

Resolution inducing the financing of a warehousing facility for Manhattan Beer Distributors LLC, and its affiliate, BAMMS Realty, LLC, as a straight-lease transaction and authorizing and approving the execution and delivery of agreements and the taking of other action 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, on April 14, 2009, the Agency adopted a resolution authorizing a straight-lease transaction with Manhattan Beer Distributors LLC (the "Applicant") for the acquisition, renovation and equipping of a warehousing facility (the "Original Facility"), consisting of an approximately 125,600 square foot facility located on an approximately 209,217 square foot parcel of land at 1080 Leggett Avenue, Bronx, New York, all for the use by the Applicant in its operations as a distributor of beer and other beverages, for lease to the Agency by a real estate holding company, BAMMS Realty, LLC (the "Company"), affiliated with the Applicant, and sublease by the Agency to the Company for subsequent sub-sublease in whole to the Applicant, and having an approximate total project cost of approximately \$24,705,000 (the "Original Project"); and

WHEREAS, the Applicant has advised the Agency that it has not completed the Original Project nor commenced operations at the Original Facility and that the Company has an opportunity to purchase four (4) parcels of land described below; and

WHEREAS, the Applicant and the Company have entered into negotiations with officials of the Agency for (i) the acquisition, renovation and equipping of a another warehousing facility (the "Facility"), consisting of the acquisition, equipping and renovation of, including the fit-out of, four (4) buildings of approximately 292,500 square feet on four (4) adjacent parcels of approximately 19.3 acres of land located at 921 East 149th Street, 985 East 149th Street, 1025 149th Street and the parcel between the terminus of East 149th Street and East River, Bronx, New York, all for the use by the Applicant in its operations as a distributor of beer and other beverages with rail docking, parking and offices, for lease to the Agency by the Company and sublease by the Agency to the Company for subsequent sub-sublease in whole to the Applicant, and having an approximate total project cost of approximately \$60,407,000 (the "Project"); and (ii) the entering into an Escrow Agreement providing for the recapture under certain circumstances of certain Agency benefits received by the Applicant and the Company from the Old Project (the "Escrow Agreement"); and

WHEREAS, the Applicant 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 Applicant and the Project, including the following: that the Applicant currently operates out of facilities in the Bronx, Brooklyn, Queens, Suffern and Wyandanch, New York, and employs approximately 953 full-time equivalent employees within The City of New York (the “City”); that the Project would enable the Applicant to relocate and expand the capacity of the Bronx distribution facilities and thereby preserve the Applicant’s competitive position in the beverage distribution industry; that the Applicant has investigated alternative facilities located in New Jersey but would prefer to remain within the City; that the Applicant expects to employ approximately 25 additional full-time equivalent employees within the three years following the completion of the Project; that the Applicant must obtain Agency financial assistance in the form of a straight-lease transaction to enable the Applicant to proceed with the Project and thereby remain and expand its operations in the City; and that, based upon the financial assistance provided through the Agency, the Applicant desire to proceed with the Project and remain and expand its operations in the City; 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 Applicant and the Company are necessary to induce the Applicant to remain and expand its operations in the City; and

WHEREAS, in order to finance a portion of the costs of the Project, JPMorgan Chase Bank, N.A. (such financial institution, or any other financial institution as may be approved by a certificate of determination of an Agency officer, the “Lender”) has agreed to enter into a loan arrangement with the Company pursuant to which the Lender will lend approximately \$37,500,000 to the Company, and the Agency and the Company will grant a mortgage on the Facility to the Lender (the “Lender Mortgage”); and

WHEREAS, for purposes of refinancing or modifying from time to time the indebtedness secured by the Lender Mortgage (the “Original Mortgage Indebtedness”) (whether such refinancing is in an amount equal to or greater than the outstanding principal balance of the Original Mortgage Indebtedness), the Applicant may from time to time desire to enter into new or modified mortgage arrangements, including but not limited to consolidation with mortgages granted subsequent to the Lender Mortgage; and therefore the Applicant may request the Agency to enter into the mortgage instruments required for such new mortgage arrangements (“Refinancing Mortgage(s)”); and

WHEREAS, in order to provide financial assistance to the Applicant and the Company for the Project, the Agency intends to grant the Applicant and the Company financial assistance through a straight-lease transaction in the form of real property tax abatements, sales tax exemptions and mortgage recording tax deferrals 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 Applicant and 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 Applicant and 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 Applicant or 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 Applicant or 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; and

(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 Applicant and 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 Applicant and the Company to proceed with the Project as herein authorized. The Applicant and the Company are 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 Applicant and 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 Applicant and the Company are 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 Applicant or the Company for such purpose.

Section 4. The execution and delivery of the Escrow Agreement among the Agency, the Applicant, the Company and the New York City Economic Development Corporation or any other entity as may be approved by a certificate of determination of an Agency officer to act as escrow agent, 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 (for sub-sublease to the Applicant), a Sales Tax Letter from the Agency to the Company and the Applicant, the Lender Mortgage, the Refinancing Mortgages and the acceptance of a Guaranty Agreement from the Company, the Applicant and the Applicant's and the Company's owners and/or principals in favor of the Agency (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, General Counsel and Vice President for Legal Affairs of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of 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 Applicant and 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.

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 7. 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, General Counsel or Vice President for Legal Affairs 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 8. Any expenses incurred by the Agency with respect to the Project shall be paid by the Applicant. By acceptance hereof, the Applicant agrees to pay such 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 9. This Resolution is subject to approval based on an investigative report with respect to the Applicant and 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 8 hereof).

Section 10. 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 Applicant and such other information as the Agency has deemed necessary and appropriate to make this determination.

The Agency hereby determines that the Project, a Type I action, pursuant to SEQRA and the implementing regulations, will not have a significant effect on the environment and that a Draft Final Environmental Impact Statement will not be prepared. The reasons supporting this determination are as follows:

- (1) the Project will not result in a substantial adverse change in the existing environment, most particularly with regard to air quality, traffic or noise levels.
- (2) the Project will not result in the impairment of the character or quality of important historical, archeological, architectural, aesthetic resources or character of the existing community or neighborhood.
- (3) the Project will not result in a change in existing zoning or land use.
- (4) as part of the Project, any asbestos-containing material and lead-based paint will be handled and disposed of in accordance with local, state, and federal law and regulations. Additionally, any above- and below-ground storage tanks will be inspected to ensure compliance in accordance with local, state, and federal law and regulations. With these in place and part of the Project, the Project will not result in the creation of a hazard to human health; and
- (5) no other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

Section 11. In connection with the Project, the Agency intends to grant the Applicant and the Company real property tax abatements, sales tax exemptions and mortgage recording tax deferrals.

Section 12. This Resolution shall take effect immediately

ADOPTED: February 14, 2012

Accepted: February ____, 2012

MANHATTAN BEER DISTRIBUTORS LLC

By: _____

Name:

Title: