may, by notice given hereunder to each other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

Section 13. Assignment of Agreement. This Agreement shall be binding upon the successors and permitted assigns of the Obligors but no assignment shall be effective to relieve the Obligors of any of their obligations hereunder unless expressly authorized and approved in writing by the Agency. The rights and obligations of the Obligors hereunder any not be assigned except in connection with a permitted assignment of the Company's interest in and to the Lease Agreement. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto, the County and the other Taxing Entities.

Section 14. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Lease Agreement executed between the parties thereto shall be a separate and independent document from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Lease Agreement shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Lease Agreement are the only considerations and terms for which the parties thereto have executed this Agreement.

Section 15. Invalidity. If any one or more phrases, sentences, clauses or provisions of this Agreement or the entirety hereof shall be declared invalid or unenforceable by any order, decree or judgment of any court of competent jurisdiction, then such phrase, sentence, clause or provision or the entirety of this Agreement shall be deemed to be reformed in such manner as shall be determined by such court, or in the absence of such a determination then in the reasonable judgment of the Agency, to render such phrase, sentence, clause or provision of this Agreement valid and enforceable under applicable law. The parties hereto agree to enter into such documents, agreements and instruments as the Agency reasonably determines are necessary to effect any such reformation. In the event that any one more of the phrases, sentences, clauses or provisions of this Agreement cannot be reformed to comply with applicable law, then this Agreement shall be construed as if such phrase, sentence, clause or paragraph had not appeared in this Agreement.

Section 16. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency and the Obligors.

Section 17. Prior Agreements. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof, other than the Existing PILOT Agreement.

Section 18. Delivery of Agreement. The Agency covenants to use reasonable efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution.

Section 19. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 20. Service of Process; Consent to Jurisdiction; Forum.

A. The Obligors represent that they are subject to service of process in the State of New York and covenants that they will remain so subject so long as the Lease Agreement shall be in effect. If for any reason any Obligor should cease to be so subject to service of process in the State of New York, such Obligor hereby designates and appoints, without power of revocation, Daniel P. Deegan, Esq., Forchelli Deegan Terrana, LLP, 333 Earle Ovington Boulevard, Uniondale, NY 11553, as agent for service of process, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, the Secretary of State of the State of New York, as the agents of such Obligor upon whom may be served all process, pleadings, notices or other papers which may be served upon such Obligor as a result of any of its obligations under this Agreement; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to such Obligor's obligations hereunder.

B. The Obligors irrevocably and unconditionally (1) agree that any suit, action or other legal proceeding arising out of this Agreement or the other Transaction Documents may be brought in the courts of record of the State of New York in Nassau County or the courts of the United States, Eastern District of New York; (2) consent to the jurisdiction of each such court in any such suit, action or proceeding; and (3) waive any objection which they may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as the Lease Agreement is in effect, the Obligors' agents designated above shall accept and acknowledge in the Obligors' behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Obligors agree and consent that any such service of process upon such agents and written notice of such service to the Obligors in the manner set forth in Section 11 hereof shall be taken and held to be valid personal service upon the Obligors whether or not the Obligors shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Obligors according to the laws governing the validity and requirements of such service in the State of New York, and waive all claim of error by

reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Obligors or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Obligors.

Section 21. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of laws.

Section 22. Nature of Obligations. This Agreement shall remain in full force and effect until each and every one of the PILOT Obligations shall have been irrevocably paid in full and all other obligations of the Obligors under this Agreement shall have been paid and performed in full.

The obligations of the Obligors under this Agreement shall be joint and several.

Section 23. Indemnification. The Obligors agree to indemnify, defend (with counsel selected by the Agency and reasonably acceptable to the Obligors) and hold harmless the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, against any liability arising from any default by the Obligors in performing their obligations hereunder or any expense incurred hereunder, including, without limitation, any expenses of the Agency and attorneys' fees and expenses

Section 24. Existing PILOT Agreement. This Agreement is given in renewal, amendment and restatement of, and not in extinguishment, termination or replacement of, the Existing PILOT Agreement. The Company represents and warrants to the Agency that the Company has no right of set-off, defense, claim or counterclaim with respect to its obligations under the Existing PILOT Agreement. The Company represents, warrants, acknowledges and agrees that this Agreement is secured by the PILOT Mortgage and that the PILOT Mortgage is a first mortgage lien on the Facility.

