

AMENDMENT NO. 2 TO SUBLEASE AGREEMENT

THIS AMENDMENT NO. 2 TO SUBLEASE AGREEMENT (this "Amendment") dated as of December 23, 2015, 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 1550 Franklin Avenue, Suite 235, Mineola, NY 11501 (the "Agency"), and NASSAU CANDY DISTRIBUTORS, INC., a corporation 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 Company submitted an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking 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 and 422) (the "Land"), (2) the renovation of the existing approximately 127,000 square foot building (collectively, the "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 "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 "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 Agency appointed the Company as agent of the Agency to undertake the acquisition, renovation, installation and equipping of the Project Facility and the Agency has subleased the Project Facility to the Company, all pursuant to the terms and conditions set forth in the Sublease Agreement dated as of January 1, 2014 between the Company and the Agency, as amended by Amendment No. 1 to Sublease Agreement dated as of December 2, 2014 between the Company and the Agency (as amended to date, the "Lease"), and the other Transaction Documents (as defined in the Lease); and

WHEREAS, the Company has requested that the Agency undertake a project (the "Expansion Project") consisting of (A) the construction, installation and equipping of an approximately 26,216 square foot addition to the Building (the "Expansion Space"), and (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of

the Act) with respect to the foregoing, in the form of a potential exemption or partial exemption from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Additional Financial Assistance"); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") to hear all persons interested in the Expansion Project and the Additional Financial Assistance contemplated by the Agency with respect to the Expansion Project, to be mailed on October 9, 2015 to the chief executive officer of Nassau County, New York and of each other affected tax jurisdiction within which the Expansion Space is or is to be located, (B) caused notice of the Public Hearing to be published on October 10, 2015 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the Town of Oyster Bay and the County of Nassau, New York, (C) conducted the Public Hearing on October 28, 2015 at 10:00 a.m. local time at Oyster Bay Community Center, 59 Church Street, Oyster Bay, Town of Oyster Bay, Nassau County, New York, and (D) prepared a report of the Public Hearing (the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, (A) the Executive Director of the Agency caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's uniform tax exemption policy and guidelines to be mailed on October 21, 2015 to the chief executive officer of each affected tax jurisdiction, and (B) the members of the Agency conducted the IDA Meeting on the November 9, 2015, reviewed any written comments or correspondence received at or before the IDA Meeting regarding the proposed deviation from the Agency's uniform tax exemption policy, and approved the proposed deviation by resolution of the members of the Agency adopted on November 9, 2015; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the materials submitted by the Company and made any necessary comments to members of the Agency, and by resolution of the members of the Agency adopted immediately prior to the adoption hereof, the Agency decided to conduct an uncoordinated review of the Expansion Project and determined that the Expansion Project will not have a significant adverse environmental impact and that an environmental impact statement will not be prepared; and

WHEREAS, by resolution adopted by the members of the Agency on November 9, 2015 (the "Authorizing Resolution"), the Agency, following a review of the Report, determined to proceed with the Expansion Project, to grant the Additional Financial Assistance and to enter into the transaction contemplated by this Amendment and that certain Project Agreement dated as of December 1, 2015 (the "Project Agreement") between the Agency and the Company;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company and the Agency mutually covenant, warrant and agree as follows:

SECTION 1. DEFINITIONS.

SECTION 1.1 Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Transaction Documents (as defined in the Lease).

SECTION 2. AMENDMENTS.

SECTION 2.1 The definition of "PILOT Agreement" in Section 1.1 of the Lease is amended and restated in its entirety to read as follows:

"'PILOT Agreement' means the Payment in Lieu of Taxes Agreement of even date herewith among the Company, the Overlandlord and the Agency, as amended and restated by the Amended and Restated Payment in Lieu of Taxes Agreement dated as of December 1, 2015 among the Company, the Overlandlord and the Agency, pursuant to which the Company and the Overlandlord shall make certain payments in lieu of real property taxes with respect to the Premises."

SECTION 2.2 The defined term "Project Agreement" is hereby added to Section 1.1 of the Lease:

"'Project Agreement' means that certain Project Agreement dated as of December 1, 2015 between the Agency and the Company."

