

Board Meeting 11/8/2010

FINAL RESOLUTION
(Empire Fruit Growers Co-Op, Inc. Project)

A special meeting of Wayne County Industrial Development Agency was convened on November 8, 2010, at 11:00 a.m.

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

Resolution No. 11/2010 - _____

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE EXECUTION AND DELIVERY OF THE LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX-AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE EMPIRE FRUIT GROWERS CO-OP, INC. PROJECT (AS MORE FULLY DESCRIBED BELOW)

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** (hereinafter called "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, **EMPIRE FRUIT GROWERS CO-OP, INC.** (the "Company") previously 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 fee title to, or a leasehold interest in, an approximately 4.98 acre unimproved parcel of land located in the Town of Huron, Wayne County (the "Land", being more particularly described as TMID No. 74117-00-026538); (ii) the construction on the Land of an approximately 70,000 square-foot facility (the "Improvements") for use by the Company as fresh fruit packing, warehousing and distribution space for the Company's apple and other fresh fruit packing, refrigerated storage and distribution operations; (iii) the acquisition of and installation in and around the Improvements by the Company of machinery, equipment, furniture, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility"); and (iv) through a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain title to or a leasehold interest in the Facility for a period of time and sell or sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"); and

WHEREAS, pursuant to the Act, the Agency adopted an initial project resolution on September 24, 2010 (the "Initial Project Resolution"), wherein the Agency accepted the Application, described the Project and the financial assistance that the Agency is contemplating with respect to the Project, and authorized the scheduling and conducting of a public hearing in compliance with the Act; and

WHEREAS, by resolution dated October 22, 2010 (the "Inducement Resolution"), the Agency (i) authorized the undertaking of the Project, (ii) appointed the Company to act as its agent to undertake the Project, (iii) adopted a Negative Declaration pursuant to applicable provisions of the State Environmental Quality Review Act, and regulations adopted pursuant thereto as codified at 6 NYCRR Part 617 (collectively, "SEQRA"), (iv) authorized execution and delivery of an Agent Agreement, along with sales tax exemption letter, with Financial Assistance to the Company not to exceed \$100,000 until a subsequent resolution of the Agency is adopted; and

WHEREAS, the Agent Agreement and Sales Tax Exemption Letter have been executed and delivered by the Agency and the Company; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on November 8, 2010, at 9:30 a.m. in the Meeting Room at the Town of Huron Town Hall, 10880 Lummisville Road, Wolcott, NY 14590, the Agency held a public hearing with respect to the Project and the proposed financial assistance 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 along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions thirty (30) days prior to said Public Hearing are attached hereto as Exhibit A; and

WHEREAS, it is contemplated that the Agency will authorize the acquisition of a leasehold interest in the Project and the Lease Agreement, Leaseback Agreement, PILOT Agreement and related documents have been negotiated and are presented to this meeting for approval and execution.

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

Section 1. The Chairman, Vice Chairman, the Executive Director and/or the Deputy Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and enter into the (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, that, (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 2. The Chairman, Vice Chairman, the Executive Director and/or the 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 necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and PILOT Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, the Executive Director and/or the Deputy Executive Director of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, and/or 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 3. 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 4. 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>Nay</i>	<i>Absent</i>	<i>Abstain</i>
David Spickerman, Sr.			xx	
James Hoffman	xx			
Willard Milliman	xx			
Marvin E. Decker	xx			
Robert Havrilla	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 the 8th day of November, 2010, 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 8th day of November, 2010.


Secretary

[SEAL]

EXHIBIT A

PUBLIC HEARING MATERIALS

Board Meeting - 11/8/2010

RESOLUTION

(Ankom Technology Corp. Project)

A special meeting of Wayne County Industrial Development Agency was convened on November 8, 2010, at 11:00 a.m.

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

Resolution No. 11/2010 - _____

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) AUTHORIZING THE UNDERTAKING OF A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW) FOR THE BENEFIT OF KAIROS, LLC AND ANKOM TECHNOLOGY CORP. (THE "COMPANY"); (ii) APPOINTING THE COMPANY AGENT OF THE AGENCY TO UNDERTAKE THE PROJECT; (iii) AUTHORIZING THE PROVISION OF FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORMS OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR FINANCINGS RELATED TO THE PROJECT; (iv) RATIFYING FINDINGS PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA"); AND (iv) AUTHORIZING THE EXECUTION AND DELIVERY OF (A) AN AGENT AGREEMENT, (B) AN AMENDMENT TO LEASE AGREEMENT, (C) AN AMENDMENT TO PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AND (D) 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, (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, the Agency previously undertook a certain project for the benefit of **KAIROS, LLC AND ANKOM TECHNOLOGY CORP.** involving the acquisition, construction and operation of a light manufacturing and industrial development facility located at 2052 O'Neill Road in the Town of Macedon, County of Wayne and State of New York (collectively, the "2002 Facility"), the Agency's interest in such 2002 Facility being set forth within and governed by a certain Lease Agreement (the "2002 Lease Agreement") and Payment-in-lieu-of Taxes Agreement (the "2002 PILOT Agreement"), each dated as of December 1, 2002, along with related documents (collectively, the 2002 Lease Agreement and 2002 PILOT Agreement, along with any related documents collectively referred to herein as the "2002 Facility Documents"); and

