

**RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO GERSHOW RECYCLING CORPORATION, KELPAM REALTY CORPORATION, 12 SARAH DRIVE REALTY LLC AND TWO BROTHERS SCRAP METAL RECYCLING COMPANY LLC IN CONNECTION WITH THE RECONSTRUCTION, RENOVATION AND EQUIPPING OF CERTAIN SCRAP METAL RECYCLING FACILITIES IN THE TOWN OF BABYLON**

WHEREAS, the Town of Babylon Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular under the provisions of the New York State Industrial Development Agency Act and the Agency's enabling legislation, respectively constituting Article 18-A and Section 907-a of the General Municipal Law (Chapter 24 of the Consolidated Laws of New York), as amended (the "Act"), to assist in providing for manufacturing, warehousing, research, civic, commercial and industrial facilities in the Town of Babylon; and

WHEREAS, representatives of Gershow Recycling Corporation ("Gershow Recycling"), a New York corporation and Kelpam Realty Corporation ("Kelpam Realty") a New York corporation, have supplied information to the Town of Babylon Industrial Development Agency (the "Agency") with respect to a project (the "Gershow Recycling Project") consisting of the renovation and equipping of an approximately 25,500 square foot scrap metal recycling facility located on those certain lots, pieces or parcels of land generally known as and located at 635 and 655 Muncy Avenue and 616 and 620 Cord Avenue in Lindenhurst, New York (the "Gershow Recycling Facility") in the Town of Babylon, New York (the "Town") for use by Gershow Recycling in its scrap metal processing and recycling business; and

WHEREAS, representatives of Two Brothers Scrap Metal Recycling Company LLC ("Two Brothers") a New York limited liability company and 12 Sarah Drive Realty LLC ("12 Sarah Drive Realty") a New York limited liability company, have supplied information to the Agency with respect to a project (the "Two Brothers Project" and collectively the Gershow Recycling Project, the "Project") consisting of the reconstruction, renovation and equipping of certain scrap metal recycling facilities aggregating approximately 33,000 square feet on those certain lots, pieces or parcels of land generally known as and located at 20 and 25 Sarah Drive and 130 and 148 Central Avenue in Farmingdale, New York (the "Two Brothers Facility" and collectively with the Gershow Recycling Facility, the "Facility") in the Town, for use by Two Brothers in its scrap metal processing and recycling business; and

WHEREAS Gershow Recycling, Kelpam Realty, Two Brothers and 12 Sarah Drive Realty are affiliated entities (the "Affiliated Entities"); and

WHEREAS, representatives of the Affiliated Entities have indicated that the Project will result in the retention and growth of a permanent full time jobs within the Town; and

WHEREAS, in order to induce the Affiliated Entities to proceed with such facilities within the Town it appears necessary for the Agency to assist the Affiliated Entites by taking leasehold title to the Gershow Recycling Facility and the Two Brothers Facility so as to afford

the Affiliated Entities certain relief from mortgage recording taxation (to the extent requested), relief from real property taxation and relief from sales and use taxation for a limited period; and

WHEREAS, it is contemplated that Kelpam Realty will lease the Gershow Recycling Facility to the Agency pursuant to a Company Lease Agreement (the "Gershow Recycling Company Lease") and the Agency will assist Kelpam Realty and Gershow Recycling to undertake the Gershow Recycling Project and will further sublease the Gershow Recycling Facility to Kelpam Realty pursuant to a Lease Agreement (the "Gershow Recycling Lease Agreement"), by and between Kelpam Realty and the Agency pursuant to which Kelpam Realty agrees, among other things, to make lease payments in such amounts as specified in the Gershow Recycling Lease Agreement; and

WHEREAS, it is intended that Kelpam Realty will sublease the Gershow Recycling Facility to Gershow Recycling pursuant to a Sublease Agreement (the "Gershow Recycling Sublease Agreement"), by and between Kelpam Realty and Gershow Recycling pursuant to which Gershow Recycling agrees, among other things, to make sublease payments in such amounts as specified in the Gershow Recycling Sublease Agreement which shall equal all amounts due to the Agency under the Gershow Recycling Lease Agreement; and

