

RESOLUTION AUTHORIZING AN AMENDMENT TO PROJECT DOCUMENTS
RELATING TO THE FLORIO FOOD CORP., D/B/A/ CANNOLI FACTORY PROJECT

WHEREAS, pursuant to a resolution adopted on August 17, 2010 authorizing the undertaking of a Project, the Town of Babylon Industrial Development Agency (the "Agency") entered into a straight lease transaction with Marsala Realty Group LLC ("Lessee") and Florio Food Corp., d/b/a Cannoli Factory ("Original Sublessee") pursuant to which the Agency granted the Lessee and Original Sublessee financial assistance in the form of among others, exemptions from real property taxes and state and local sales and use taxes in accordance with a Lease Agreement, between the Agency and Lessee dated September 30, 2010 (the "Lease Agreement") and a Sublease Agreement, between Lessee and Original Sublessee dated September 30, 2010 (the "Sublease Agreement"), covering the property located at 75 Wyandanch Avenue, Wyandanch, New York; and

WHEREAS, the Lessee and the Original Sublessee were owned and controlled by John Alair-Garcia; and

WHEREAS, on April 30, 2016 the assets of the Original Sublessee were acquired by Vivi Foods LLC ("Vivi"), which was wholly owned by Indulge Intermediate LLC whose controlling member was John Alair-Garcia; and

WHEREAS, Vivi has been acquired by Emmi Dessert USA LLC ("Emmi") and Emmi now desires to assume, all of Original Sublessee's right, title and interest in, to and under the Sublease Agreement and, in connection with such assignment and assumption, the Lessee and Emmi desire to enter into an Amended and Restated Sublease Agreement (the "Amended and Restated Sublease"); and

WHEREAS, John Alair-Garcia does not own and control Emmi but continues to maintain a controlling interest in the Lessee; and

WHEREAS, representatives of Emmi have informed the Agency that Emmi has and will continue to provided employment at the Facility (as defined in the Lease Agreement) at the same levels as had been previously provided by the Original Sublessee; and

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

Section 1. The Agency hereby approves of and consents to the execution of the Amended and Restated Sublease by and between the Lessee and Emmi.

Section 2. Thomas E. Dolan as Chief Executive Officer (the "Chief Executive Officer") or any other Authorized Representative, is hereby authorized, on behalf of the Agency, to consent to final forms of the Amended and Restated Sublease Agreement and any other consents, agreements or certificates consistent herewith (hereinafter collectively called the "Amended Documents"), all in form acceptable to the Agency upon the advice of counsel to the Agency. The execution thereof by the Chief Executive Officer shall constitute conclusive evidence of the approval of the Amended Documents.

The Chief Executive Officer 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 Amended Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Amended Documents.

The Secretary, Assistant Secretary or Counsel to the Agency is hereby authorized to attest to the Chief Executive Officer'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 3. 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 Amended 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 Amended Documents binding upon the Agency.

Section 4. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution, and the Amended 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 Amended 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 5. No covenant, stipulation, obligation or agreement contained in this resolution, or the Amended 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 Amended Documents or be subject to any personal liability or accountability by reason of the execution thereof.

Section 6. 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 7. This resolution shall take effect immediately.

STATE OF NEW YORK)

) ss.:

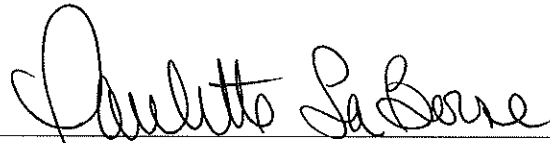
COUNTY OF SUFFOLK)

I, Paulette LaBore 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 October 19, 2022, 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 19th day of October, 2022.



Secretary, Town of Babylon Industrial Development Agency

(SEAL)