

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO HAROLD LEVINSON ASSOCIATES, LLC IN CONNECTION WITH THE ACQUISITION AND INSTALLATION OF CERTAIN MAJOR PRODUCTION EQUIPMENT AND MACHINERY

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, to accomplish the purposes of the Act, the Agency on October 29, 2002, entered into a Straight Lease (as defined in the Act) with REB Limited Liability Company ("REB") for the acquisition of a "project" within the meaning of the Act (the "Initial REB Project") within the territorial boundaries of the Town of Babylon, New York and located on that certain lot, piece or parcel of land generally known as and located at 140 Carolyn Blvd. in East Farmingdale, New York and, in furtherance of such purposes, on July 16, 2002, the Agency adopted a resolution authorizing the undertaking of the Initial REB Project; and

WHEREAS, the Initial REB Project consisted of the acquisition of a warehouse and distribution facility and certain machinery and equipment relating thereto consisting of the acquisition of real property and an approximately 160,000 square foot building located thereon, together with the ability to construct an additional 80,000 square feet (the "REB Facility"), all for use by Harold Levinson Associates, LLC (and its predecessor) (the "Company") in its business of warehousing, sale and distribution of tobacco products, food stuffs and confectionary products; and

WHEREAS, pursuant to a project application REB requested financial assistance for a second project consisting of the re-equipping and renovation of the REB Facility and the renovation and replacement of the Company's existing truck fleet which is dispatched from the REB Facility (the renovation and re-equipping of the REB Facility together with replacement and renovation of the truck fleet, the "Second REB Project"), all for use by the Company in its business of warehousing, sale and distribution of tobacco products, food stuff and confection products; and

WHEREAS, to facilitate the Second REB Project, the Agency, REB and the Company on November 30, 2012, entered into a modification of the "straight lease transaction" within the meaning of the Act in which the Agency granted financial assistance to REB and the Company for the Second REB Project, and, in furtherance of such purposes, on July 17, 2012 the Agency adopted a resolution authorizing the undertaking of the Second REB Project; and

WHEREAS, to accomplish the purposes of the Act, the Agency on January 17, 2002, entered into a Straight Lease (as defined in the Act) with the ERB Limited Liability

Company (“ERB”) for the acquisition of a “project” within the meaning of the Act (the “Initial ERB Project”) within the territorial boundaries of the Town of Babylon, New York and located on that certain lot, piece or parcel of land generally known as and located at 21 Banfi Plaza in Farmingdale, New York and, in furtherance of such purposes, on January 15, 2002, the Agency adopted a resolution authorizing the undertaking of the Initial ERB Project; and

WHEREAS, the Initial ERB Project consisted of the acquisition of a warehouse and distribution facility and certain machinery and equipment relating thereto consisting of the acquisition of real property at 21 Banfi Plaza in Farmingdale, New York and an approximately 201,000 square foot building located thereon (the “ERB Facility” and collectively with the REB Facility, the “Facility”), all for use by the Company in its business of warehousing, sale and distribution of tobacco products, food stuffs and confectionary products; and

WHEREAS, pursuant to a project application ERB requested financial assistance for a second project consisting of the re-equipping and renovation of the ERB Facility and the renovation and replacement of the Company’s existing truck fleet which is dispatched from the ERB Facility (the renovation and re-equipping of the ERB Facility together with replacement and renovation of the truck fleet, the “Second ERB Project”), all for use by the Company in its business of warehousing, sale and distribution of tobacco products, food stuff and confection products; and

WHEREAS, to facilitate the Second ERB Project, the Agency, ERB and the Company on November 30, 2012, entered into a modification of the “straight lease transaction” within the meaning of the Act in which the Agency granted financial assistance to the ERB and the Company for the Second ERB Project, and, in furtherance of such purposes, on July 17, 2012 the Agency adopted a resolution authorizing the undertaking of the Second ERB Project; and

