

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO 40 DANIEL LLC, CMB WIRELESS GROUP LLC D/B/A COMMUNICATIONS WIRELESS GROUP AND LONG ISLAND RACEWAY LLC D/B/A POLE POSITION RACEWAY WITH RESPECT TO A FACILITY LOCATED IN THE TOWN OF BABYLON

WHEREAS, the Town of Babylon Industrial Development Agency (the "Agency") has heretofore provided financial assistance 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") to CMB Wireless Group LLC d/b/a Communications Wireless Group, a limited liability company organized and existing under the laws of the State of New York ("CMB Wireless") and 40 Daniel LLC, a limited liability company organized and existing under the laws of the State of New York ("40 Daniel"), with respect to an approximately 120,000 square feet of a building located on that certain approximately 8.3 acre lot, piece or parcel of land generally known as and located at 40 Daniel Street, in Farmingdale, New York (the "Facility"), pursuant to a straight lease transaction dated January 5, 2010, among the Agency, CMB Wireless and 40 Daniel; and

WHEREAS, existing provision of financial assistance by the Agency to CMB Wireless and 40 Daniel will be terminated; and

WHEREAS, representatives of Long Island Raceway LLC D/B/A Pole Position Raceway, a limited liability company organized and existing under the laws of the State of New York (the "Company"), CMP Wireless and 40 Daniel have filed or caused to be filed an application with the Agency concerning a project (the "Project") consisting of the leasing, renovation and equipping by the Company of the Facility, all for use by the Company as a sports and entertainment complex containing an indoor Go-Kart Raceway, with food service, café, lounge, game room and other related uses; and

WHEREAS, the Agency has determined that the Facility is a facility which will be primarily used in making retail sales to customers who personally visit such facility; and

WHEREAS, in connection with its application to the Agency, the Company has submitted to the Agency and the Agency has reviewed a Market Analysis of Pole Position Raceway Babylon, New York dated February 2014, prepared by Camoin Associates which provides evidence that the Facility itself will attract a significant number of visitors from outside the Nassau/Suffolk region to the Facility and in addition, such Market Analysis provides that the operation of the Facility would offer residents of the Town a unique experience unlike any other facility on Long Island; and

WHEREAS, in order to induce such facilities within the Town it appears necessary to assist the Company by retaining legal title to the Facility so as to afford CMB Wireless, 40 Daniel and the Company 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 Agency will retain legal title to the Facility and lease the Facility to 40 Daniel pursuant to an Overlease Agreement between the Agency and the Sublandlord (the "Overlease Agreement"); which Facility will continue to be subleased to CMB Wireless pursuant to a Sublease Agreement from 40 Daniel to CMB Wireless, further subleased to the Company pursuant to an Agreement of Lease between CMB Wireless and the Company, further subleased by the Company to the Agency pursuant to a Company Lease Agreement between the Company and the Agency (the "Company Lease"), and then subleased by the Agency to the Company pursuant to the provisions a Lease Agreement (the "Lease Agreement")

WHEREAS, pursuant to the Overlease Agreement and Lease Agreement 40 Daniel or the Company on behalf of 40 Daniel have agreed to make certain payments in lieu of real property taxes with respect to the Facility to the Agency; and

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to CMB Wireless, 40 Daniel and the Company 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 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 Company, 40 Daniel and CMB Wireless 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 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 retain legal title to the Facility, lease the Facility to 40 Daniel pursuant to the Overlease Agreement, which Facility will then continue to be subleased by 40 Daniel to CMB Wireless pursuant to the Sublease Agreement and then further subleased by CMB Wireless to the Company pursuant to the Prime Lease.

Section 3. To accomplish the purposes of the Act and assist the Company to undertake the Project, the Company shall sublease the Facility to the Agency pursuant to the Company Lease and the Agency shall then sublease the Facility to the Company pursuant to the Lease Agreement.

Section 4. Pursuant to the Overlease Agreement and Lease Agreement, 40 Daniel or the Company on behalf of 40 Daniel shall make certain payments in lieu of real property taxes (“Pilots”) which would be otherwise due and payable with respect to the Facility.

Section 5. In order to provide the Company with financial assistance with respect to exemptions from New York State and local Sales and Use Taxes with respect to the Project the Agency shall issue to the Company its Sales Tax Letters (collectively the “Sales Tax Letter”) which shall be used pursuant to the terms contained therein, in the Lease Agreement.

Section 6. The form and substance of the Overlease 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 Company Lease in substantially the form previously executed for other “straight lease” transactions is hereby approved.

Section 8. The form and substance of the Lease Agreement in substantially the form of lease agreements previously approved by the Agency for other “straight lease” transactions is hereby approved.

Section 9. 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 Overlease Agreement, the Company Lease, the Lease Amendment, the Sales Tax Letter, 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 10. 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 Overlease Agreement, the Company Agreement 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 11. 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 12. 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 13. 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 14. The law firm Winston & Strawn LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 15. 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 40 Daniel, CMB Wireless or the Company until the Agency has held a public hearing with respect to the Project in accordance with the provisions of the Act.

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 28, 2014

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

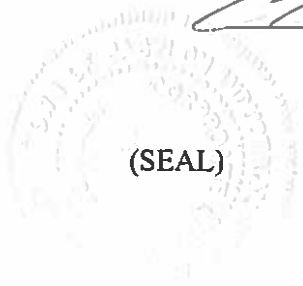
I, Chris Feliczyk, the duly elected, qualified Secretary of the Town of Babylon Industrial Development Agency (the "Agency"), hereby certify that:

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 28, 2014, commencing at the hour of 12:00 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 28th day of May, 2014.


Secretary



(SEAL)