

**RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO BERENSTEIN & SON INC. D/B/A BERENSTEIN TEXTILES AND RCB PROPERTIES IN CONNECTION WITH THE ACQUISITION, RENOVATION AND EQUIPPING BY STRONG ISLAND PROPERTIES LLC OF AN OFFICE AND MANUFACTURING FACILITY 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 Berenstein & Son Inc. d/b/a Berenstein Textiles, a corporation organized and existing under the laws of the State of New York (the "Sublessee") and RCB Properties or any other real estate holding entity formed by the principals of the Company (the "Lessee") have supplied information to the Agency concerning the acquisition, renovation and equipping by the Lessee of an approximately 25,000 square foot building for use by the Company as an office, warehousing and manufacturing facility (the "Project") located on that certain approximately 2.1 acre lot, piece or parcel of land generally known as and located at 300 Suburban Drive, Deer Park, New York, (the "Facility") in the Town of Babylon, New York (the "Town") in its its business of importing textiles globally and selling (wholesale) mainly throughout the United States; and

WHEREAS, representatives of the Lessee and the Sublessee have indicated that the Project will result in the creation and growth of a significant number of permanent full time jobs within the Town; and

WHEREAS, in order to induce such facilities within the Town it appears necessary to assist the Lessee and the Sublessee by taking legal title to the Facility so as to afford the Sublessee and the Lessee certain relief from mortgage recording taxation, relief from real property taxation and relief from sales and use taxation for a limited period; and

WHEREAS, it is contemplated that the Lessee or the current owner of the Facility will cause the transfer pursuant to a deed of the Facility to the Agency and the Agency will assist the Lessee and the Sublessee to undertake the Project and will Lease the Facility to the Lessee pursuant to a Lease Agreement (the "Lease Agreement"), by and between the Lessee and the Agency pursuant to which the Lessee agrees, among other things, to make lease payments in such amounts as specified in the Lease Agreement and it is intended that the Lessee will sublease the Facility to the Sublessee pursuant to a Sublease Agreement (the "Sublease Agreement"), by and between the Lessee and the Sublessee pursuant to which the Sublessee agrees, among other things, to make sublease payments in such amounts as specified in the Sublease Agreement which shall equal all amounts due to the Agency under the Lease Agreement; and

WHEREAS, pursuant to the Lease Agreement and the Sublease Agreement the Lessee and the Sublessee have agreed to make certain payments in lieu of real property taxes with respect to the Facility to the Agency; and

WHEREAS, the Agency has made certain findings and determinations in its inducement resolution regarding the Project adopted on March 19, 2013, which by this reference are adopted and confirmed as though made on the date hereof; and

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Lessee and the Sublessee in connection with the Project including exemption from mortgage recording taxes, 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 Sublessee and the Lessee with respect to the Project.

(c) The Agency shall grant Financial Assistance in the form of state and local sales and use tax abatements not to exceed \$8,625 over a period of two years. In the event of the occurrence of a recapture event under the Lease Agreement, the Agency will pursue recapture of Financial Assistance as provided in the Lease Agreement.

Section 2. To accomplish the purposes of the Act, the Agency shall take legal title to the Facility, assist the Lessee and Sublessee to undertake the Project and lease the Facility to the Lessee pursuant to the Lease Agreement. The Lessee shall sublease the Facility to the Sublessee pursuant to the Sublease Agreement.

Section 3. Pursuant to the Lease Agreement and Sublease Agreement, the Lessee or the Sublessee on behalf of the Lessee 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 the Lessee and the Sublessee with financial assistance with respect to exemption from New York State Sales and Use Taxes with respect to the Project the Agency shall issue to the Lessee and the Sublessee its Sales Tax Letter (the "Sales Tax Letter") which shall be used pursuant to the terms contained therein and in the Lease Agreement.