WHEREAS, pursuant to the Gerhow Recycling Lease Agreement and the Gershow Recycling Sublease Agreement, Kelpam Realty and Gershow Recycling have agreed to make certain payments in lieu of real property taxes with respect to the Gershow Recycling Facility to the Agency; and

WHEREAS, it is contemplated that 12 Sarah Drive Realty will lease the Two Brothers Facility to the Agency pursuant to a Company Lease Agreement (the "Two Brothers Company Lease") and the Agency will assist 12 Sarah Drive Realty and Two Brothers to undertake the Two Brothers Project and will further sublease the Two Brothers Facility to 12 Sarah Drive Realty pursuant to a Lease Agreement (the "Two Brothers Lease Agreement"), by and between 12 Sarah Drive Realty and the Agency pursuant to which 12 Sarah Drive Realty agrees, among other things, to make lease payments in such amounts as specified in the Two Brothers Lease Agreement; and

WHEREAS, it is intended that 12 Sarah Drive Realty will sublease the Two Brothers Facility to Two Brothers pursuant to a Sublease Agreement (the "Two Brothers Sublease Agreement" and collectively with the Gershow Recycling Sublease Agreement, the "Sublease Agreements"), by and between 12 Sarah Drive Realty and Two Brothers pursuant to which Two Brothers agrees, among other things, to make sublease payments in such amounts as specified in the Two Brothers Sublease Agreement which shall equal all amounts due to the Agency under the Two Brothers Lease Agreement; and

WHEREAS, pursuant to the Two Brothers Lease Agreement and the Two Brothers Sublease Agreement, 12 Sarah Drive Realty and Two Brothers have agreed to make certain payments in lieu of real property taxes with respect to the Two Brothers Facility to the Agency; and

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Affiliated Entities in connection with the Project including exemption from mortgage recording taxes (to the extent requested), real property taxes and sales and use taxes.

NOW, THEREFORE, BE IT DETERMINED, APPROVED AND RESOLVED by the members of the Agency as follows:

Section 1. (a) The Agency hereby finds and determines that (i) the Project constitutes a "Project" within the meaning of the Industrial Development Agency Act Article 18-A of the General Municipal Law of the State of New York (the "Act"); and (ii) the granting of mortgage recording tax abatements, real property tax abatements and sales and use tax abatements (collectively the "Financial Assistance") by the Agency with respect to the Facility pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town of Babylon, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

(b) It is desirable and in the public interest for the Agency to grant Financial Assistance to the Affiliated Entities with respect to the Project.

(c) The Agency shall grant Financial Assistance in the form of state and local sales and use tax abatements and in the event of the occurrence of a recapture event under the Gershow Recycling Lease Agreement or the Two Brothers Lease Agreement (collectively the "Lease Agreements"), the Agency will pursue recapture of Financial Assistance as provided in the Lease Agreements.

Section 2. To accomplish the purposes of the Act in order to assist the Affiliated Entities to undertake the Project, (i) the Agency shall take leasehold title to (A) the Gershow Recycling Facility pursuant to the Gershow Recycling Company Lease and (B) the Two Brothers Facility pursuant to the Two Brothers Company Lease (collectively the "Company Leases"), (ii) the Agency will lease (A) the Gershow Recycling Facility to Kelpam Realty pursuant to the Gershow Recycling Lease Agreement and (B) the Two Brothers Facility to 12 Sarah Drive Realty pursuant to the Two Brothers Lease Agreement, and (iii) (A) Kelpam Realty shall sublease the Gershow Recycling Facility to Gershow Recycling pursuant to the Gershow Recycling Sublease Agreement and (B) 12 Sarah Drive Realty shall sublease the Two Brothers Facility to Two Brothers pursuant to the Two Brothers Sublease Agreement.

