

Special Board Meeting, Wayne County IDA

August 8, 2014, 10 am at 16 William Street

Board Members Present: Heald, Milliman, Spickerman, Hoffman; absent: Havrilla

Others present: Dave Richards, CFO; Peg Churchill, executive director; Barb Heald, business owner; John Morell, attorney for the agency.

Chairman Spickerman called the meeting to order at 10 am.

Minutes adopted unanimously. No public participation. When Ms. Heald joined the group, introductions were made. Ms. Barb Heald and her husband are owners of the Twilight on the Erie RV camp in the Town of Macedon, a project currently under construction.

Barb Heald gave a presentation and update on the status of the development. She provided the board with a handout showing before and after pictures of the progress made. (copy attached) At the end of the presentation and question period Ms. Heald excused herself.

Resolution A: TJK Properties, LLC; Twilight on the Erie RV Resort, LLC – Extend Loan Commitments

Whereas, TJK Properties, LLC was approved for a \$130,000 Revolving Loan and Twilight on the Erie RV Resort, LLC was approved for a \$170,000 Revolving Loan on October 1, 2013 to assist in the establishment of a RV Park in Macedon, NY.; and

Whereas, WCIDA extended its commitment from December 1, 2013 to February 1, 2014 in order to allow for the processing of a SBA 504 Loan approval that is necessary for the funding of the project; and

Whereas, on February 6, 2014 the commitment was extended until June 30, 2014, the estimated time of conversion of construction loan to permanent mortgage; and

Whereas, the commitment expired on June 30, 2014 and due to significant construction delays as a result of weather conditions the revised estimated time of conversion of construction loan to permanent mortgage is now December 31, 2014; be it therefore

Resolved, that WCIDA extends its commitment to December 31, 2014

Moved: Pamela Heald Ayes: All

Second: Willard Milliman Nays: None

Resolution B—DNT-- PROJECT INDUCEMENT RESOLUTION

(DNT Express Project)

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF DNT EXPRESS, INC. (THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE COMPANY AND DNT EXPRESS REALTY, LLC (THE "OWNER") TO UNDERTAKE THE PROJECT AND APPOINTING THE COMPANY AND OWNER AS AGENTS OF THE AGENCY IN FURTHERANCE OF SAME; (iii) AUTHORIZING THE NEGOTIATION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT AND RELATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT; (iv) AUTHORIZING THE PROVISION OF FINANCIAL ASSISTANCE (AS DEFINED HEREIN) TO THE COMPANY AND OWNER; (v) ADOPTING

FINDINGS PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA"); AND
(vi) AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS.

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, as amended (hereinafter collectively called the "Act"), the **WAYNE COUNTY 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, DNT EXPRESS, INC. and DNT EXPRESS REALTY, LLC (collectively, the "Company"), have 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 two parcels of real property comprised of approximately 5 acres located at 80 Davis Parkway in the Village of Clyde, New York (the "Land", being more particularly described as tax parcels 74112-15-597352 and 74112-15-566358, as may be merged) owned by DNT EXPRESS REALTY, LLC (the "Owner"), along with the existing improvements thereon including an approximately 10,000 square foot warehouse and office facility (the "Existing Improvements"); (ii) the planning, design, and construction of modifications to the Existing Improvements and construction of an approximately 37,500 building structure adjacent to the Existing Improvements, along with external parking, curbage, landscaping and general site improvements for continued operation as a beverage warehousing and distribution facility by DNT EXPRESS, INC. (the "Improvements"); (iii) the acquisition of and installation in and around the Existing Improvements and Improvements by the Owner and Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land, the Existing Improvements and the 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 Owner (the "Straight Lease Transaction"); and

WHEREAS, pursuant to Article 18-A of the Act, the Agency previously adopted a resolution on July 25, 2014 (i) describing the Project; (ii) describing the financial assistance that the Agency is contemplating with respect to the Project; and (iii) authorizing the scheduling and conduct of a public hearing pursuant to the Act (the "Public Hearing"); and

