

## PROJECT AUTHORIZING RESOLUTION

A regular meeting of Wayne County Industrial Development Agency was convened on Wednesday, August 7, 2013 at 11:00 a.m.

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

Resolution No. 08/2013 - \_\_

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) APPOINTING PALMYRA PROPERTIES, LLC (THE "COMPANY") AS ITS AGENT TO UNDERTAKE THE PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE PROVISION OF CERTAIN FINANCIAL ASSISTANCE TO THE COMPANY (AS FURTHER DEFINED HEREIN); (iv) ADOPTING FINDINGS WITH RESPECT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA"); AND (v) AUTHORIZING THE EXECUTION OF 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 916 of the Laws of 1969 of the State of New York, (the "Act"), the **WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to promote, develop, encourage and assist in acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, civic, research, and recreational facilities as authorized by the Act, and in connection therewith to issue its revenue bonds, and/or enter into straight lease transactions and provide other forms of financial assistance; and

WHEREAS, PALMYRA PROPERTIES, LLC (the "Company"), has submitted an application to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of a leasehold interest in an approximately .18 acres of real property comprised of 4 tax parcels located at 234-240 East Main Street in the Village of Palmyra, New York (the "Land", being more particularly described as tax parcels 64111-11-726685, 64111-11-728685, 64111-11-730684, and 64111-11-733683) along with the existing improvements thereon (the "Existing Improvements"); (ii) the demolition of the Existing Improvements and the planning, design, construction, reconstruction and operation of an approximately 3,000 square foot building, along with external curbage, sidewalks, and landscaping improvements to be operated as restaurant facility leased to and operated by Palmyra Pizza, Inc., doing business as Mark's Pizzeria (the "Improvements"); (iii) the acquisition of and installation in and around the Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to

which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"); and

WHEREAS, on June 28, 2013, the Agency adopted an initial resolution (the "Initial Project Resolution") which (i) accepted the Company's application, (ii) authorized the scheduling and conduct of a public hearing in compliance with the Act, (iii) made initial findings of the Agency regarding the retail nature of the Project pursuant to and in accordance with Section 862(2)(b) of the Act; and (iv) authorized the negotiation of an agent agreement (the "Agent Agreement"), lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") to be entered into with respect to the Project; and

WHEREAS, in accordance with the Initial Project Resolution, the Agency published and forwarded a Notice of Public Hearing to the Village of Palmyra (the "Village"), the Town of Palmyra (the "Town"), the County of Wayne (the "County"), and the Palmyra-Macedon Central School District (the "School", and together with the Village, Town and County, the "Affected Tax Jurisdictions) at least thirty (30) days prior to said Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, as a component of the Notice of Public Hearing delivered to the Affected Tax Jurisdictions, the Agency delivered a notice of proposed deviation (the "Deviation") from the Agency's Uniform Tax Exemption Policy ("UTEP") regarding the proposed PILOT Agreement being considered by the Agency, such Notice having been transmitted at least 30 days prior to the date hereof; and

WHEREAS, the Agency has identified the Project as an "Unlisted Action" pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617 (collectively referred to as "SEQRA"), for which the Agency will conduct an uncoordinated review based upon the Company's application and a Short Environmental Assessment Form ("EAF"), a copy of which is attached hereto as **Exhibit B**; and

WHEREAS, pursuant to Section 859-a of the Act, on August 7, 2013, 9:30 a.m. local time, in the conference room at the Village Hall, Village of Palmyra, 144 East Main Street, Palmyra, New York 14522, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance (as further defined herein) being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views, a copy of the minutes of the Public Hearing; and

WHEREAS, in furtherance of the foregoing, the Agency desires to authorize (i) the appointment of the Company as agent of the Agency to undertake the Project; (ii) the execution and delivery of the Agent Agreement, Lease Agreement, the Leaseback Agreement, the PILOT Agreement, and related documents; and (iii) the provision of the Financial Assistance to the Company, which shall include (a) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Facility or used in the rehabilitation, renovation and equipping of the Facility, and (b) a partial real property tax

abatement through the execution of an agreement with the Agency regarding payments in lieu of real property taxes to be made for the benefit of the Affected Tax Jurisdictions.