Section 3. Pursuant to the Lease Agreements and Sublease Agreements, Kelpam Realty and 12 Sarah Drive Realty, respectively shall make certain payments in lieu of real property taxes ("Pilots") which would be otherwise due and payable with respect to the Facility.

Section 4. In order to provide Kelpam Realty and 12 Sarah Drive Realty with financial assistance with respect to exemption from New York State and local Sales and Use Taxes with respect to the Project the Agency may respectively issue to Kelpam Realty and 12 Sarah Drive Realty agents its Sales Tax Agent Authorization Letter (the "Sales Tax Letter") which shall be used pursuant to the terms contained therein and in the Lease Agreement.

Section 5. The form and substance of the Company Leases are hereby approved.

Section 6. The form and substance of the Lease Agreements in substantially the form previously approved by the Agency for other “straight lease” transactions are hereby approved.

Section 7. The form and substance of the Sublease Agreements in substantially the form previously executed for other “straight lease” transactions are hereby approved.

Section 8. Matthew McDonough, as Chief Executive Officer or any successor CEO or any other Authorized Representative, is hereby authorized, on behalf of the Agency, to execute and deliver final forms of the Company Leases, the Lease Agreements, the Sales Tax Agent Authorization Letters and any other agreements or certificates consistent herewith (hereinafter collectively called the “Agency Documents”), all in substantially the forms previously executed by the Agency for other “straight lease” transactions acceptable to Agency Counsel, with such changes, variations, omissions and insertions in the Agency Documents as the CEO or any other Authorized Representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO shall constitute conclusive evidence of such approval.

The CEO or any other Authorized Representatives are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives including the Chairman, the Secretary or Assistant Secretary of the Agency, to execute any Agency Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Agency Documents.

The Secretary, Assistant Secretary or Counsel to the Agency is hereby authorized to attest to the CEO’s or any other Authorized Representative’s signature on the foregoing documents and to impress or affix the seal or facsimile seal of the Agency thereto.

Section 9. The CEO, the Chief Financial Officer (“CFO”) of the Agency, the Chairman or the Secretary and any member of the Agency (as used in this resolution, the “Authorized Representatives”) are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to cause the transactions as described in the Company Leases, the Lease Agreements, and the Sublease Agreements to be undertaken and in relation thereto, to execute and deliver any and all papers, instruments, agreements, opinions, certificates, affidavits and other documents, and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, and the Agency Documents including such changes or revisions in the forms of such documents as may be requested by counsel to the Agency.

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments, agreements and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary, or in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 11. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution, and the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this resolution, and the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

Section 12. No covenant, stipulation, obligation or agreement contained in this resolution, or the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency or the Town of Babylon in his or their individual capacity and neither the members of the Agency nor any officer shall be liable personally on the Agency Documents or be subject to any personal liability or accountability by reason of the execution thereof.

Section 13. The law firm Winston & Strawn LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 14. Notwithstanding the foregoing, the Agency will not grant any Financial Assistance (as such term is defined in the Act) in excess of \$100,000 to any of the Affiliated Entities until the Agency has held a public hearing with respect to the Project in accordance with the provisions of the Act.

Section 15. This resolution shall take effect immediately.

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

The resolution was thereupon declared duly adopted.

Adopted: January 12, 2016


STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF SUFFOLK )

I, Chris Ferenczik, the duly elected, qualified Secretary of the Town of Babylon Industrial Development Agency (the "Agency"), hereby certify that:

1. The foregoing is a true, correct and complete copy of the record of proceedings of the Agency had and taken at a lawful meeting of the Agency held at the Law Office of John Braslow, 816 Deer Park Avenue, North Babylon, New York on January 12, 2016, commencing at the hour of 7:00 P.M., as recorded in the regular official book, of the proceedings of the Agency, those proceedings were duly had and taken as shown therein.

2. All members of the Agency and the public were duly notified of that meeting pursuant to law.

IN WITNESS WHEREOF, I have signed this certificate and affixed the seal of the Agency the 12th day of January, 2016.

  
Secretary

(SEAL)