Section 5. In order to secure amounts to be loaned by any mortgage lender acceptable to the Chief Executive Officer (“CEO”) of the Agency to the Lessee, the Agency hereby authorizes the execution of one or more mortgages and assignments of leases and rents (collectively, the “Mortgages”) granted from the Agency and the Lessee to any mortgage lender acceptable to the CEO of the Agency in form acceptable to the CEO of the Agency and Counsel to the Agency.

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

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

Section 8. Robert Stricoff, as CEO 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 Lease Agreement, the Sales Tax Letter, the Mortgages 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 to the extent required by the Agency Documents.

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 Lease Agreement and the Sublease Agreement 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 either of the Sublessee or the Lessee until the Agency has held a public hearing with respect to the Project in accordance with the provisions of the Act.

Section 15. Special Provisions Relating to State Sales Tax Savings. The Lessee and the Sublessee agree to comply, and to cause each of their respective contractors, subcontractors, agents, persons or entities to comply, with the terms and conditions of Section 875(1) and (3) of the General Municipal Law, attached hereto as Exhibit A, as such provisions may be amended from time to time.

Section 16. 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: May 21, 2013

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

I, \_\_\_\_\_, 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 May 21, 2013, 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 21st day of May, 2013.

  
Secretary

(SEAL)

## EXHIBIT A

### SPECIAL PROVISIONS RELATING TO STATE SALES TAX SAVINGS General Municipal Law, Section 875(1) and (3)

Section 875. Special provisions applicable to State sales and compensating use taxes and certain types of facilities.

1. For purposes of this Section: "State sales and use taxes" means sales and compensating use taxes and fees imposed by Article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a City by Section eleven hundred seven or eleven hundred eight of such Article twenty-eight. "IDA" means an industrial development agency established by this Article or an industrial development authority created by the public authorities law. "Commissioner" means the Commissioner of taxation and finance. ...

3. (A) An IDA shall include within its resolutions and project documents establishing any project or appointing an agent or project operator for any project the terms and conditions in this subdivision, and every agent, project operator or other person or entity that shall enjoy State sales and use tax exemption benefits provided by an IDA shall agree to such terms as a condition precedent to receiving or benefiting from such State sales and use exemptions benefits.

(B) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity State sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator. Or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person's agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such State sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such amounts to the IDA shall be grounds for the Commissioner to assess and determined State sales and use taxes due from the person under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.

(C) If an IDA recovers, recaptures, receives, or otherwise obtains, any amount of State sales and use tax exemption benefits from an agent, project operator or other person or entity, the IDA shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report of such amount. An IDA commences to recover, recapture, obtain, or otherwise seek the return of, State sales and use tax exemption benefits from an agent, project operator or other person or entity.

(D) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (A) of this subdivision and its activities and efforts to recover,

recapture, receive, or otherwise obtain State sales and use exemptions benefits described in paragraph (B) of this subdivision, together with such other information as the Commissioner and the Commissioner of economic development may require. The report required by this subdivision shall be filed with the Commissioner, the Director of the division of the budget, the Commissioner of economic development, the State Comptroller, the governing body of the municipality for whose benefit the agency was created, and may be included with the Annual financial statement required by paragraph (B) of subdivision one of Section eight hundred fifty-nine of this Title. Such report required by this subdivision shall be filed regardless of whether the IDA is required to file such financial statements described by such paragraph (B) of subdivision one of Section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (E) of subdivision one of such Section eight hundred fifty-nine.

(E) This subdivision shall apply to any amounts of State sales and use tax exemption benefits that an IDA recovers, recaptures, receives, or otherwise obtains, regardless of whether the IDA or the agent, project operator or other person or entity characterizes such benefits recovered, recaptures, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The provisions of this subdivision shall also apply to any interest or penalty that the IDA imposes on any such amounts or that are imposed on such amounts by operator of law or by judicial order or otherwise. Any such amounts or payments that an IDA recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State sales and use taxes and the IDA shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for an on account of the State.