

RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO TOPIDERM, INC. AND TOPIX PHARMACEUTICALS, INC. IN CONNECTION WITH THE ACQUISITION, RENOVATION AND EQUIPPING OF A MANUFACTURING, DEVELOPMENT AND DISTRIBUTION FACILITY

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 (the "Town"); and

WHEREAS, the Agency has heretofore granted certain financial assistance to Topiderm, Inc., pursuant to lease agreements between the Agency and affiliates of Topiderm, Inc., dated March 31, 2004 (the "Original Lease Agreements") and such Original Lease Agreements have been terminated prior to the date hereof; and

WHEREAS, representatives of Topiderm, Inc. and Topix Pharmaceuticals, Inc. each a corporation organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Topiderm, Inc. and Topix Pharmaceuticals, Inc. and/or any entity or entities formed on behalf of Topiderm, Inc. and Topix Pharmaceuticals, Inc. (collectively, the "Company") has filed or caused to be filed an application with the Agency concerning a project (the "Project") consisting of the renovation and equipping of an existing building located at 5200 New Horizons Blvd. in North Amityville, New York containing approximately 54,008 square feet, the renovation and equipping of an existing building located at 180 Farmingdale Road in West Babylon, New York containing approximately 110,000 square feet and the leasehold acquisition, renovation and equipping of an existing building located at 5300 New Horizons Blvd. in North Amityville, New York containing approximately 35,000 square feet (collectively, the "Facility"), all for use by the Company as an integrated campus facility as a manufacturing, development, and distribution center in its business of manufacturing of over-the-counter pharmaceuticals, cosmetics, dermatological products and health and beauty aids; and

WHEREAS, in order to induce the Company to retain and create jobs in the Town it appears necessary to assist the Company by taking leasehold title to the Facility so as to afford 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 Company will cause the transfer or lease of the Facility to the Agency pursuant to a Company Lease Agreement (the "Company Lease") and the Agency will assist the Company to undertake the Project and will lease or sublease the Facility 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 make lease payments in such amounts as specified in the Lease Agreement; and

WHEREAS, pursuant to the Lease Agreement the Company has agreed to make certain payments in lieu of real property taxes with respect to the Facility to the Agency; and

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

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

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Company in connection with the Project and the Facility 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. 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 Project.
- (b) The Company proposes a capital investment in the building, machinery and equipment and capital improvements in the Facility of approximately \$3,615,000 over the next three years.
- (c) The Project will not have significant impact from local labor construction in the Town.
- (d) Wage rates including average fringe benefits for the employees of the Company average \$108,000 per year for management employees, \$82,000 for professional employees, \$48,000 per year for administrative employees, and \$33,000 for production employees including fringe benefits.

- (e) The Company sells its products throughout the United States and the Project will have a positive impact on regional wealth creation.
- (f) The Project will not have a significant effect on in-region purchases.
- (g) The Project will not have a significant effect on energy efficiency.
- (h) The Project will not affect existing land use or zoning.
- (i) The Company is a major employer in the Town employing approximately 405 employees in the Labor Market Area as defined in the Application and the Project will assist in retention and growth of employment in the Town. In connection with the Project employment by the Company is expected to increase to 438 employees.
- (j) The Company has a national client base and as such, many of its competitors are located in other states and even other countries. Often, those competitors' locations offer substantially lower costs of doing business than New York and specifically, Long Island. Given the high cost of doing business in its current location, it is a challenge for the Company to continue to compete in the marketplace. The Company has received and continue to receive offers to relocate their operations out-of-state and even to other countries where the costs of doing business, together with incentive packages, would greatly improve the Company's competitive position. The financial assistance provided by the Agency would be of vital importance not only in the decision to expand (and the hiring associated therewith) but also to keep the Company's operations in the Town.

Section 2. Based on the evaluation of the foregoing evaluation criteria, (a) The Agency hereby finds and determines that (i) the Project constitutes a "Project" within the meaning of the Act; (ii) the 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 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 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 Project.

(c) The Agency shall grant the Financial Assistance to the Company in the form of New York State and local Sales and Use Tax abatements in an amount not to exceed \$310,500 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 the Financial Assistance as provided in Section 5.4 of the Lease Agreement.

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

Section 4. Pursuant to the Lease Agreement, the Company will 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 exemption from New York State and local Sales and Use Taxes with respect to the 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 6. In order to secure amounts to be loaned by a mortgage lender acceptable to the Chief Executive Officer (“CEO”) or the Chief Financial Officer (“CFO”) of the Agency or any other authorized representative to the Company with respect to the Project, the Agency hereby authorizes the execution of one or more mortgages (collectively, the “Mortgages”) granted at the initial closing of the “straight lease” transaction or any time thereafter during the term of the Lease Agreement, from the Agency and the Company to any mortgage lender acceptable to the CEO or the CFO of the Agency or any other authorized representative, in form acceptable to the CEO or CFO of the Agency or any other authorized representative and Counsel to the Agency.

Section 7. 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 8. The form and substance of the Company Lease in substantially the form previously executed for other “straight lease” transactions is hereby approved.

Section 9. 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 Company Lease, Lease Agreement, Mortgages, 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 10. 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 Company Lease 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 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 Katten Muchin Rosenman 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 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 16. This resolution shall take effect immediately.

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

I, Paullette F. 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 on May 22, 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 22nd day of May, 2019.

Paullette F. Moses
Secretary

(SEAL)