

Resolution authorizing the execution and delivery of agreements in connection with straight-lease transactions for Bogopa Service Corp. and its affiliated entities

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, On October 6, 2011, the Agency entered into straight-lease transactions with Bogopa, Inc. ("Bogopa, Inc."); Bogopa-Junction, Inc. ("Bogopa-Junction"); Bogopa-Junius, Inc. ("Bogopa-Junius"); Bogopa-Manhattan, Inc. ("Bogopa-Manhattan", and collectively with Bogopa, Inc., Bogopa-Junction, and Bogopa-Junius, the "Lessees"); and Bogopa Service Corp. ("Bogopa Service") for the acquisition, construction, renovation and equipping of commercial facilities, consisting of (i) the construction of an approximately 14,000 square foot addition and renovations to an existing approximately 42,000 square foot supermarket at 17-59 Ridgewood Place, Brooklyn, New York, and the acquisition of machinery and equipment for the equipping thereof (the "Bushwick Facility"), by or on behalf of Bogopa, Inc.; (ii) the construction of an approximately 8,000 square foot addition and renovations to an approximately 52,370 square foot supermarket at 21 Manhattan Avenue, Brooklyn, New York, and the acquisition of machinery and equipment for the equipping thereof (the "Bedford-Stuyvesant Facility"), by or on behalf of Bogopa-Manhattan; (iii) the renovation of an approximately 45,000 square foot supermarket at 417 Junius Street, Brooklyn, New York, and the acquisition of machinery and equipment for the equipping thereof (the "Brownsville Facility"), by or on behalf of Bogopa-Junius; and (iv) the construction of an approximately 4,000 square foot addition and renovations to an existing approximately 14,388 square foot supermarket at 34-20 Junction Boulevard, Queens, New York, and the acquisition of machinery and equipment for the equipping thereof (the "Jackson Heights Facility"), by or on behalf of Bogopa-Junction, (the Bushwick Facility, the Bedford-Stuyvesant Facility, the Brownsville Facility, and the Jackson Heights Facility being, collectively, the "Facilities"), all for the use (a) with respect to the Bushwick Facility, by Bogopa, Inc. in its operations as a retail supermarket, for lease to the Agency by Bogopa, Inc., and sublease by the Agency to Bogopa, Inc. (the "Bushwick Project"); (b) with respect to the Bedford-Stuyvesant Facility, by Bogopa-Manhattan in its operations as a retail supermarket, for lease to the Agency by Bogopa-Manhattan, and sublease by the Agency to Bogopa-Manhattan (the "Bedford-Stuyvesant Project"); (c) with respect to the Brownsville Facility, by Bogopa-Junius in its operations as a retail supermarket, for lease to the Agency by Bogopa-Junius, and sublease by the Agency to Bogopa-Junius (the "Brownsville Project"); and (d) with respect to the Jackson Heights Facility, by Bogopa-Junction in its operations as a retail supermarket, for lease to the Agency by Bogopa-Junction, and sublease by the Agency to Bogopa-Junction (the "Jackson Heights Project") (the Bushwick

Project, the Bedford-Stuyvesant Project, the Brownsville Project, and the Jackson Heights Project being, collectively, the "Projects"); and

WHEREAS, the Lessees and Bogopa Service have advised the Agency that the Projects have not been completed and will not be completed prior to the "Completion Date" as defined in the Agency Lease Agreement, dated as of October 1, 2011, between the Agency and Bogopa, Inc., the Agency Lease Agreement, dated as of October 1, 2011, between the Agency and Bogopa-Junction, the Agency Lease Agreement, dated as of October 1, 2011, between the Agency and Bogopa-Junius, and the Agency Lease Agreement, dated as of October 1, 2011, between the Agency and Bogopa-Manhattan (collectively, the "Lease Agreements"), and in the Project Agreement (the "Project Agreement") between the Lessees, Bogopa Service, and Bogopa-Concourse, Inc., a New York corporation related to the Lessees and Bogopa Service (collectively, the "Companies"), and the Agency; and

WHEREAS, in order to provide financial assistance to the Lessees for the Projects, the Agency granted the Lessees financial assistance through straight-lease transactions in the form of sales tax exemptions pursuant to the Act;

WHEREAS, the Lessees and Bogopa Service have requested that the Agency (i) extend the Completion Dates for the Projects to June 30, 2014 with respect to the Jackson Heights Project and to June 30, 2018 with respect to the other Projects and (ii) extend the "Expiration Date" of the Letter of Authorization for Sales Tax Exemption dated October 6, 2011 and delivered pursuant to the Project Agreement (the "Sales Tax Letter") until the respective, extended Completion Date for each Project;

WHEREAS, the Agency desires to accommodate such request of the Lessees and Bogopa Service;

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

Section 1. The execution and delivery of amendments to the Lease Agreements, the Project Agreement and the Sales Tax Letter, each being substantially in the form approved by the Agency for prior transactions (the "Amending Documents"), 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 Amending Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

Section 2. The Agency hereby determines that the predominant purpose of the Projects is to make available goods or services which would not, but for the Projects, be reasonable accessible to the residents of The City of New York because of a lack of reasonably accessible retail trade facilities offering such goods or services.

