

Attachment Two – 1/16/15 WCIDA Mtg.

RESOLUTION

(Northern Development, LLC)

A regular meeting of the Wayne County Industrial Development Agency was convened on January 16, 2015 at 9:30 a.m.

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

Resolution No. 1/2015 - _____

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) CONSENTING TO THE SUBLEASE OF PART OF THE NB FACILITY TO DENHART BREWING COMPANY, LLC

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”), **WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called 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, the Northern Development, LLC (the “Company”) previously requested the Agency's assistance with a certain project (the “Harbec Project”) consisting of: (i) the acquisition of title to or a leasehold interest in a certain plastics manufacturing facility located at 369 NYS Route 104 in the Town of Ontario, Wayne County, New York (said parcel being identified as tax map number 61117-00-282664) the “Harbec Land”) together with the existing improvements thereon (the “Existing Harbec Improvements”), (ii) the acquisition, renovation, upgrading and equipping by the Company as agent of the Agency of the Harbec Existing Improvements (the “Harbec Improvements”), (iii) the acquisition and installation in and around the Existing Harbec Improvements and the Improvements by the Company of certain items of machinery, equipment and other tangible personal property (the “Harbec Equipment,” and collectively with the Harbec Land, the Existing Harbec Improvements and the Harbec Improvements, the “Harbec Facility”); and

WHEREAS, in furtherance of the Harbec Project, the Agency acquired title to the Harbec Land from the Company pursuant to Warranty Deed, dated November 19, 1999, and commensurate with which entered into a certain Lease Agreement with the Company, dated as of November 1, 1999, a memorandum of which was recorded on November 22, 1999 in Liber 972 of Deeds, at page 843 (the “Harbec Lease Agreement”); and

WHEREAS, in connection with the Harbec Project and Harbec Lease Agreement, the Agency and the Company entered into a certain payment-in-lieu-of-tax agreement, dated as of November 1, 1999 (the “Harbec PILOT Agreement”) and relating to the Harbec Facility; and

WHEREAS, the Company also previously requested the Agency's assistance with a certain project (the "NB Project") consisting of (i) the acquisition (the "Acquisition") of fee title in an approximately 6.0 acre parcel of land located at 317 NYS Route 104 in the Town of Ontario, Wayne County, New York (said parcel being identified as tax map number 61117-00-232664) (the "NB Land") and the existing improvements located thereon consisting principally of four (4) buildings comprising approximately 44,000 square-feet of commercial space (the "NB Existing Improvements"), (ii) the acquisition and construction thereon of certain upgrades and renovations to the Existing Improvements for bio-diesel refining and manufacture, administrative and office use (the "NB Upgrades" and collectively with the Existing Improvements, the "NB Improvements"), (iii) the acquisition of and installation in and around the Improvements of certain machinery and related equipment and items of personal property (the "NB Equipment"); (iv) the planning, design and construction of certain infrastructure improvements, including certain roadway, rail and utility improvements to benefit the Land and the Project (the "Infrastructure", collectively with the NB Land, the NB Improvements and the NB Equipment, the "NB Facility"); (v) the leasing of the NB Facility to the Company for a term of fifteen (15) years, with portions of the Facility to be subleased to Northern Biodiesel, Inc., Sustainable Energy Developments, Inc., Harbec Plastics, Inc., and such other tenants as may be approved by the Agency (collectively, the "Subtenants"); (vi) the finance of the Acquisition through the issuance of bond(s) or note(s) of the Agency to be secured by, among other things, the Agency's interest in the NB Facility along with lease revenues to be provided by the Company and the Subtenants; and (vii) the provision of certain financial assistance to the Company (and/or the Subtenants) in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the NB Project, (b) a partial real property tax abatement and/or secured financing for the benefit of the NB Project through the NB PILOT Agreement, as defined herein, and (c) a mortgage recording tax exemption for the financing(s) related to the NB Project; and

WHEREAS, in furtherance of the NB Project, the Agency acquired title to the NB Land pursuant to Special Warranty Deed, dated October 11, 2006, and commensurate with which entered into a certain Master Lease Agreement with the Company, dated as of October 1, 2006, a memorandum of which was recorded on October 12, 2006 as Instrument No. R9077401 (the "Master Lease Agreement"); and

WHEREAS, in furtherance of the Company's efforts to complete the NB Facility, and in exchange for the Company's willingness to assume the Agency's obligations under the Master Lease Agreement, the Agency, pursuant to a certain Amended and Restated Leaseback Agreement, dated as December 1, 2007, a memorandum of which was recorded in the Wayne County Clerk's Office on December 24, 2007 as Instrument No. R9092564, retained title to the Harbec Land and NB Land (collectively hereinafter, the "Land"), along with all improvements and personal property constituting the Harbec Facility and NB Facility (collectively hereinafter, the "Facility") and leased its interest in said Land and Facility to the Company, such Amended and Restated Leaseback Agreement superseded and acted as a complete amendment and restatement of both the Harbec Lease Agreement and Master Lease Agreement; and

WHEREAS, in connection with the Amended and Restated Leaseback Agreement the Agency, the Company, Northern Biodiesel, Inc., and Harbec Plastics, Inc. entered into a certain

amended and restated payment-in-lieu-of-tax agreement, dated as of December 1, 2007 (the "Amended and Restated PILOT Agreement") making provisions for payments in lieu of taxes relating to the Facility by the Company and the Payment Obligor to the Agency for the benefit of (i) the Project; and (ii), Wayne County (the "County"), the Town of Ontario (the "Town") and the Wayne Central School District (the "School District" and collectively with the County and the Town, the "Affected Tax Jurisdictions"); and

WHEREAS, the Company has terminated its sublease agreement with Northern Biodiesel, Inc.; and

WHEREAS, the Company gave notice pursuant to Section 6.3 of the Amended and restated Leaseback Agreement of its intention to sublease a portion of the NB Facility to Denhart Brewing Company, Inc. pursuant to a sublease agreement by and among the Company and Denhart Brewing Company to be entered into in substantially the same form as the sublease agreement attached hereto as Exhibit "A" and made a part hereof.

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

Section 1. The Agency hereby consents to a certain sublease agreement by and between the Company and Denhart Brewing Company, LLC to be entered into in substantially the same form as the sublease agreement in Exhibit "A" attached hereto in connection with the NB Facility (the "Denhart Brewing Company Sublease Agreement") upon: i) evidence of insurance of Denhart Brewing Company, LLC naming the Agency an additional insured pursuant to the insurance requirements of the Amended and Restated Leaseback Agreement, and iii) Denhart Brewing Company, LLC executing a sublease rider in form and substance as the sublease rider in Schedule C of the Amended and Restated Leaseback Agreement.

Section 2. 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 3. These Resolutions shall take effect immediately.

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>Nea</i>	<i>Absent</i>	<i>Abstain</i>
James Hoffman	XX			
Willard Milliman			XX	
Pamela Heald			XX	
David Spickerman	XX			
Robert Havrilla	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 annexed extract of minutes of the meeting of the Wayne County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on January 16, 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 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 16th day of January, 2015.

Marie Leisenring, Assistant Secretary

[SEAL]