

RESOLUTION INDUCING THE FINANCING OF A COMMERCIAL FACILITY TO BE DEVELOPED BY DMFYD LIC LLC AS A STRAIGHT LEASE TRANSACTION AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF AGREEMENTS IN CONNECTION THEREWITH

WHEREAS, New York City Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, DMFYD LIC LLC (the “Company”), a limited liability company, has entered into negotiations with officials of the Agency in connection with a project consisting of the with the construction and development of a three story, approximately 86,234 square foot facility located on an approximately 42,521 square foot parcel of land (the “Facility”), which Facility is owned by JMK Realty, Family Limited Partnership (“JMK”) and leased by JMK to the Company which will operate the Facility and lease it to the Agency for sublease by the Agency to the Company for subsequent sub-sublease to various industrial, light manufacturing and office tenants, and having an approximately total project cost of \$31,215,961 (together with the Facility, the “Project”); and

WHEREAS, the Company has submitted a Project Application (the “Application”) to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Company and the Project, including the following: that the construction, furnishing and equipping of the Facility will provide high quality, affordable rental space to various industrial, light manufacturing and office tenants s and, at full occupancy, it is estimated that 125 full-time equivalent employees will be employed at the Facility and that, based upon the financial assistance provided through the Agency, the Company desires to proceed with the Project; and

WHEREAS, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Company are necessary to induce the Company to establish and expand its operations in New York City (the “City”); and

WHEREAS, the Company may enter into loan commitments with commercial banks, institutional lenders, private lenders or governmental entities lenders acceptable to the Company and the Agency (collectively, the “Lender”), which may provide funds to the Company in the form of one or more loans to finance a portion of the cost of the Project, and the Agency, the Company will grant one or more mortgages on the Facility to the Lender (collectively, the “Mortgage”), and

WHEREAS, in order to provide financial assistance to the Company for the Project, the Agency intends to grant the Company financial assistance through a straight-lease transaction in the form of sales

tax exemptions, real property tax exemptions and a mortgage recording tax exemption all pursuant to the Act;

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the Project and the provision by the Agency of financial assistance to the Company pursuant to the Act in the form of a straight-lease transaction will promote and is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Company to proceed with the Project. The Agency further determines that:

(a) the Project shall not result in the removal of any facility or plant of the Company or any other occupant or user of the Facility from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Company or any other occupant or user of the Facility located within the State of New York (but outside of the City);

(b) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York;

(c) not more than one-third of the total Project cost is in respect of facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities within the meaning of Section 862 of the New York General Municipal Law.

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Company for the Project, a straight-lease transaction is hereby authorized subject to the provisions of this Resolution.

Section 3. The Agency hereby authorizes the Company to proceed with the Project as herein authorized. The Company is authorized to proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Company that (i) nominal leasehold title to or other interest of the Agency in the Facility shall be in the Agency for purposes of granting financial assistance, and (ii) the Company is hereby constituted the agents for the Agency solely for the purpose of effecting the Project, and the Agency shall have no personal liability for any such action taken by the Company for such purpose.

Section 4. The execution and delivery of a Company Lease Agreement from the Company leasing the Facility to the Agency, an Agency Lease Agreement from the Agency subleasing the Facility to the Company (collectively, the "Lease Agreement"), and the Mortgage (each document referenced in this Section 4 being, collectively, the "Agency Documents"), each being substantively the same as approved by the Agency for prior transactions, is hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director and General Counsel of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

Section 5. The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Company to assist in the Project.

Section 6. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in 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 or 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 7. No covenant, stipulation, obligation or agreement herein contained or contained in the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, director, officer, agent or employee of the Agency in his or her individual capacity and neither the members nor the directors of the Agency nor any officer executing any Agency Document shall be liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

Section 8. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, 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. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by a certificate of determination of an Agency officer.

Section 9. All fees and expenses incurred by the Agency with respect to the Project shall be paid by the Company. By acceptance hereof, the Company agrees to pay such fees and expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project.

Section 10. This Resolution is subject to approval based on an investigative report with respect to the Company. The provisions of this Resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 9 hereof).

Section 11. The Agency, as lead agency, is issuing this determination pursuant to the State Environmental Quality Review Act (“SEQRA”) (Article 8 of the Environmental Conservation Law) and implementing regulations contained in 6 N.Y.C.R.R. Part 617. This determination is based upon the Agency’s review of information provided by the Company and such other information as the Agency has deemed necessary and appropriate to make this determination.