Section 3. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Amending 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 Amending 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 Amending 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 Amending 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 4. 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 5. The Lessees and Bogopa Service agree to comply, and to cause each of their respective contractors, subcontractors, agents, persons or entities to comply, with the terms and conditions of Section 875(1) and (3) of the General Municipal Law, attached hereto as Exhibit A, as such provisions may be amended from time to time.

Section 6. This Resolution shall take effect immediately.


ADOPTED: June 11, 2013

ACCEPTED: August 8, 2013


BOGOPA SERVICE CORP.

By:  _____
Name: Hwee III An
Title: President and Chairman

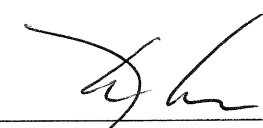
BOGOPA, INC.

By:  _____
Name: Hwee III An
Title: President and Chairman

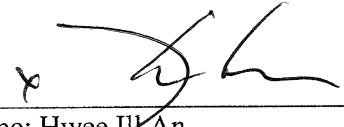
BOGOPA-JUNCTION, INC.

By:  _____
Name: Hwee III An
Title: President and Chairman

BOGOPA-JUNIUS, INC.

By:  _____
Name: Hwee III An
Title: President and Chairman

BOGOPA-MANHATTAN, INC.

By:  _____
Name: Hwee III An
Title: President and Chairman

MAYORAL CONFIRMATION

Pursuant to Section 862(2)(c) of the Act, the undersigned hereby confirms the proposed actions of the Agency as set forth in the attached Resolution.

By: _____

_____, 2013

Exhibit A
SPECIAL PROVISIONS RELATING TO STATE SALES TAX SAVINGS
General Municipal Law, Section 875(1) and (3)

“Section 875. Special provisions applicable to State sales and compensating use taxes and certain types of facilities.

1. For purposes of this Section: “State sales and use taxes” means sales and compensating use taxes and fees imposed by Article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a City by Section eleven hundred seven or eleven hundred eight of such Article twenty-eight. “IDA” means an industrial development agency established by this Article or an industrial development authority created by the public authorities law. “Commissioner” means the Commissioner of taxation and finance. ...

3. (A) An IDA shall include within its resolutions and project documents establishing any project or appointing an agent or project operator for any project the terms and conditions in this subdivision, and every agent, project operator or other person or entity that shall enjoy State sales and use tax exemption benefits provided by an IDA shall agree to such terms as a condition precedent to receiving or benefiting from such State sales and use exemptions benefits.

(B) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity State sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person’s agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such State sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such amounts to the IDA shall be grounds for the Commissioner to assess and determine State sales and use taxes due from the person under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.

(C) If an IDA recovers, recaptures, receives, or otherwise obtains, any amount of State sales and use tax exemption benefits from an agent, project operator or other person or entity, the IDA 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. An IDA shall join the Commissioner as a party in any action or proceeding that the IDA commences to recover, recapture, obtain, or otherwise seek the return of, State sales and use tax exemption benefits from an agent, project operator or other person or entity.

(D) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (A) of this subdivision and its activities and efforts to recover, recapture, receive, or otherwise obtain State sales and use exemptions benefits described in paragraph (B) of this subdivision, together with such other information as the Commissioner and the Commissioner of economic development may require. The report required by this subdivision shall be filed with the Commissioner, the Director of the division of the budget, the Commissioner of economic development, the State Comptroller, the governing body of the municipality for whose benefit the agency was created, and may be included with the Annual financial statement required by paragraph (B) of subdivision one of Section eight hundred fifty-nine of this Title. Such report required by this subdivision shall be filed regardless of whether the IDA is required to file such financial statement described by such paragraph (B) of subdivision one of Section eight hundred fifty-nine. The failure to file or substantially complete the report required by this subdivision shall be deemed to be the failure to file or substantially complete the statement required by such paragraph (B) of subdivision one of such section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (E) of subdivision one of such Section eight hundred fifty-nine.

(E) This subdivision shall apply to any amounts of State sales and use tax exemption benefits that an IDA recovers, recaptures, receives, or otherwise obtains, regardless of whether the IDA or the agent, project operator or other person or entity characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The provisions of this subdivision shall also apply to any interest or penalty that the IDA 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 an IDA recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State sales and use taxes and the IDA shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the State.”