

Resolution inducing the financing of a commercial facility for BOGOPA Harlem, 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, civic, 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, BOGOPA Harlem, LLC, a New York limited liability company (the “Applicant”), has entered into negotiations with officials of the Agency for the renovation, furnishing and equipping of a commercial facility in New York, New York (the “Facility”), consisting of a retail condominium unit (the “Condominium Unit”) containing approximately 45,344 square feet located within a mixed-use 19-story building on an approximately 47,100 square foot parcel of land located at 201 East 125th Street, New York, New York 10035, which Condominium Unit has been leased to the Applicant by East Harlem MEC Parcel B West LLC, a Delaware limited liability company, all for the use by the Applicant in its operations as a supermarket, for sublease to the Agency by the Applicant, and sub-sublease by the Agency to the Applicant, and having an approximate total project cost of approximately \$8,000,000 (the “Project”); 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 is currently located in New York, New York, and employs approximately 0 full time equivalent employees within The City of New York (the “City”); that the Project will meet all requirements of the City’s Food Retail Expansion to Support Health Program (“FRESH”); that the Applicant’s operations will be located in the City; that the Applicant expects to employ approximately 102.5 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 establish its operations in the City; and that, based upon the financial assistance provided through the Agency, the Applicant desires to proceed with the Project and establish 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 are necessary to induce the Applicant to establish its operations in the City; and

WHEREAS, the Act allows the Agency to provide financial assistance for a project at which facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services to constitute more than one-third of the total project cost if, among other alternative requirements:

(1) the project is located in a “highly distressed area,” defined in Section 854(18) of the Act, to include an area in which a census tract, or tracts or block numbering area or areas or such census tract or block numbering areas contiguous thereto, which, according to the most recent census data available has (i) a poverty rate of at least 20% for the year to which the data relates or at least 20% of households receiving public assistance and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates; and

(2) the Agency determines after a public hearing that undertaking the project will serve the public purposes of Article 18-A of the Act by increasing the overall number of permanent, private sector jobs in New York State; and

WHEREAS, the Agency has determined: that the Project is located in Census Tract 242 in Manhattan; that the poverty rate calculated from the most recent census data (American Community Survey 2014-2018 5-Year Estimate) for Census Tract 242 indicates that for the year to which the census data relates approximately 37.4% of the population was living below the poverty level; that the unemployment rate in Census Tract 242 for the year to which the census data relates was approximately 8%, while the statewide unemployment rate for such year was 4.1%; that 8% is greater than 1.25 times the statewide rate of 4.1%; and that, therefore, the proposed Project meets the statutory requirements of being located in a “highly distressed area”; 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 will serve the public purposes of Article 18-A of the Act by increasing the overall number of permanent, private sector jobs in New York State and that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Applicant are necessary to induce the Applicant to establish its operations in the City; and

WHEREAS, in order to provide financial assistance to the Applicant for the Project, the Agency intends to grant the Applicant financial assistance through a straight-lease transaction in the form of real property tax abatements and sales and use tax exemptions 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 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 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 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 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) the Project is located in a “highly distressed area” (as defined in Section 854(18) of the Act); and

(d) the proposed action of the Agency described herein must be confirmed by the Mayor of the City.

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Applicant 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 to proceed with the Project as herein authorized. The Applicant 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 Applicant 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 is hereby constituted the agent 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 for such purpose.

Section 4. The execution and delivery of a Company Lease Agreement from the Applicant subleasing the Facility to the Agency, an Agency Lease Agreement from the Agency sub-subleasing the Facility to the Applicant (the “Lease Agreement”), a Sales Tax Letter from the Agency to the Applicant, the acceptance of a Guaranty Agreement from the Applicant and the Applicant’s owners and/or principals in favor of the Agency (the “Guaranty Agreement”), and an Agency-Owner Agreement by and between the Agency and East Harlem MEC Parcel B West LLC, as fee title owner of the Facility (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 Applicant 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 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 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. 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 has determined that the proposed action is a Type II action, pursuant to 6 N.Y.C.R.R. Part 617.5(c)(29), because the proposed action constitutes "investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt...", which would not result in adverse environmental impacts requiring the preparation of an Environmental Impact Statement.

Section 11. In connection with the Project, the Applicant covenants and agrees to comply, and to cause each of its 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.

