

RESOLUTION OF THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, RECONSTRUCTION AND EQUIPPING OF A CERTAIN FACILITY FOR NY LOUNGE DÉCOR INC. AND 11 MICHAEL MANAGEMENT LLC AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, Town of Babylon Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 177 of the Laws of 1973 of New York, as amended, constituting Section 907-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of, among others, manufacturing, warehousing, research, commercial or industrial facilities, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York (the "State"), to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, pursuant to an application (the "Application") submitted to the Agency by NY Lounge Décor Inc. (the "Operator") and 11 Michael Management LLC (the "Company"), on behalf of themselves and/or entities formed on behalf of the foregoing, requesting that the Agency undertake a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in approximately 1 acre of real estate located at 11 Michael Avenue (Tax Map #0100-069.00-03.00-005.017), in the Town of Babylon, Suffolk County, New York (the "Land") and the existing approximately 34,950 square foot building located thereon (the "Facility"); (2) the renovation of the Facility; and (3) the acquisition and installation therein and thereon of various furniture, machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), such Project Facility to be used as offices and warehouse facilities; (B) the granting of certain "financial assistance" (within the meaning of section 854(14) of the Act) with respect to the foregoing limited to potential exemptions from certain sales and use taxes, transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, representatives of the Company and the Operator have indicated that the Project will result in the growth of permanent full time jobs within the Town of Babylon (the "Town"); and

WHEREAS, in order to induce the Company and the Operator to proceed with the Project within the Town it appears necessary for the Agency to assist the Company and the Operator by taking leasehold title to the Project Facility so as to afford the Company and the Operator certain

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

WHEREAS, the Agency (A) caused notice of public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on April 19, 2016 to the chief executive officers of the County of Suffolk (the "County"), the Town of Babylon (the "Town"), the Farmingdale Public Schools (the "School District") and the Farmingdale Public Library (the "Library"), (B) caused notice of the Public Hearing to be published on April 21, 2016 in Newsday, a newspaper of general circulation available to the residents of the Town of Babylon, New York, (C) conducted the Public Hearing on May 2, 2016 at 11:30 a.m. at the offices of the Agency, 47 West Main Street, Babylon, New York 11702, and (D) prepared a report of the Public Hearing (the "Report") which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents: (A) an underlying lease agreement (and a memorandum thereof) (the "Underlying Lease") by and between the Company and the Agency, pursuant to which, among other things, the Agency will acquire a leasehold interest in the Land and the improvements now or hereafter located on the Land from the Company; (B) a lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake and complete the Project Facility as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (C) an equipment lease agreement (the "Equipment Lease Agreement") by and between the Agency and the Operator, pursuant to which, among other things, the Agency agrees to lease certain Equipment (the "Operator Equipment") to the Operator and the Operator agrees to lease the Operator Equipment from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a tenant agency compliance agreement (the "Tenant Agency Compliance Agreement") by and between the Agency and the Operator; (E) a payment in lieu of tax agreement (the "PILOT Agreement") by and among the Agency, the Company and the Operator whereby the Company and the Operator will agree to make certain payments in lieu of taxes; (F) an environmental compliance and indemnification agreement (the "Environmental Compliance Agreement") by the Company and the Operator for the benefit of the Agency setting forth the Company's and the Operator's obligations with respect to indemnifying the Agency for any environmental issues arising with respect to the Project Facility; (G) a sales tax benefit agreement (the "Sales Tax Benefit Agreement") by and among the Agency, the Company and the Operator, which sets forth the procedure to be followed by the Company and the Operator in obtaining the sales and use tax exemption which comprises a portion of the Financial Assistance approved herein; and (H) various other documents and certificates relating to the Project (the "Other Documents" and, collectively with the Underlying Lease, the Lease Agreement, the Equipment Lease Agreement, the PILOT Agreement, Tenant Agency Compliance Agreement, the Environmental Compliance Agreement and the Sales Tax Benefit Agreement, the "Agency Documents"); and

WHEREAS, in connection with the Project, (A) the Company will execute and deliver to the Agency a bill of sale (the “Bill of Sale to Agency”), which conveys from the Company to the Agency all right, title and interest of the Company in the Equipment; and (B) the Operator will execute and deliver to the Agency a bill of sale (the “Operator Bill of Sale to Agency”), which conveys from the Operator to the Agency all right, title and interest of the Operator in the Operator Equipment; and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (a “Real Property Tax Exemption Form”) relating to the Project; and

WHEREAS, simultaneously with the execution of the Agency Documents, the Agency will file with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Form”); and

WHEREAS, as security for the Loan (as such term is defined in the Lease Agreement), the Agency and the Company will execute and deliver to Bank of America, N.A. or another lender selected by the Operator and the Company (the “Lender”), one or more mortgages, assignments of leases and rents and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined (collectively, the “Loan Documents”) in connection with the financing, refinancing or permanent financing of the costs of acquiring, renovating, reconstructing and equipping of the Project Facility; and

WHEREAS, for purposes of exemption from New York State (the “State”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency, based upon the representations made by the Company and the Operator to the Agency in the Application, hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The Project constitutes a “project”, as such term is defined in the Act; and

(C) The acquisition, renovation, reconstruction and equipping of the Project Facility and the leasing of the Project Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Babylon and the State and improve their standard of living and thereby serve the public purposes of the Act; and

(D) The acquisition, renovation, reconstruction and equipping of the Project Facility is reasonably necessary to induce the Company and the Operator to maintain and expand their business operations in the Town and the State; and

(E) Based upon representations of the Company, the Operator and counsel to the Company and the Operator, the Project Facility conforms with the local zoning laws and planning regulations of the Town and all regional and local land use plans for the area in which the Project Facility is located; and

(F) The completion of the Project Facility will result in the removal of a plant or facility of the Operator or any other proposed occupant of the Project from one area of the State to another area of the State or in the abandonment of a plant or facility of the Operator or of any proposed occupant of the Project located in the State but such move is reasonably necessary to preserve the competitive position of the Operator in its industry; and

(G) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire (i) a leasehold interest in the Land and all improvements now or hereafter located on the Land from the Company pursuant to the Underlying Lease, and (ii) title to the Equipment and the Operator Equipment pursuant to the Bill of Sale to Agency and the Operator Bill of Sale to Agency; (C) lease the Project Facility to the Company pursuant to the Lease Agreement; (D) acquire, construct, reconstruct and install the Project, or cause the Project to be acquired, constructed, reconstructed, and installed, as provided in the Lease Agreement and the Equipment Lease Agreement; (E) enter into the PILOT Agreement; (F) grant to the Company exemptions from real estate taxes with respect to the Project Facility, provided that the Company executes and delivers to the Agency the PILOT Agreement; (G) grant to the Lender such mortgage lien on and security interest in its interest in the Project Facility and assign to the Lender all leases and rents with respect to the Project Facility, in each case as required by the Lender and the Loan Documents; and (H) grant to the Company and the Operator the Financial Assistance with respect to the Project. In the event of the occurrence of a recapture event under the Lease Agreement or the Equipment Lease Agreement, the Agency will pursue recapture of Financial Assistance as provided therein.

Section 3. The Agency is hereby authorized to acquire an interest in the Project Facility and to do all things necessary or appropriate for the accomplishment of the Project, and all acts heretofore taken by the Agency with respect to such Project are hereby approved, ratified and confirmed.

Section 4. (A) The Agency Documents and the Loan Documents shall be in form and substance satisfactory to the Chief Executive Officer (“CEO”) and the Agency Counsel and shall be in substantially similar form to the documents used in connection with prior Agency projects. The CEO, the Chief Financial Officer, the Chairman and the Secretary (each an “Authorized Representative”) are each hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents and the Loan Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same.

(B) The CEO and any other Authorized Representatives are each hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives to execute any Agency Documents, Loan Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Agency Documents and the Loan Documents.

Section 5. 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 the Loan Documents, and to execute and deliver all such additional certificates, instruments and documents, to 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 and the Loan Documents binding upon the Agency.

Section 6. The Agency hereby delegates to the Company and the Operator, as agents of the Agency, the authority to designate (following the execution and delivery of the Agency Documents), agents and sub-agents of the Agency (each, a “Sub-Agent”) for purposes of utilizing the Agency sales and use tax exemption with respect to the acquisition, reconstruction and installation of the Project Facility; provided that any such sub-agency designation shall become effective only upon submission to the Agency within fifteen (15) days of such agency and sub-agency designation: (1) an executed sub-agent appointment agreement (in a form approved by the Agency) and (2) a completed Form ST-60 of the New York State Department of Taxation and Finance (IDA Appointment of Project Operator or Agent for Sales Tax Purposes). Such agents and sub-agents may include contractors and subcontractors involved in the acquisition, reconstruction and installation of the Project Facility.

Section 7. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company, the Operator and any other agents and subagents shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State sales and use exemptions benefits.

Section 8. The law firm Barclay Damon, LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 9. This resolution shall take effect immediately upon adoption.

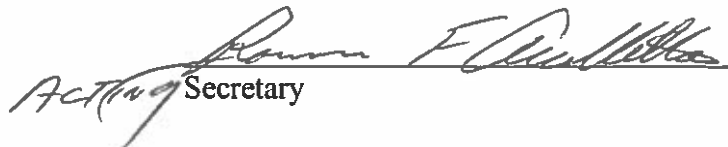
STATE OF NEW YORK)
) SS.:
COUNTY OF SUFFOLK)

I, the undersigned Secretary of the Town of Babylon Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on May 3, 2016, with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 3rd day of May, 2016.


Acting Secretary

(SEAL)