WHEREAS, representatives of the Company have filed or caused to be filed an application with the Agency concerning an additional project (the “Equipment Project”) consisting of the acquisition and installation of certain major production equipment and machinery (the “Facility Equipment”) at the Facility, all for use by the Company in its business of warehousing and wholesale distribution of various products (including tobacco products, food stuffs and confectionary products) to convenience stores and marts; and

WHEREAS, in order to induce the Company to retain and grow jobs in the Town of Babylon (the “Town”) it appears necessary to assist the Company by taking title to the Facility Equipment so as to afford the Company certain relief from New York State and local sales and use taxation for a limited period; and

WHEREAS, the transactions contemplated in this resolution shall not result in the removal of any facility or plant of any Facility occupant(s) from one area of the State to another area of New York State or in the abandonment of one or more facilities or plants of the Facility occupant(s) located within New York State, except as permitted by the Act; and

WHEREAS, it is contemplated that the Company will cause the transfer by Bill of Sale (the "Bill of Sale") or Equipment Lease (each an "Equipment Lease") of the Facility Equipment to the Agency and the Agency will assist the Company to undertake the Equipment Project and will lease or sublease the Facility Equipment to the Company pursuant to a Lease and Project Agreement (the "Lease Agreement"), by and between the Company and the Agency pursuant to which the Company agrees, among other things, to undertake the Equipment Project; and

WHEREAS, in connection with the adoption of this resolution the Agency has reviewed the Equipment Project Application (herein defined) and the Company has confirmed in such Project Application that as of the date of the Equipment Projection Application, the Company is in substantial compliance with the Act; and

WHEREAS, in connection with the Agency's evaluation of the Equipment Project for the provision of financial assistance, the Agency has (i) assessed all material information relating to the Equipment Project included in the Company's project application (the "Project Application") in order to afford a reasonable basis for the decision of the Agency to provide financial assistance to the Equipment Project; (ii) reviewed the Agency's written cost benefit analysis for the Equipment Project which identifies the extent to which (A) the Equipment Project will create or retain permanent, private sector jobs; (B) the estimated value of any tax exemption to be provided to the Equipment Project, (C) the amount of private sector investment generated or likely to be retained or generated by the Equipment Project; (D) reviewed the likelihood of accomplishing the proposed Equipment Project in a timely fashion; and (E) considered the extent to which the Equipment Project will provide additional sources of revenue for the Town and the school district where the Facility is located: and

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Company in connection with the Equipment Project including exemption from New York State and local sales and use taxes.

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

Section 1. With respect to the Agency's evaluation criteria for Manufacturing, Warehousing and Distribution Projects the Agency makes the following determinations:

- (a) It has reviewed the information in the Cost Benefit Analysis with respect to the Equipment Project.
- (b) The Company proposes a capital investment in soft costs, machinery and equipment and capital improvements with respect to Equipment Project and the Facility Equipment of approximately \$5,235,000.
- (c) The Equipment Project will not have significant impact from local labor construction in the Town.

- (d) Wage rates for the employees of the Company average \$220,000 per year for professional positions, \$108,000 per year for management positions, \$85,000 per year for sales positions, \$76,000 per year for administrative positions, and \$46,000 per year for laborer positions, which is above the median wage for the region.
- (e) The Company has a positive impact on regional wealth creation due to the fact that a significant portion of the Company's product is sold and shipped outside of the Town and result in revenue inflows into the Town and the Long Island region due to taxes and municipal charges paid by the Company to the Town and Suffolk County.
- (f) The Equipment Project will not have a significant effect on in-region purchases.
- (g) The Equipment Project will not have a significant effect on energy efficiency.
- (h) The Equipment Project will not affect existing land use or zoning.
- (i) The Equipment Project is important to the retention of a significant employer of the Town. The Company currently employs 477 full-time employees and if the Equipment Project is not undertaken, the Company will reach capacity with its current systems at its facilities in Farmingdale in three years. For the past several years, the Company's growth has been out of state sales. The Company has created and/or maintained and expanded cross-docking facilities in Massachusetts, New Jersey, Pennsylvania, Connecticut and Upstate New York. In 2017 for the first time, the Company sold more cartons out of state than in New York. If this trend continues, it will require the Company to find a distribution center more efficient than the Facility or it requires that the Company upgrade the Facility and stay in Long Island. The Equipment Project and the Facility Equipment are a part of the Company's plan to upgrade the Facility and remain in Farmingdale.