SECTION 2.3 Section 2.2(N) of the Lease is hereby amended and restated in its entirety to read as follows:

"(N) The Company shall (i) maintain its current level of employment in the State of New York as set forth in the Application for Financial Assistance dated September 28, 2015 (i.e., three hundred twenty-eight (328) full-time equivalent, private sector jobs) throughout the term of this Agreement, (ii) create at least fifteen (15) new, full-time equivalent, private sector jobs on or before December 1, 2017 as described in the Application; (iii) create at least an additional five (5) new, full-time equivalent, private sector jobs on or before December 1, 2019 as described in the Application; all of which jobs set forth in clauses (i), (ii) and (iii) shall, at all times during the term of this Agreement, be located at the Project Facility and/or at any of the Company's facilities located at 500-530 West John Street, Hicksville, NY, 90 Alpha Plaza, Hicksville, NY, and 660 Cantiague Rock Road, Jericho, NY (collectively, the "Minimum Employment

Requirement”). In addition, the Company covenants and agrees that it shall maintain the Project Facility as its regional distribution facility at all times during the term of this Lease from and after the Scheduled Completion Date (as hereinafter defined)”

SECTION 2.4 The following subsection (24) is inserted at the end of Subsection (A) of Section 10.1 of the Lease:

“(24) A default or an Event of Default shall occur under the Project Agreement or under any document, instrument or agreement executed and delivered by the Company, the Overlandlord or the Guarantor in connection with the Project Agreement.”

SECTION 2.5 The following sentence is inserted at the end of subsection (2) of Subsection (B) of Section 11.4 of the Lease:

“Furthermore, miscellaneous benefits hereunder shall not include the value of any exemption from sales and/or use taxes received by the Company pursuant to the Project Agreement.”

SECTION 2.6 The following subsection (12) is inserted at the end of Subsection (C) of Section 11.4 of the Lease:

“(12) The occurrence of a Recapture Event under the Project Agreement.”

SECTION 2.7 The parties acknowledge and agree that, effective as of the date of this Amendment, the Expansion Space constitutes a part of the Building and the Project Facility and such terms shall be deemed amended to include the Expansion Space.

SECTION 3. CONDITIONS.

SECTION 3.1 Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof, of the following conditions precedent:

(A) the execution and delivery by the Company and the Agency of an original or counterpart originals of this Amendment;

(B) the Company, the Overlandlord and the Guarantor shall deliver such other documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment; and

(C) the Company shall pay all fees and expenses (including attorneys’ fees and expenses) incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the transactions contemplated herein.

SECTION 4. MISCELLANEOUS.

SECTION 4.1 Representations and Warranties.

(A) All terms, conditions, covenants, representations and warranties of the Company contained in the Transaction Documents, except as expressly modified hereby, are ratified, confirmed and reaffirmed by the Company as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Amendment.

(B) The Company represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

SECTION 4.2 Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the Lease as amended by this Amendment shall be satisfactory in form and substance to the Agency.

SECTION 4.3 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other documents furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 4.4 Reference to Lease. The Lease, the Transaction Documents and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Lease, as amended hereby, are hereby amended so that any reference in the Lease, the Transaction Documents or such other agreements, documents or instruments executed in connection with the Lease shall mean a reference to the Lease, as amended hereby.

SECTION 4.5 Governing Law. This Amendment, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the laws of the State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

SECTION 4.6 Successors and Assigns. The Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties.

SECTION 4.7 Counterparts. This Amendment may be executed in any number of counterparts and by the Company and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Amendment.

SECTION 4.8 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

SECTION 4.9 Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment shall govern.

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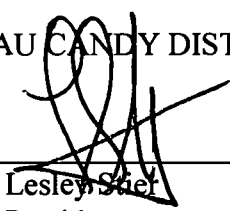
SECTION 4.10 Entire Agreement. This Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings, and agreements between such parties with respect to such transaction.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

Company:

NASSAU CANDY DISTRIBUTORS, INC.

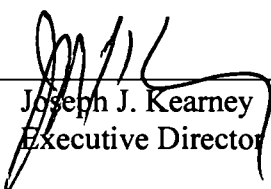
By: _____


Lesley Stier
President

Agency:

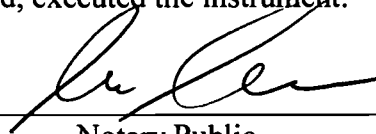
NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____


Joseph J. Kearney
Executive Director

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

On the 23rd day of December, 2015, before me, the undersigned, personally appeared Lesley Stier, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

FRANKLIN R. DAVIS
Notary Public, State of New York
No. 02DA4964405
Qualified in Nassau County
Commission Expires April 2, 2016

STATE OF NEW YORK)
)SS.:
COUNTY OF NASSAU)

On the 24th day of December, 2015, before me, the undersigned, personally appeared Joseph J. Kearney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Paul V. O'Brien
Notary Public State of New York
No. 02OB6235944
Qualified in Nassau County
Commission Expires February 14, ~~2015~~ 2016