

J & K DUFFY HOLDINGS, LLC

(3101-15-6A)

RESOLUTION APPROVING ASSIGNMENT

A regular meeting of the Onondaga County Industrial Development Agency (the “Agency”) was convened in public session on August 14, 2018, at 8:00 a.m. at 333 W. Washington Street, Syracuse, New York.

The meeting was called to order by the (Vice) Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT: Patrick Hogan, Chairperson
Janice Herzog, Vice Chairperson
Victor Ianno, Member
Kevin Ryan, Member
Steve Morgan, Member
Susan Stanczyk, Member
Fanny Villarreal, Member

ABSENT: None

ALSO PRESENT: Julie Cerio, Executive Director
Anthony P. Rivizzigno, Esq., Agency Counsel
Amanda M. Mirabito, Esq., Agency Counsel

The following resolution was offered by Janice Herzog, seconded by Victor Ianno, to wit:

RESOLUTION CONSENTING TO AN ASSIGNMENT TRANSACTION BY J & K DUFFY HOLDINGS, LLC TO B & N REAL ESTATE HOLDINGS OF CNY, LLC AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, the Onondaga County Industrial Development Agency (the “Agency”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), Chapter 564 of the 1970 Laws of New York, as amended, constituting Section 895 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities and continuing care retirement communities, among others, for the purpose of promoting, attracting, encouraging and developing recreation, and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New

York and to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct, improve, maintain, equip or furnish one or more “projects” (as defined in the Act); to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of said projects; and to issue bonds and provide for the rights of the holders thereof; and

WHEREAS, the Agency has undertaken a project (the “Project”) on behalf of J&K Duffy Holdings, LLC (the “Original Company”) consisting of the following: acquisition and improvements to a 105,000 square foot building in the Town of Clay, Onondaga County, New York (the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, real property taxes, transfer and mortgage recording taxes (the “Financial Assistance”); (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Original Company; and (D) assisting the Original Company in the financing of the Project; and

WHEREAS, in connection with the Project, the Agency and the Original Company entered into (1) a lease and leaseback agreement (and a memorandum thereof) dated as of June 15, 2015, (the “Lease Agreement”); (B) a payment in lieu of taxes agreement dated as of February 25, 2016 (the “PILOT Agreement”); and (C) various certificates relating to the Project (the “Certificates” and collectively with the Lease Agreement and the PILOT Agreement, the “Basic Documents”); and

WHEREAS, the Original Company has notified the Agency that it has entered into a certain Purchase and Sale Agreement dated July 11, 2018 pursuant to which it will sell the Project Facility to B & N Real Estate Holdings of CNY, LLC (the “New Company”) (the “Sale Transaction”); and

WHEREAS, the Original Company has requested that the Agency consent to the Sale Transaction, which will include the assignment to and assumption by the New Company of the Lease Agreement and the PILOT Agreement, (collectively, the “Assigned Documents”); and

WHEREAS, the Agency is willing to consent to the Sale Transaction and the assignment to and the assumption by the New Company of the Assigned Documents (the “Assignment Transaction”); and

WHEREAS, documentation to evidence the Sale Transaction will be negotiated by the Agency’s counsel in consultation with the Executive Director (the “Assignment Documents”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation

of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency must determine the potential environmental significance of the Assignment Transaction;

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

Section 1. Pursuant to SEQRA, the Agency hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(23) of the Regulations, the Assignment Transaction is a "Type II action" (as said quoted term is defined in the Regulations); and

(B) Therefore, the Agency hereby determines that no environmental impact statement or any other determination or procedure is required under the Regulations with respect to the Assignment Transaction.

Section 2. The Agency hereby finds and determines that by virtue of the Act, that:

(a) 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) It is desirable and in the public interest for the Agency to consent to the Assignment Transaction, subject to satisfaction of the conditions set forth in Section 3 hereof.

Section 3. The Agency hereby consents to the Assignment Transaction and delegates to the Executive Director, in consultation with Barclay Damon LLP as transaction counsel, to determine and approve the form and substance of the Assignment Documents.

Section 4. The Chief Executive Officer is hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

Section 5. No covenant, stipulation, obligation or agreement contained in this Resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 6. A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 7. The Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 8. This Resolution 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:

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
Patrick Hogan	X		
Janice Herzog	X		
Victor Ianno	X		
Steve Morgan			X
Susan Stanczyk	X		
Kevin Ryan	X		
Fanny Villarreal	X		

The Resolution was thereupon declared duly adopted.

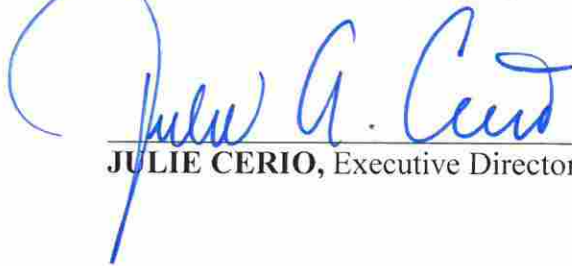
STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

I, the undersigned Executive Director of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on August 14, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter therein referred to.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of August, 2018.



JULIE CERIO, Executive Director