WHEREAS, **ANDREW KOMAREK, INDIVIDUALLY AND ON BEHALF OF KAIROS, LLC AND ANKOM TECHNOLOGY CORP.** (collectively, the “Company”) has submitted an application (the “Application”) to the Agency, a copy of which is on file at the office of the Agency, requesting the Agency’s assistance with respect to a certain project (the “Project”) consisting of (i) the retention by the Agency of fee title to an approximately 58.5 acre parcel of land located in the Town of Macedon, Wayne County (the “Land”, being more particularly described as TMID No. 63112-00-158493) and existing approximately 10,000 square foot light manufacturing facility (the “Existing Improvements”); (ii) the construction on the Land of an approximately 8,000 square-foot addition to the Existing Improvements (the “Improvements”) to expand the Company’s existing light manufacturing operations; (iii) the acquisition of and installation in and around the Existing Improvements and Improvements by the Company of machinery, equipment, furniture, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land, improvements to the Existing Improvements, and the Improvements, the “2010 Facility”); and (iv) through a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain title to the 2002 Facility and 2010 Facility for a period of time and sell or sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”), such Straight Lease Transaction to be effectuated, in part, through the amendment and restatement of certain of the 2002 Facility Documents; and

WHEREAS, by resolution dated September 24, 2010 (the “Initial Project Resolution”), the Agency: (i) described the Project, (ii) accepted the Application, (iii) described the forms of Financial Assistance contemplated by the Agency with respect to the Project, and (iv) and authorized the scheduling and conduct of a public hearing (the “Public Hearing”) pursuant to and in accordance with the Act; and

WHEREAS, in accordance with the Initial Project Resolution, and pursuant to General Municipal Law Section 859-a, the Agency duly scheduled and published a Notice of Public Hearing and forwarded same to the affected taxing jurisdictions thirty (30) days prior to said Public Hearing, such Public Hearing having been held November 5, 2010 at 9:30 a.m. local time, at the Town of Macedon Town Hall, 32 Main Street, Macedon, NY 14502, 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 along with proof of publication and delivery being attached hereto as **Exhibit A**); and

WHEREAS, in connection with the Company’s application for site plan approval, dated August 18, 2010 and relating to the 2010 Facility, and pursuant to and in accordance with Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, “SEQRA”), the Town of Macedon Planning Board issued a negative declaration (the “Negative Declaration”) with respect to the Project on September 13, 2010, a copy of which is attached hereto as **Exhibit B**; and

WHEREAS, it is contemplated that the Agency will (i) authorize the undertaking of the Project, (ii) designate the Company as its agent for the purpose of acquiring, constructing and equipping the 2010 Facility, (ii) amend and restate that certain Lease Agreement by and between the Agency and Company, dated as of December 1, 2002 (the “Lease Agreement”), and certain Payment-in-lieu-of-tax Agreement, also dated as of December 1, 2002 (the “PILOT Agreement”),

and together with the Lease Agreement and related documents, the "Straight Lease Documents"), (iii) retain fee title to 2002 Facility and Existing Improvements, (iv) take title to or a leasehold interest in the Improvements and the Equipment and personal property constituting the 2010 Facility pursuant to the Lease Agreement and PILOT Agreement, and (v) provide financial assistance to the Company in the form of (a) an exemption from all State and local sales and use taxes with respect to qualifying personal property included in or incorporated into the 2010 Facility or used in the acquisition, construction or equipping of the 2010 Facility, (b) a partial real property tax abatement for the 2010 Facility through the PILOT Agreement; and (c) a mortgage recording tax exemption for financing(s) related to the construction of the Improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE 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 (i) retain title to the Land and Existing Improvements constituting the 2002 Facility and acquire title to or an other interest in the Improvements and the Equipment constituting the 2010 Facility, (ii) lease the Agency's interest in the 2010 Facility to the Company pursuant to the 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 Town of Macedon, 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) The Agency has reviewed the Negative Declaration adopted by the Town of Macedon Planning Board on September 13, 2010 and determined the Project involves an "Unlisted Action" as said term is defined under SEQRA. The review is uncoordinated. Based upon the review by the Agency of the Negative Declaration, the Short Environmental Assessment Form (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 ratifies the SEQRA determination made by the Town of Macedon Planning Board and the Agency further 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 in connection with the Agency's sponsorship and involvement with the Project for purposes of SEQRA.

Section 2. Subject to the Company executing an Agent Agreement, a form of which is attached hereto as **Exhibit C**, or the Straight Lease Documents, along with the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy satisfactory to the Agency, the Agency hereby authorizes the Company, as agent of the Agency, to proceed with the acquisition, construction and equipping 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.

Section 3. The Chairman (or Vice Chairman) and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and enter into the Straight Lease Documents; provided (i) the rental payments under the Lease Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the amended and restated PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 4. The Chairman (or Vice Chairman), Executive Director and/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 necessary to undertake the Project, acquire the 2010 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 Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman), Executive Director and/or Deputy Executive Director of the Agency shall approve, the execution thereof by the Chairman (or Vice Chairman), Executive Director and/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 5. 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 6. These Resolutions 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:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
David Spickerman, Sr.			xx	
James Hoffman	xx			
Willard Milliman	xx			
Marvin E. Decker	xx			
Robert Havrilla	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 the 8th day of November, 2010, 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 8th day of November, 2010.



Secretary

[SEAL]

EXHIBIT A

PUBLIC HEARING MATERIALS

EXHIBIT B

SHORT EAF / NEGATIVE DECLARATION