WHEREAS, it is contemplated that the Agency will (i) designate the Company and Owner as its agent for the purpose of constructing and equipping the Facility pursuant to an agent agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement") and leaseback agreement (the "Leaseback Agreement") with the Company, (iii) take title to or a leasehold interest in the Land, the Existing Improvements, the Improvements, the Equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated and authorized), 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, (b) mortgage recording tax exemptions for financings undertaken in connection with the Project, and (c) a partial real property tax abatement through the PILOT Agreement (collectively, the "Financial Assistance"); and

WHEREAS, at the request of the Company, and prior to the conduct of the Public Hearing, the Agency desires to authorize the undertaking of the Project by the Company as agent of the Agency, and in furtherance of same the Agency shall comply with applicable provisions of the State Environmental Quality Review Act as codified under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQRA"); and

WHEREAS, the Agent Agreement has been negotiated and is presented to this meeting for approval and execution, along with a form of sales tax exemption letter to be provided to the Company in connection with the undertaking of the Project; and

WHEREAS, the Agency further desires to authorize the negotiation of a Lease Agreement, Leaseback Agreement, PILOT Agreement, Environmental Compliance Agreement and related documents in furtherance of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF WAYNE COUNTY 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 and any other correspondence submitted by the Company to the Agency, 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 appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; 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 develop the Project, thereby increasing employment opportunities in Wayne County 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 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; and

(F) The Project involves an "Unlisted Action" as said term is defined pursuant to SEQRA. Based upon a review of the Application, the Environmental Assessment Form ("EAF", attached hereto as **Exhibit A**) and other information submitted to the Agency, the Agency hereby finds that the Project involves an "unlisted action" (as such quoted term is defined under SEQRA). The review is "uncoordinated" (as such quoted term is defined under SEQRA). Based upon the review by the Agency of 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 term is defined under SEQRA); and (iii) no "environmental impact statement" (as such quoted term is defined under SEQRA) need be prepared for this action. This determination constitutes a "negative declaration" (as such quoted terms are defined under SEQRA) for purposes of SEQRA.

Section 2. The Agency hereby authorizes the undertaking of the Project and the provision of the Financial Assistance to the Company and Owner. Subject to (i) the Company and Owner executing the Agent Agreement, in substantially the form attached hereto as **Exhibit B**, 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 and Owner to proceed with the acquisition, renovation, construction, reconstruction, rehabilitation and equipping of the Project and hereby appoints the Company and Owner as the true and lawful agents 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, 2015 (*unless extended for good cause by the Executive Director of the Agency*). **The Financial Assistance provided to the Company and Owner shall not exceed \$100,000.00 until the Public Hearing is conducted, a subsequent authorizing resolution is adopted by the Agency, and the Company and Owner enter into the Leaseback Agreement with 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 \$2,000,000.00, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed \$160,000.00. 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 the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate, but not execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement; provided (i) the rental payments under the Leaseback Agreement include payments

Whereas, the WCIDA is interested in determining the most efficient, cost effective and environmentally sound sites, along with basic cost benefit analysis; be it hereby

Resolved, the WCIDA board of directors authorizes funds up to \$75,000 to be expended out of the project/planning budget for this purpose; and be it further

Resolved, that the executive director is authorized to solicit a minimum of three proposals in response to an RFP for the above services, select the best proposal with the assistance of the CEO and enter into such agreements as necessary to initiate and move the study forward.

Moved: Milliman Ayes: All

Second: Hoffman Nays: None

Staff provided updates on a number of projects, including the completed appraisal on the Shilling Road property. Staff will move forward on this sale by sealed bid.

It was moved and agreed by all to enter into executive session to discuss real property negotiations at 11 am.

The board entered back into regular session at 11:18 am.

Pamela Heald motioned and Willard Milliman seconded that the attorney is authorized to develop a Right of First Refusal for the property and the executive director is authorized to enter into the agreement. All members present voted AYE; they were no NAY votes.

Jim Hoffman moved and it was adopted unanimously that the board adjourn at 11:20.