*[Remainder of this page intentionally left blank]*

*[Signature Page to Third Amended and Restated Payment In Lieu of Taxes Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Harry Coghlan  
Chief Executive Officer /  
Executive Director

**NASSAU CANDY DISTRIBUTORS,  
INC.**

By: \_\_\_\_\_  
Lesley Stier  
President

**300 DUFFY REAL ESTATE, LLC**

By: \_\_\_\_\_  
Lesley Stier  
Manager



**EXHIBIT A**

DESCRIPTION OF THE LAND

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, with the buildings and improvements thereon erected, situate, lying, and being in the Unincorporated area of Hicksville, Town of Oyster Bay, County of Nassau and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Duffy Lane (Avenue), distant 694.50 feet easterly, as measured along the northerly side of Duffy Lane (Avenue), from the easterly end of a curve connecting the easterly side of Charlotte Street with the northerly side of Duffy Lane (Avenue);

RUNNING THENCE North 7 degrees 58 minutes 00 seconds West 669.79 feet;

RUNNING THENCE along the property of Long Island Rail Road, North 82 degrees 02 minutes 00 seconds East 826.16 feet;

RUNNING THENCE South 1 degree 46 minutes 20 seconds West 342.80 feet;

RUNNING THENCE South 76 degrees 49 minutes 40 seconds West 150 feet;

RUNNING THENCE South 1 degree 46 minutes 20 seconds West 270 feet to the northerly side of Duffy Lane (Avenue);

RUNNING THENCE along the Northerly side of Duffy Lane (Avenue) South 76 degrees 49 minutes 40 seconds West 575.49 feet to the point or place of BEGINNING.

FOR INFORMATION ONLY: SAID PREMISES BEING KNOWN AS AND BY:

Section: 11 Block: 327 Lot: 406, 408, 412, 422

and

Section: 11 Block: 327 Lot: 424

300 Duffy Avenue and 344 Duffy Avenue

Hicksville, NY 11801



**EXHIBIT B**

**FORM OF NYS FORM ST-60 TO BE COMPLETED BY COMPANY AND FILED WITH  
THE NYS TAX DEPARTMENT IDA UNIT FOR EACH OF ITS SUBAGENTS WITHIN  
THIRTY (30) DAYS OF APPOINTMENT**

**[See Attached Page]**



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

### IDA information

Name of IDA <b>Nassau County IDA</b>			IDA project number (use OSC numbering system for projects after 1998) <b>2803-19-10A</b>
Street address <b>One West Street</b>			Telephone number <b>( 516 ) 571-1945</b>
City <b>Mineola</b>	State <b>NY</b>	ZIP code <b>11501</b>	Email address (optional) <b>N/A</b>

### Project operator or agent information

Name of IDA project operator or agent		Mark an <b>X</b> in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number
Street address		Telephone number ( )	Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
City	State	ZIP code	Email address (optional) <b>N/A</b>

**\*\*NOTE: Issued to reflect appointment of sub-agent.\*\***

### Project information

Name of project <b>Nassau Candy Distributors, Inc. 2019 Project</b>			
Street address of project site <b>300 Duffy Drive**</b>			
City <b>Hicksville</b>	State <b>NY</b>	ZIP code <b>11801</b>	Email address (optional) <b>N/A</b>
Purpose of project <b>The Project consists of: The construction, installation and equipping of an approximately 20,000 square foot addition to the existing manufacturing facility.</b>			

Description of goods and services intended to be exempted from New York State and local sales and use taxes			
Date project operator or agent appointed (mmddyy)		Date project operator or agent status ends (mmddyy) <b>06/01/2021</b>	Mark an <b>X</b> in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: <b>\$2,738,840</b>		Estimated value of New York State and local sales and use tax exemption provided: <b>\$236,224</b>	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA <b>Harry Coghlan</b>		Print title <b>Chief Executive Officer / Executive Director</b>	
Signature		Date	Telephone number <b>( 516 ) 465-0000</b>

## Instructions

### When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

### Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

### If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

### Mailing instructions

Mail completed form to:

NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866

**Private delivery services** – See Publication 55, *Designated Private Delivery Services*.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our website at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

### Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

**EXHIBIT C-1**

**NYS FORM ST-123  
FOR  
COMPANY**

**[See Attached Page]**



IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities, for more information.

Table with seller and agent information including name, address, city, state, ZIP code, and sales tax ID number.

Mark an X in one: [ ] Single-purchase certificate [X] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Table with project information including Name of IDA (Nassau County IDA), Name of project (Nassau Candy Distributors, Inc. 2019 Project), IDA project number (2803-19-10A), Street address (9 Gerhard Road), City (Hicksville), State (NY), ZIP code (11801), and dates of appointment and status ends.

Exempt purchases

(Mark an X in boxes that apply)

- [X] A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
[ ] B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
[ ] C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence.

Signature of purchaser or purchaser's representative (include title and relationship) and Date fields.

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, WA Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



**Sales Tax Information Center:**

(518) 485-2889

To order forms and publications:

(518) 457-5431



**Text Telephone (TTY) Hotline**

(for persons with hearing and

speech disabilities using a TTY):

(518) 485-5082

**EXHIBIT C-2**

**NYS FORM ST-123  
FOR  
SUBAGENTS OF COMPANY**

**[See Attached Page]**



IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities, for more information.

Form with fields for Name of seller, Name of agent or project operator, Street address, City, town, or village, State, ZIP code, and Agent or project operator sales tax ID number.

Mark an X in one: [ ] Single-purchase certificate [X] Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Form with fields for Name of IDA (Nassau County IDA), Name of project (Nassau Candy Distributors, Inc. 2019 Project), IDA project number (2803-19-10A), Street address (9 Gerhard Road), City (Hicksville), State (NY), ZIP code (11801), and dates of appointment and status ending.

Exempt purchases

(Mark an X in boxes that apply)

- [X] A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
[ ] B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
[ ] C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence.

Form with fields for Signature of purchaser or purchaser's representative (include title and relationship) and Date.



## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, WA Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



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- get information and manage your taxes online
- check for new online services and features



**Sales Tax Information Center:** (518) 485-2889

To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline**

(for persons with hearing and

speech disabilities using a TTY):

(518) 485-5082

**EXHIBIT C-3**

**INVOICE RIDER FORM**

I, \_\_\_\_\_, the  
\_\_\_\_\_ of \_\_\_\_\_ certify that I am  
a duly appointed agent of the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
(the “Agency”) and that I am purchasing the tangible personal property or services for use in the  
following Agency Project and that such purchases qualify as exempt from sales and use taxes  
under the Uniform Project Agreement, dated as of November 1, 2019, by and between the  
Agency and NASSAU CANDY DISTRIBUTORS, INC.

Name of the Project:	NASSAU CANDY DISTRIBUTORS, INC., 2019 Project
Street address of the Project Site:	300 Duffy Avenue, Hicksville, Town of Oyster Bay, Nassau County, New York
Tax Map #:	(Section: 11; Block: 327; Lots: 406, 408, 412, 422 and 424)
IDA OSC project number:	<b>2803-19-10A</b>

**EXHIBIT D**

**NYS FORM ST-340 TO BE COMPLETED BY THE COMPANY AND FILED  
ANNUALLY WITH THE NYS TAX DEPARTMENT IDA UNIT NO LATER THAN  
FEBRUARY 10<sup>TH</sup> OF EACH YEAR**

**[See Attached Page]**



Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

For period ending December 31, \_\_\_\_\_ (enter year)

Project information

Form with fields for Name of IDA agent/project operator, Employer identification number (EIN), Street address, Telephone number, City, State, ZIP code, Name of IDA, Name of project, IDA project number, Street address of project site, City, State, ZIP code, Date project began, Completion date of project, Actual, Expected, Total sales and use tax exemptions.

Representative information (not required)

Form with fields for Authorized representative, if any, Title, Street address, Telephone number, City, State, ZIP code.

Certification

Certification text: I certify that the above statements are true, complete, and correct... Print name of officer, employee, or authorized representative, Title of person signing, Signature, Date.

If you do not annually file a complete report, we may remove your authority to act as an IDA agent/project operator.

Mail completed report to: NYS TAX DEPARTMENT, IDA UNIT, W A HARRIMAN CAMPUS, ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

## Instructions

### General information

#### Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should not themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

#### What you must report

The report must show the **total value of all state and local sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the **total combined** exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

#### When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

#### Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

**Name of IDA agent/project operator:** Enter your name, address, employer identification number (EIN), and telephone number.

**Name of IDA and IDA project number:** Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

**Name of project:** Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

**Date project began:** Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Completion date of project:** Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

**Total sales and use tax exemptions:** Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (*if none, enter 0*). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases.

#### Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

#### Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

### Need help?



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- get information and manage your taxes online
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#### Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

#### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.