(1) The Applicant 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 Applicant New York State sales or use tax savings taken or purported to be taken by the Applicant, and any agent or any other person or entity acting on behalf of the Applicant, to which the Applicant is not entitled or which are in excess of the maximum sales or use tax exemption amount authorized in Section 12 of this Resolution or which are for property or services not authorized or taken in cases where the Applicant, or any agent or any other person or entity acting on behalf of the Applicant, 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 Applicant and/or any agent or any other person or entity acting on behalf of the Applicant. The Applicant shall, and shall require each agent and any other person or entity acting on behalf of the Applicant, 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 Applicant under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(2) The Applicant 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 Applicant 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 Applicant, 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 Applicant 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).

(3) The foregoing requirements of this Section 11 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 Applicant, or any agent or other person or entity acting on behalf of the Applicant 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 12. In connection with the Project, the Agency intends to grant the Applicant real property tax abatements and sales and use tax exemptions in an amount not to exceed \$470,375.

Section 13. This Resolution shall take effect immediately

ADOPTED: January __, 2021

Accepted: _____, 2021

BOGOPA Harlem, LLC

By: _____

Name:

Title:

**RESOLUTION AUTHORIZING THE AMENDMENT TO A
PRIOR RESOLUTION INDUCING THE FINANCING OF A
COMMERCIAL FACILITY FOR BOGOPA HARLEM, LLC
AS A STRAIGHT-LEASE TRANSACTION AND
AUTHORIZING AND APPROVING THE EXECUTION
AND DELIVERY OF AGREEMENTS IN CONNECTION
THEREWITH**

WHEREAS, the 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, Bogopa Harlem, LLC, a New York limited liability company (the “Applicant”) entered into negotiations with officials of the Agency for the renovation, furnishing and equipping of an approximately 45,344 square foot retail condominium (the “Facility”) located on the ground floor and second floor of a 19-story mixed-use building located on an approximately 47,100 square foot parcel of land located at 201 East 125th Street, New York, NY 10035, which Facility has been leased to the Applicant by East Harlem MEC Parcel B West LLC, all for the use by the Applicant in its operations as a full service supermarket, for sublease to the Agency by the Applicant, and subsequent sub-sublease by the Agency to the Applicant in whole, and having an approximate total project cost of \$8,000,000 (the “Project”); and

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

WHEREAS, on January 19, 2021, the Agency’s Board of Directors approved an Inducement and Authorizing Resolution (the “January 19, 2021 Resolution”) authorizing the Project for the benefit of Bogopa Harlem, LLC, which January 19, 2021 Resolution contained Section 10 referencing a determination under the State Environmental Quality Review Act (“SEQRA”) that the Project was a “Type II action, pursuant to 6 N.Y.C.R.R. Part 617.5(c)(29)”, which “would not result in adverse environmental impacts requiring the preparation of an Environmental Impact Statement”; and

WHEREAS, subsequent to the approval and adoption of the January 19, 2021 Resolution, the Agency determined that the SEQRA determination as set forth in Section 10 of the January 19, 2021 Resolution should be corrected; and

NOW, THEREFORE, THE AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby approves this Amended Authorizing Resolution, by which the text of Section 10 of the January 19, 2021 Resolution shall be deleted and replaced in its entirety with the following language:

“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 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:

1. The proposed Project would not result in a substantial adverse change in existing traffic, air quality, or noise levels.
2. The proposed Project would not result in significant adverse impacts on cultural, archaeological, architectural, or aesthetic resources or the existing neighborhood.
3. The proposed Project would not result in significant adverse impacts to natural resources, critical habitats, or water quality.
4. The proposed Project would not result in a change in existing zoning or land use.
5. The Project site has been remediated under the New York State Department of Environmental Conservation's (NYS DEC) Brownfield Cleanup Program (BCP). As part of the BCP, a Phase I and Phase II Remedial Investigation was completed for the Project, as well as completion of remedial actions that have eliminated the potential for contact with site-related contaminants. If ground disturbance is to occur in the future for the proposed Project, work would need to adhere to the Site Management Plan (SMP) developed for the Project site under the BCP. If the requirements of the SMP are met in accordance with BCP standards, we do not anticipate any significant adverse impacts resulting from the proposed Project due to hazardous materials.
6. No other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable."

Section 2. The January 19, 2021 Resolution is hereby amended to reflect the changes described herein.

Section 3. The January 19, 2021 Resolution is in all other respects ratified and confirmed.

Section 4. This Resolution shall take effect immediately.

ADOPTED: July 23, 2024