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

Section 1. Based upon the representations made by the Company to the Agency in the 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) It is desirable and in the public interest for the Agency to (i) acquire title to or other interest in the Land, the Existing Improvements, Improvements and the Equipment constituting the Facility, (ii) lease or sell the Agency's interest in the Land, Existing Improvements, Improvements and Equipment constituting the Facility to the Company pursuant to a lease agreement or sale agreement to be negotiated, and (iii) enter into a Straight Lease Transaction with the Company; and

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

(D) The action to be taken by the Agency will induce the Company to undertake the Project, thereby increasing employment opportunities in the Village of Palmyra, which is located within Wayne County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a facility or 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 facility or plant to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(F) Based upon the Agency's prior review of the Application submitted by the Company, along with supporting materials, and in accordance with the findings of the Agency within the Initial Project Resolution, the Project will include facilities or property that are primarily used in making retail sales, as defined within Section 862(2) of the Act, to customers who personally visit the Facility. Notwithstanding the foregoing, and based upon the Application and supporting materials prepared and presented by the Company to the Agency, the Project is located in a "highly distressed area" by virtue of being within an area which was designated an empire zone pursuant to Article 18-B of the Act. The Agency also hereby finds

that the Project will play a role in restoring critical buildings and infrastructure within the Village that were previously destroyed by fire. In accordance with the foregoing, and pursuant to Section 862(2)(c) of the Act, the Agency hereby finds that the undertaking of 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 the State; and

(G) The Project involves an “Unlisted Action” as said term is defined pursuant to SEQRA. The Agency’s review of the Project is uncoordinated. Based upon the review by the Agency of the application, the EAF, and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a “significant effect on the environment” as such quoted terms are defined in SEQRA; and (iii) no “environmental impact statement” as such quoted term is defined in SEQRA, need be prepared for this action. This determination constitutes a negative declaration for purposes of SEQRA; and

(H) Upon consideration of the Deviation, as outlined within the Public Hearing Notice and Deviation letter issued to the Affected Tax Jurisdictions, and upon consideration of the Project and comments received from the Affected Tax Jurisdictions, the Agency hereby authorizes the undertaking of the Deviation based upon the following factors: (i) the Company’s significant proposed investment in the Facility, (ii) the Company’s willingness to demolish vacant buildings damaged as a result of a multi-building fire on Main Street in the Village, (ii) the Company’s replacement of the demolished structures with the Facility, which will not only replace damaged Main Street building structures and infrastructure, but also retain and expand job opportunities within the Village. In addition, the Agency’s consideration of the foregoing includes the economic condition of the Land, Existing Improvements, and surrounding area at the time of the Company’s application and the economic multiplying effect that the Project will have on the County, including the retention and creation of permanent, private sector jobs and sales tax revenue generation.

Section 2. Subject to (i) the receipt by the Agency of a Confirming Certificate from the Chairman of the Board of Supervisors of the County pursuant to Section 862(2)(c) of the Act, (ii) the Company and primary Project Operator executing the Agent Agreement and Leaseback Agreement, and (iii) 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, renovation, construction, reconstruction, rehabilitation 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 July 31, 2014 (unless extended for good cause by the Executive Director of the Agency).*

Section 3. Based upon the representation and warranties made by the Company the Application, 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 approximately \$550,000.00, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed \$44,000.00. 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, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 4. Pursuant to Section 875(3) of the Act, 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; (iv) the Company has made a material false statement on its application for financial assistance; (v) 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; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and 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 (collectively, items (i) through (vi) hereby defined as a “Recapture Event”).

As a condition precedent of receiving sales and use tax exemption benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, mortgage recording tax benefits and/or real property tax abatements abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 5. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement, Lease Agreement, Leaseback Agreement, PILOT Agreement and related documents with such

changes as shall be approved by the Chairman, Vice Chairman, the Executive Director and counsel to the Agency upon execution.

Section 6. 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 7. These Resolutions shall take effect immediately upon adoption.

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

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
David Spickerman, Sr.	XX			
James Hoffman	XX			
Willard Milliman	XX			
Robert Havrilla			XX	
Pamela Heald			XX	

The resolutions were thereupon duly adopted.

STATE OF NEW YORK     )  
COUNTY OF WAYNE     ) ss:

I, the undersigned Secretary of the Wayne County Industrial Development Agency, DO HEREBY CERTIFY:

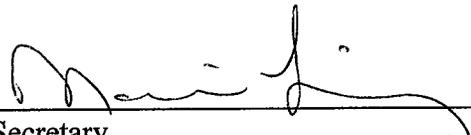
That I have compared the foregoing extract of the minutes of the meeting of the Wayne County Industrial Development Agency (the "Agency") including the resolution contained therein, held on August 7, 2013, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates 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 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 seal of said Agency this 7<sup>th</sup> day of August, 2013.

  
Secretary

[SEAL]