The Agency has determined that the proposed project, an Unlisted action, pursuant to SEQRA and the implementing regulations, would not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared. The reasons supporting this determination are as follows:

(a) The proposed project would not result in a substantial adverse change in existing traffic, air quality, or noise levels. While the site is currently vacant, the addition of the projected worker population and truck traffic would not constitute a significant increase in traffic to and from the site. Workers traveling to the proposed project are expected to utilize public transportation, which is abundant in the area.

(b) The proposed project would not result in significant adverse impacts on cultural, archaeological, architectural, or aesthetic resources or the existing neighborhood.

(c) The proposed project would not result in significant adverse impacts to natural resources, critical habitats, or water quality. The proposed project site is located within New York City's coastal zone boundary. Having reviewed the materials submitted by the applicant regarding this action, the Agency finds that the proposed action is consistent with the policies comprising the City's Waterfront Revitalization Program (WRP) and that the proposed action would not hinder the achievement of the WRP.

(d) The proposed project would not result in a change in existing zoning or land use. The proposed building would be constructed as-of-right under existing zoning and would comply with all relevant standards and regulations related to construction within the flood zone.

(e) A Phase I Environmental Site Assessment (ESA) prepared for the site listed a number of recognized environmental conditions (RECs), related to historic uses on the site, a previously existing gasoline tank (which has had a confirmed spill and an active file with NYSDEC), currently existing closed tanks on the site (for which closure procedures are inconclusive), and previously conducted targeted soil sampling (which indicated petroleum in the soil on the site).

A Phase II Environmental Site Investigation will be conducted by the Company in the identified areas of concern to further delineate the contamination present on the site. The company will work with NYSDEC or other relevant regulators to remediate the site and close the file for the known spill from the historic tank. During the construction of the proposed Project, closure of the existing 7,500-gallon underground storage tank and 5,000-gallon heating oil underground storage tank should be performed in accordance with the relevant regulations.

Furthermore, based on the date of construction, asbestos containing materials (roof, roof flashing, floor tiles and other concealed materials) and or lead based paint may be present in the existing building. During the site inspection conducted as part of the Phase I, all suspect materials were noted to be in fair condition. Prior to any renovations or demolition of the building, an asbestos and lead based paint survey would be needed to determine the asbestos and or lead based paint content of suspect materials.

With the implementation of these aforementioned measures, the construction of the proposed Project is not expected to result in any adverse impacts related to hazardous materials.

(f) No other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

Section 12. In connection with the Project, the Company covenants and agrees to comply, and to cause each of their respective contractors, subcontractors, agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3), as such provisions may be amended from time to time.

(a) The Company acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company New York State sales or use tax savings taken or purported to be taken by the Company, and any agent or any other person or entity acting on behalf of the Company, to which the Company is not entitled or which are in excess of the maximum sales or use tax exemption amount authorized in Section 13 of this Resolution or which are for property or services not authorized or taken in cases where the Company, or any agent or any other person or entity acting on behalf of the Company, failed to comply with a material term or condition to use property or services in the manner required by this Resolution or any agreements entered into among the Agency, the Company and/or any agent or any other person or entity acting on behalf of the Company. The Company shall, and shall require each agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such New York State sales or use tax savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”) to assess and determine New York State sales or use taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(b) The Company is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Company or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of New York State sales or use tax savings from the Company, any agent or other person or entity, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, New York State sales or use tax savings from the Company or any other agent, person or entity.

(ii) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State sales or user tax savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. Such report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the Council of the City of New York, and may be included with the annual financial statement required by General Municipal Law Section 859(1)(b). Such report shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete such report shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(c) The foregoing requirements of this Section 12 shall apply to any amounts of New York State sales or use tax savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency, the Company or any agent or other person or entity acting on behalf of the Company characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be New York State sales or use taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of New York State.

Section 13. In connection with the Project, the Agency intends to grant the Company sales and use tax exemptions in an amount not to exceed \$1,031,845, real property tax exemptions and a mortgage recording tax exemption.

Section 14. This Resolution shall take effect immediately.

Adopted: December 12, 2017

Accepted: December ____, 2017

DMFYD LIC LLC

By: _____
Name:
Title: