

Attachment One – WCIDA Minutes 9.25.2015

PROJECT AUTHORIZING RESOLUTION

(Silver Hill Facility – Assignment and Assumption and 1000 Silver Hill, LLC Project)

A meeting of Wayne County Industrial Development Agency was convened on Friday, September 25, 2015 at 9:30 a.m.

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

Resolution No. 9/2014 - __

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) AUTHORIZING THE ASSIGNMENT AND ASSUMPTION OF A CERTAIN LEASE AGREEMENT AND PILOT AGREEMENT (ALONG WITH RELATED DOCUMENTS) RELATING TO A PROJECT PREVIOUSLY UNDERTAKEN BY THE AGENCY FOR THE BENEFIT OF SILVER HILL ASSOCIATES, LLC (THE “ASSIGNOR”); (ii) APPOINTING 1000 SILVER HILL LLC (THE “COMPANY”) AS AGENT TO UNDERTAKE A PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT AND ASSUMPTION AGREEMENT, AGENT 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, 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, pursuant to a Lease Agreement, dated as of August 1, 2006 (the “Lease Agreement”), along with a certain Payment-in-Lieu-of-Tax Agreement (the “PILOT Agreement”, along with related documents, and collectively with the Lease Agreement, the “Agency Documents”), the Agency previously appointed Silver Hill Associates, LLC (herein, the “Assignor”) as agent to undertake a certain project (the “2006 Project”, as defined within the Lease Agreement) relating to a certain parcel of land located at 1100 Technology Parkway in the Village of Newark, New York (the “Facility”, as defined within the Lease Agreement); and

the Agency Documents (collectively herein, the "Assignment") to 1000 Silver Hill LLC (the "Company" in connection with the proposed sale of beneficial ownership of the Facility by Assignor to the Company; and

WHEREAS, the Company has also submitted an application to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the retention by the Agency of fee title to the Facility; (ii) the appointment of the Company as agent of the Agency to undertake the planning, design, and construction of certain internal fit up and improvements within the Facility for tenant expansion and additional subleasing (the "Improvements"); (iii) the acquisition of and installation in and around the Facility and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with the Improvements, the "2015 Facility"); and

WHEREAS, it is contemplated that the Agency will (i) authorize the Assignment and execution of an Assignment and Assumption Agreement (the "Assignment and Assumption Agreement") with the Assignor and Company; (ii) designate the Company as its agent for the purpose of acquiring, reconstructing, renovating and equipping the 2015 Project, (iii) negotiate and enter into an Agent and Financial Assistance Agreement (the "Agent Agreement") with the Company, and (iii) provide financial assistance (the "Financial Assistance") to the Company in the form of a (i) sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the 2015 Project, and (ii) mortgage recording tax exemptions for financing(s) undertaken by the Company in furtherance of acquiring the Facility and undertaking the 2015 Project; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the 2015 Project and the Financial Assistance, with such Financial Assistance to not exceed \$100,000; and

WHEREAS, the Agency has identified each of the Assignment and the 2015 Project as "Type II" actions 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 no formal review is required; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution authorizing (i) the Assignment and the execution and delivery of the Assignment and Assumption Agreement, (ii) acceptance of the Application submitted by the Company; (iii) the undertaking of the 2015 Project and appointment of the Company as agent of the Agency to undertake the 2015 Project and the execution and delivery of the Agent Agreement, (iv) the provision of the Financial Assistance to the Company; and (iv) the execution and delivery of related financing documents.

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

Section 1. The Agency hereby authorizes the Assignment, subject to (i) the Assignor and Company executing the Assignment and Assumption Agreement in such form as approved by

the Agency Executive Director and counsel; (ii) compliance with Section 9.3 of the Lease Agreement, including the receipt of required opinions; (iii) execution by the Company of an Environmental Compliance and Indemnification Agreement; and (iv) payment by the Assignor and Company of all fees and costs of the Agency associated with the Assignment.

Subject to the terms and conditions contained within the Agency Documents and this resolution, the Agency's approval of the Assignment is further conditioned upon the Facility and the operation thereof at times continuing to constitute a "project" under the Act and in no way shall the Agency Documents be materially changed or modified without the prior written consent of the Agency, and further provided that per the policies of the Agency, the Agency may recover or recapture from the Company, as assignee any real property tax abatement benefits taken or purported to be taken by the Company, as assignee (and herein, the "Assignee"), if it is determined by the Agency that: (i) the Assignee has made a material false statement on its application for financial assistance; and/or (ii) the Assignee obtained/obtains a real property tax abatement benefit 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 approval as provided herein and as further described below (collectively, items (i) through (ii) hereby defined to be and constitute a "Recapture Event", as further defined below).

As a condition precedent of receiving real property tax abatement benefits pursuant to the PILOT Agreement, the Assignee must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any real property tax 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 2. Based upon the representations made by the Applicant 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 retain title to the Facility and appoint the Company as agent to undertake the 2015 Project pursuant to the Agent Agreement; 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 2015 Project, thereby retaining and increasing employment opportunities in the Village of Newark, 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 2015 Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the 2015 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 2015 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 2015 Project is reasonably necessary to discourage the 2015 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 2015 Project occupants in their respective industries; and

(F) The Assignment and 2015 Project constitute "Type II" Actions (as such quoted term is defined under SEQRA) for which no formal review is required.

Section 2. Subject to the Company executing the Agent Agreement, and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the 2015 Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation, construction, reconstruction, rehabilitation and equipping of the 2015 Project and hereby appoints the Company as true and lawful agent of the Agency: (i) to acquire, construct and equip the 2015 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 December 31, 2016 (*unless extended for good cause by the Executive Director of the Agency*).

Section 3. The Agency hereby authorizes the provision of up to \$100,000.00 in Financial Assistance to the Company. Based upon the representation and warranties made by the Applicant in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the 2015 Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately **\$890,000.00**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$71,200.00**. 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 2015 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 2015 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 2015 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 Applicant 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 2015 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 2015 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 2015 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 Assignment and Assumption Agreement, Agent Agreement and related documents (collectively, the "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 Chairman (or Vice Chairman), Executive Director (or Deputy Executive Director) of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any 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 of **\$2,880,000** in connection with the acquisition of the Facility and/or finance or refinance equipment and other personal property and related transactional costs; and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency to the Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman), Executive Director (or Deputy Executive Director) of the Agency shall approve, the execution thereof by the Chairman (or Vice Chairman), Executive Director (or Deputy Executive Director) of the Agency to constitute conclusive evidence of such approval; provided, that, in all events, recourse against the Agency is limited to the Agency's interest in the Project.

Section 7. 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 8. 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 Assistant 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 September 25, 2015, 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 25th day of September, 2015.

Assistant Secretary

[SEAL]