Section 2. Based on the evaluation of the foregoing evaluation criteria, (a) The Agency hereby finds and determines that (i) the Equipment Project constitutes a "Project" within the meaning of the Act; (ii) the Equipment Project is necessary for the Company to maintain its competitive position in its industry and to prevent the Company from relocating its facilities outside of New York State and (iii) the granting of New York State and local sales and use tax abatements (the "Financial Assistance") by the Agency with respect to the Equipment Project and the Facility Equipment 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 Company with respect to the Equipment Project.

(c) The Agency shall grant Financial Assistance to the Company in the form of New York State and local sales and use tax abatements as provided in Section 5.2 of the Lease Agreement and 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 3. To accomplish the purposes of the Act, the Agency shall acquire title or leasehold interest to the Facility Equipment pursuant to the Bill of Sale or Equipment Leases, assist the Company to undertake the Equipment Project and lease or sublease the Facility Equipment to the Company pursuant to the Lease Agreement.

Section 4. In order to provide the Company with financial assistance with respect to exemption from New York State and local sales and use taxes with respect to the Equipment Project the Agency may issue one or more Sales Tax Agent Authorization Letters (“Sales Tax Authorization Letters”) which shall be used pursuant to the terms contained therein and in the Lease Agreement.

Section 5. 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 6. The form and substance of the Bill of Sale and Equipment Leases in substantially the form previously executed for other “straight lease” transactions is hereby approved.

Section 7. The CEO of the Agency or any successor CEO of the Agency or any other authorized representative including the CFO, is hereby authorized, on behalf of the Agency, to execute and deliver final forms of the Bill of Sale, Equipment Leases, Lease Agreement, 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 the CFO of the Agency or any other authorized representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO or the CFO of the Agency or any other authorized representative shall constitute conclusive evidence of such approval.

The CEO or CFO of the Agency or any other authorized representative 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, the CFO’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 8. The CEO of the Agency, the CFO of the Agency or any other authorized representative including 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 Bill of Sale, Equipment Leases, and the Lease 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 9. 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 10. 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 11. 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 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 12. The law firm Katten Muchin Rosenman LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 13. This Resolution shall also constitute a “declaration of official intent” under the Treasury Regulations of the Internal Revenue Code of 1986 as amended.

Section 14. Notwithstanding the foregoing, the Agency will not grant any Financial Assistance to be granted hereunder in excess of \$100,000 to the Company until the Agency has held a public hearing with respect to the grant of financial assistance in accordance with the provisions of the Act.

Section 15. For purposes of providing the terms and conditions for which the Company will receive the benefit of certain New York State and local sales and use tax exemptions in connection with the Equipment Project, preliminary sales tax agreements and/or documents (collectively, the “Interim Documents”) in such form as the CEO of the Agency shall deem advisable are hereby approved; and the CEO of the Agency is hereby authorized and directed to execute, acknowledge and deliver the Interim Documents in the name of the Agency. The execution and delivery of the Interim Documents shall be conclusive evidence of due authorization and approval of the Interim Documents in their respective final form

Section 16. This resolution shall take effect immediately.

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

I, Burkette L. Moses, 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 Old Town Hall 47 West Main Street, Babylon, New York 11702 on February 27, 2019, commencing at the hour of 8:00 A.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 27th day of February, 2019.


Secretary

(SEAL)

