

AUTHORIZING RESOLUTION
(Tacos El Poblano Mexicano No. 2, Inc. Project)

A regular meeting of the City of Yonkers Industrial Development Agency was convened on September 25, 2017 at 9:00 a.m. at Yonkers City Hall.

The following resolution was duly offered and seconded, to wit:

Resolution No. 09/2017 - 38

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF TACOS EL POBLANO MEXICANO NO. 2, INC., (ii) APPOINTING TACOS EL POBLANO MEXICANO NO. 2, INC. (THE "COMPANY") AS ITS AGENT TO UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW), (iii) AUTHORIZING FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A SALES AND USE TAX EXEMPTION, A PARTIAL REAL PROPERTY TAX ABATEMENT, AND A MORTGAGE RECORDING TAX EXEMPTION, (iv) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, TAX AGREEMENT MORTGAGE, AND (v) AUTHORIZING THE EXECUTION AND DELIVERY OF A COMMERCIAL OR OTHER MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 83 of the Laws of 1982 of the State of New York, as amended (hereinafter collectively called the "Act"), the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **TACOS EL POBLANO MEXICANO NO. 2, INC.**, for itself or on behalf of an entity to be formed (the "Company") has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition of a leasehold or other interest in certain land located at 200 New Main Street and 122 Nepperhan Avenue, City of Yonkers, New York (the "Land"), (ii) the renovation and expansion on the Land of a two-story restaurant (the "Improvements"), and (iii) the acquisition and installation in and around the Improvements of certain items of equipment and other tangible personal property (the "Equipment"; and collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency (i) negotiate and enter into an agent, financial assistance and project agreement, pursuant to which the Agency will designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and tax agreement (the "Tax Agreement") with the Company, a Tax Agreement mortgage (the "Tax Agreement Mortgage"), and a commercial or other mortgage in favor of a lender or lenders to be identified by the Company (the "Mortgage"), (iii) take a leasehold interest in the Land, the Existing Improvements, the Improvements and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and Tax Agreement (and Tax Agreement Mortgage, if applicable) have been negotiated), and (iv) provide Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, and (b) a partial real property tax abatement structured through the Tax Agreement, and (c) a mortgage recording tax exemption (excluding the additional mortgage recording tax imposed on real property located within a transportation district pursuant to Section 253(2)(a) of the New York Tax Law) (collectively, the "Financial Assistance"); and

WHEREAS, the Financial Assistance to be provided to the Company by the Agency in the aggregate shall not exceed \$100,000 and, therefore, the Agency is not required to hold a public hearing under the Act; and

WHEREAS, the Agency shall find, prior to providing any Financial Assistance to the Project, (i) that the Project is located in a "highly distressed area" (as such term is defined in Section 854(18) of the GML, a "Highly Distressed Area") and (ii) after any public hearing required under the Act, that the undertaking of the Project will serve the public purposes of the GML by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State; and

WHEREAS, the Company has represented in its Application to the Agency that the Project is located in a Highly Distressed Area; and

WHEREAS, the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement, Tax Agreement Mortgage, Mortgage and related documents with respect to the Project are being negotiated and will be presented to the President, Executive Director or Secretary of the Agency for execution upon approval of this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; and

(D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in the City of Yonkers and otherwise furthering the purposes of the Agency as set forth in the Act;

(E) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries;

(F) The Project is located in a Highly Distressed Area;

(G) The Project will serve the public purposes of the Act by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in New York State; and

(H) The Financial Assistance to be provided to the Company by the Agency in the aggregate shall not exceed \$100,000 and, therefore, the Agency is not required to hold a public hearing under the Act.

Section 2. The Project involves an Unlisted Action under SEQRA as that term is defined by 6 NYCRR §617.2(ak). The Agency is acting as Lead Agency pursuant to SEQRA and conducting an Uncoordinated Review pursuant to 6 NYCRR §617.6 Based upon a thorough and comprehensive review by the Agency of the Application, a Short Environmental Assessment Form and related documents delivered by the Company to the Agency, as well as other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that the Project will result in no potential significant adverse environmental impacts requiring the preparation of an environmental impact statement for the action. Thus, the Agency issues a Negative Declaration for the action pursuant to 6 NYCRR 617.7 of the SEQRA findings.

Section 3. Subject to the Company executing an Agent Agreement (in a form to be approved by Counsel to the Agency and/or Transaction Counsel) and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on **September 30, 2018** (*unless extended for good cause by the President and/or Executive Director of the Agency*) if the Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage contemplated have not been executed and delivered.

Section 4. Based upon the representation and warranties made by the Company in its Application for Financial Assistance, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$345,000.00** which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$30,618.75**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 5. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project,

is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 6. The Agency is hereby authorized to provide the Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, and (b) a partial real property tax abatement structured through the Tax Agreement, and (c) a mortgage recording tax exemption (excluding the additional mortgage recording tax imposed on real property located within a transportation district pursuant to Section 253(2)(a) of the New York Tax Law).

Section 7. The Chairman, Vice Chairman, President, Secretary, Executive Director and/or the CFO of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, Leaseback Agreement, Tax Agreement, Tax Agreement Mortgage, Agent Agreement and related documents with such changes as shall be approved by the Chairman, Vice Chairman, President, Secretary, Executive Director and/or the CFO upon execution; provided, the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

Section 8. The Chairman, Vice Chairman, President, Secretary, Executive Director and/or the CFO of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any Lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement and Tax Agreement Mortgage, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, President, Secretary, Executive Director, and/or the CFO of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, President, Secretary, Executive Director and/or the CFO of the Agency to

constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency’s interest in the Project.

Section 9. 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 and to execute and deliver all such certificates, instruments and documents, to 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 10. These Resolutions shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Mike Spano	[✓]	[]	[]	[]
Susan Gerry	[✓]	[]	[]	[]
Wilson Kimball	[✓]	[]	[]	[]
Melissa Nacerino	[✓]	[]	[]	[]
Cecile D. Singer	[✓]	[]	[]	[]
Peter Kischak	[✓]	[]	[]	[]

The Resolutions were thereupon duly adopted.

CERTIFICATION
(Tacos El Poblano Mexicano No. 2, Inc. Project)

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

I, SUSAN GERRY, the undersigned Secretary of the City of Yonkers Industrial Development Agency DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the "Agency"), including the resolution contained therein, held September 25, 2017, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 29 day of Sept, 2017.


Susan Gerry, Secretary

[SEAL]