

Resolution A - 10/22/2010

**PROJECT INDUCEMENT RESOLUTION**  
*(Empire Fruit Growers Co-Op, Inc. Project)*

A regular meeting of Wayne County Industrial Development Agency was convened on October 22, 2010 at 9:30 a.m.

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

Resolution No. 10/2010 - \_\_\_\_\_

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) AUTHORIZING THE UNDERTAKING OF A CERTAIN PROJECT (AS MORE PARTICULARLY DESCRIBED HEREIN) (ii) APPOINTING EMPIRE FRUIT GROWERS CO-OP, INC. (THE "COMPANY") AGENT OF THE AGENCY TO UNDERTAKE THE PROJECT; (ii) ADOPTING FINDINGS PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA"); (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 TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH THE PILOT AGREEMENT, AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR FINANCINGS RELATED TO THE PROJECT; AND (v) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT, SALES TAX EXEMPTION LETTER AND 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, **EMPIRE FRUIT GROWERS CO-OP, INC.**, a domestic business corporation of the State of New York with a mailing address at 5975 Lake Bluff Road, North Rose, New York 14516, for itself or on behalf of an entity to be formed (the "Company") previously submitted an application (the "Application") to the Agency, copies of which were presented at this meeting and 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 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 conduct of a public hearing in compliance with the Act; and

WHEREAS, pursuant to the Initial Project Resolution, and in furtherance of the Project, the Agency has duly scheduled and noticed a public hearing to be held in accordance with the Act on Monday, November 8, 2010, at 9:30 a.m. local time, in the Meeting Room at the Town of Huron Town Hall, 10880 Lummisville Road, Wolcott, NY 14590 (the "Public Hearing"); and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, 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") and payment-in-lieu-of-tax agreement (the "PILOT Agreement", along with the Lease Agreement, Leaseback Agreement and related documents, the "Straight Lease Documents") with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements, the Equipment and personal property constituting the Project (once the Straight Lease Documents 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, and (b) a partial real property tax abatement through the PILOT Agreement and (c) a mortgage recording tax exemption for the financing(s) related to the Project (collectively, the "Financial Assistance"); and

WHEREAS, the Agency desires to authorize the undertaking of the Project by the Company as agent of the Agency, however the Financial Assistance to be provided to the Company by the Agency shall not exceed \$100,000, nor will the Agency execute or deliver the Straight Lease Documents, until the Public Hearing is held and a subsequent resolution of the Agency is adopted; and

WHEREAS, in connection with authorizing the undertaking of the Project, the Agency desires to and shall comply with applicable provisions of the State Environmental Quality Review Act, and regulations adopted pursuant thereto as codified at 6 NYCRR Part 617

(collectively, "SEQRA"), and in furtherance of same, the Agency shall determine herein whether the undertaking of the Project may have a significant effect upon the environment; and

WHEREAS, in furtherance of SEQRA, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the "EAF") with respect to the Project, a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, a form of Agent Agreement, along with a form of sales tax exemption letter to be provided to the Company in connection with the undertaking of the Project, have been negotiated and is presented to this meeting for approval and execution, forms of which are attached hereto as **Exhibit B**; and

WHEREAS, the Agency further desires to authorize the negotiation of the Straight Lease Documents in furtherance of the Project, the forms of which shall be subject to a future resolution of the Agency.

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) Although the Project will result in the abandonment of one or more plants or facilities of the Company located within the State, the Agency hereby finds that, based on the Company's Application, the Project is reasonably necessary to discourage the Company 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 Company in its industry; and

(F) 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 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. The Agency's findings are incorporated in Part II of the EAF.

Section 2. Subject to the Company executing the Agent Agreement attached hereto as **Exhibit B** and 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, as agent of the Agency, to undertake the acquisition, construction 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 **December 31, 2010** (unless extended for good cause by the Executive Director of the Agency) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 3. 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, (C) the PILOT Agreement, and (D) related documents; provided (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 4. 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 the Agent Agreement and Sales Tax Exemption Letter in substantially the form attached hereto as **Exhibit B**, along with 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 5. These resolutions shall take effect immediately.

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.	<b>xx</b>			
James Hoffman	<b>xx</b>			
Willard Milliman	<b>xx</b>			
Marvin E. Decker	<b>xx</b>			
Robert Havrilla	<b>xx</b>			

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 22<sup>nd</sup> day of October, 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 22<sup>nd</sup> day of October, 2010.

  
\_\_\_\_\_  
Secretary

[SEAL]

**EXHIBIT A**

**ENVIRONMENTAL ASSESSMENT FORM**

**RESOLUTION**  
*(Marshall Pet Products, Inc. Project)*

A regular meeting of Wayne County Industrial Development Agency was convened on October 22, 2010, at 9:30 a.m.

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

Resolution No. 10/2010 - \_\_\_\_\_

RESOLUTION AUTHORIZING THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY TO (i) UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW) FOR THE BENEFIT OF MARSHALL PET PRODUCTS, INC. (THE "COMPANY"); (ii) NEGOTIATE, EXECUTE AND DELIVER A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS; (iii) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, DEMOLITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AND (C) IF NECESSARY, A MORTGAGE RECORDING TAX EXEMPTION FOR THE FINANCING OR REFINANCING RELATED TO THE PROJECT; (iv) ADOPTING FINDINGS PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA"); AND (iv) EXECUTE 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, **MARSHALL PET PRODUCTS, INC.** (the "Company") has submitted an application (the "Application"), a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project (the "Project") consisting of (i) the acquisition by the Agency of fee title to, or a leasehold interest in, an approximately 13.3 acre unimproved parcel of land located in the Town of Butler, Wayne County (the "Land", being more particularly described as TMID No. 75116-00-685897); (ii) the construction on the Land of an approximately 27,000 square-foot facility (the "Improvements") for use by the Company as light industrial, packaging and distribution space for the Company's pet food ingredient production 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 General Municipal Law Section 859-a, on October 14, 2010 at 9:30 a.m. local time, at the Town of Butler Town Hall, 4576 Butler Center 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 (i) designate the Company as its agent for the purpose of acquiring, constructing and equipping the Facility, (ii) enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (the "PILOT Agreement", and together with the Lease Agreement, Leaseback Agreement and related documents, the "Straight Lease Documents") with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements, the Equipment and personal property constituting the Project, 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) a partial real property tax abatement through the PILOT Agreement, and (c) if necessary, a mortgage recording tax exemption for the financing related to the Project; and

WHEREAS, pursuant to and in accordance with applicable provisions of the State Environmental Quality Review Act ("SEQRA"), the Company has submitted to the Agency a Full Environmental Assessment Form (the "EAF") with respect to the Project, a copy of which is attached hereto as Exhibit B; and

WHEREAS, the Agency desires to authorize the undertaking of the project by the Company as agent of the Agency and the Straight Lease 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 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) acquire title to or an other interest in the Land, the Improvements and the Equipment constituting the Facility, (ii) lease or sell the Agency's interest in the Land, 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 Town of Butler, which is located within Wayne County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) Although the Project will result in the abandonment of one or more plants or facilities of the Company located within the State, the Agency hereby finds that, based on the Company's Application, the Project is reasonably necessary to discourage the Company 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 Company in its industry; and

(F) The Project involves an "Unlisted Action" as said term is defined under SEQR. The review is uncoordinated. 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 terms are defined in SEQR; and (iii) no "environmental impact statement" as such quoted term is defined in SEQR, need be prepared for this action. This determination constitutes a "negative declaration" for purposes of SEQR. The Agency's findings are incorporated in Part II of the EAF.

Section 2. Subject to the Company executing the Straight Lease Documents and 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, 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, 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 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 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 22<sup>nd</sup> day of October, 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 22<sup>nd</sup> day of October, 2010.

  
\_\_\_\_\_  
Secretary

[SEAL]

**EXHIBIT A**

**PUBLIC HEARING MATERIALS**

**EXHIBIT B**

**FULL EAF**

**RESOLUTION**

*(Wayne Hostels Holdings, Inc./Wayne County Chapter  
Of the New York Association for Retarded Children, Inc.)*

A regular meeting of the Wayne County Industrial Development Agency was convened on October 22, 2010 at 9:30 a.m.

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

Resolution No. 10/2010 - \_\_\_\_\_

**RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE REFINANCE OF THE COST OF RECENTS IMPROVEMENTS MADE AT 848 PEIRSON AVENUE, NEWARK, NEW YORK**

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 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 Agency was created by Chapter 916 of the Laws of 1969 of the State pursuant to Title I of Article 18-A of the General Municipal Law of the State (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Agency is the record owner of that certain parcel of real property commonly known as 848 Peirson Avenue, Newark, New York (the "Premises"); and

WHEREAS, Wayne Hostels Holdings, Inc., leases the Premises from the Agency pursuant to that certain Lease Agreement dated March 1, 1993 (the "Lease"); and

WHEREAS, Wayne County Chapter of the New York State Association for Retarded Children, Inc., subleases the Premises from Wayne Hostels Holdings, Inc., pursuant to that certain Sublease Agreement dated as of March 1, 1993 (the "Sublease"); and

WHEREAS, the Dormitory Authority of the State of New York, at the request of NYSARC, INC., will sell its revenue bonds (the "Bonds"); and

WHEREAS, the proceeds of the Bonds are expected to be used to finance or refinance certain projects of NYSARC, INC., including the acquisition, renovation and equipping of the Premises, as hereinafter described; and

WHEREAS, as an inducement to Dormitory Authority of the State of New York to sell the Bonds, NYSARC, INC. will execute and deliver to Dormitory Authority of the State of New York a loan agreement (the "Loan Agreement"), pursuant to which NYSARC, INC. has agreed, inter alia, to pay to or upon the order of Dormitory Authority of the State of New York an amount set forth in the Loan Agreement (such principal, interest and other amounts being collectively referred to as the "Payments"), of which an amount up to \$1,000,000.00 will be secured by a certain Mortgage from the Wayne Hostel Holdings, Inc. and Wayne County Chapter of the New York State Association for Retarded Children, Inc to the Dormitory Authority of the State of New York on the Premises (the "Mortgage"); and

WHEREAS, the Wayne Hostel Holdings, Inc. and Wayne County Chapter of the New York State Association for Retarded Children, Inc. has received or will receive the benefit of a portion of the funds advanced to NYSARC, INC. by the Dormitory Authority of the State of New York under the Loan Agreement as consideration for the granting of the Mortgage; and

WHEREAS, the Mortgagor has requested the Agency execute the Mortgage and related documents (the "Agency Documents").

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

Section 1. Subject to the terms and conditions contained within the Agency Documents, the Chairman, Vice Chairman, Executive Director and/or the Deputy Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, along with any related documents in the form presented at this meeting with such changes as shall be approved by the Chairman, Vice Chairman, Executive Director and/or the Deputy Executive Director upon execution.

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. This resolution shall take effect immediately.

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.	<b>xx</b>			
James Hoffman	<b>xx</b>			
Willard Milliman	<b>xx</b>			
Marvin E. Decker	<b>xx</b>			
Robert Havrilla	<b>xx</b>			

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 22<sup>nd</sup> day of October, 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 22<sup>nd</sup> day of October, 2010.

  
\_\_\_\_\_  
Secretary

[SEAL]