

Resolution H - 3/5/2010

**RESOLUTION**  
*(Northern Development, LLC)*

A regular meeting of the Wayne County Industrial Development Agency was convened on March 5, 2010, at 9:30 a.m.

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

Resolution No. 3/2010 - \_\_\_\_\_

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING (1) FOREGIVNESS OF THE 2010 AMOUNT OBLIGATION OWED BY NORTHERN DEVELOPMENT, LLC, NORTHERN BIODIESEL, INC. AND HARBEC PLASTICS, INC. TO THE AGENCY IN CONNECTION WITH THE AMENDED AND RESTATED PILOT AGREEMENT AND (2) THE EXECUTION AND DELIVERY OF ANY DOCUMENTS NECESSARY AND INCIDENTAL THERETO, ALL AS MORE FULL DESCRIBED HEREIN.

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 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 both the Harbec Project and the NB Project 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 on December 24, 2007 as Document No. R9092564 (the "Amended and Restated Leaseback Agreement"),

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, Company and Payment Obligors entered into a certain Amended and Restated PILOT Agreement last dated as of December 1, 2007 (the "Amended and Restated PILOT Agreement"); and

WHEREAS, in connection with the Amended and Restated PILOT Agreement, the Company and Payment Obligors are required to pay to the Agency in calendar year 2010, the NB Diversion Amount, as defined in the Amended and Restated PILOT Agreement, being \$15,000.00 plus late payment penalties and interest (the "2010 NB Diversion Amount")

WHEREAS, the Company and Payment Obligors are currently indebted to the Agency in the principal amount of \$15,000.00 plus late payment penalty plus interest; and

WHEREAS, the Company and Payment Obligors are currently in default on their respective obligations under the Amended and Restated PILOT Agreement in connection with the 2010 NB Diversion Amount; and

WHEREAS, the Company and Payment Obligors have asked the Agency to forgive the entire 2010 NB Diversion Amount. The Agency has now had an opportunity to review the request of the Company and Payment Obligors and in connection therewith is willing to agree as set forth below:

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 and this resolution, the Agency hereby approves the PILOT Payment Waiver and Forebearance Agreement along with the execution and delivery by the Agency of any and all documents necessary and incidental thereto.

Section 2. The Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate, approve the form and substance of, execute and deliver any certificates, documents and agreements, based on the advice and counsel of counsel, necessary or desirable to allow for forgiveness of the the 2010 NB Diversion Amount. The Chairman's, Vice Chairman's and/or Executive Director's execution and delivery of such documents shall constitute conclusive evidence of such approval.

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 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			
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:

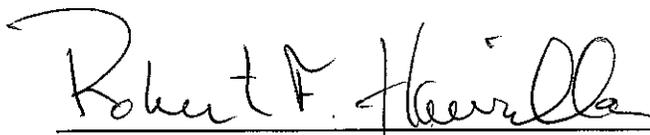
That I have compared the foregoing extract of the minutes of the meeting of the Wayne County Industrial Development Agency (the "Agency") including the resolution contained therein, held on the 5<sup>th</sup> day of March, 2010, with the original thereof on file in my office, and that the same is a true 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 5<sup>th</sup> day of March, 2010.

  
\_\_\_\_\_  
Asst Secretary

[SEAL]

Resolution K - 3/5/2010

**RESOLUTION**  
(PAAA)

A regular meeting of the Wayne County Industrial Development Agency was convened on March 5, 2010, at 9:30 a.m.

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

Resolution No. 3/2010 - \_\_\_\_

**RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY IN CONNECTION WITH THE PUBLIC  
AUTHORITIES LAW**

**WHEREAS**, by Title 1 of Article 18-A of the General Municipal Law ("GML") of the State of New York (the "State"), as amended, and Chapter 916 of the Laws of 1969 of the State, (hereinafter collectively called the "Act"), the **WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called the "Agency") was created as a public benefit corporation of the State; and

**WHEREAS**, the New York State Legislature adopted the Public Authorities Act of 2005, as amended by Public Authority Reform Act of 2009, Chapter 506 of the Laws of 2009 (the "PAAA"), designed to ensure that New York's public authorities operate more efficiently, more openly, and with greater accountability; and

**WHEREAS**, the PAAA requires that the Agency adopt a new Property Disposition Policy pursuant to Sections 2896 and 2897 of the New York State Public Authorities Law (the "Property Disposition Policy"),

**NOW, THEREFORE, BE IT RESOLVED** by the members of the Board of the Agency (the "Board") as follows:

Section 1. The Agency hereby finds and determines:

(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) The adoption of the Property Disposition Policy will allow the Agency to continue to operate in compliance with the Act and in compliance with the PAAA, and cause the Agency to operate more efficiently, openly and with greater accountability to the residents of Wayne County.

In consequence of the foregoing, the Agency hereby determines to adopt the Property Disposition Policy attached hereto as **Exhibit A**; **Already on Website - property disposition**

Section 2. The Agency hereby creates a Finance Committee that shall keep the Board informed of its review of proposals for the issuance of debt by the Agency and its subsidiaries and make recommendations to the Board.

Section 3. For efficiency purposes, the Finance Committee and the Audit Committee shall be combined into one committee called the Audit/Finance Committee.

Section 4. The Audit/Finance Committee shall be comprised of not less than three Independent Members, as defined in PAAA, who shall be elected by a plurality of the votes cast by the Board members of the Agency at each Annual Meeting and shall serve until the next Annual Meeting. To the extent practicable, members of the Audit/Finance Committee should be familiar with corporate financial and accounting practices. The Audit/Finance Committee shall: i) recommend to the Board the hiring of a certified independent accounting firm in compliance with the Public Authorities Law of New York State to conduct the annual independent audit, establish the compensation to be paid to the accounting firm and provide direct oversight of the performance of the annual independent audit; and ii) shall keep the Board informed of its review of proposals for the issuance of debt by the Agency and its subsidiaries and make recommendations to the Board.

Section 5. That Robert Havrilla, Willard Milliman and Marvin Decker are elected to the Audit/Finance Committee of the Corporation to serve for the ensuing year and until their successors are elected and qualify.

Section 6. That Jared VanDusen shall be appointed the Compliance Officer of the Agency to serve for the ensuing year and until his successor is elected, and shall be responsible for insuring that the Agency complies with all financial and other reporting requirements imposed by structure, including those requirements in the General Municipal Law and the Public Authorities Law of New York State.

Section 7. That Jared VanDusen shall be appointed the contracting officer of the Agency to serve for the ensuing year and until his successor is elected, as defined in Section 2895 of the Public Authorities Law, who shall be responsible for the disposition of property pursuant to PAAA.

Section 8. The Agency hereby undertakes to comply with all other provisions of the PAAA applicable to the Agency as diligently as possible.

Section 9. The Agency is hereby authorized to do all things necessary or appropriate for the accomplishment of the purposes of this resolution, and all acts heretofore taken by the Agency with respect to such activities are hereby approved, ratified and confirmed.

Section 10. This resolution 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:

	Yea	Nea	Absent	Abstain
Marvin Decker	[     ]	[     ]	[ xx ]	[     ]
David Spickerman	[     ]	[     ]	[ xx ]	[     ]
Willard Milliman	[ xx ]	[     ]	[     ]	[     ]
James Hoffman	[ xx ]	[     ]	[     ]	[     ]
Robert Havrilla	[ xx ]	[     ]	[     ]	[     ]

The Resolution was 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 annexed extract of minutes of the meeting of the Wayne County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on March 5, 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 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 5<sup>th</sup> day of March, 2010.

*Assistant Secretary*  
*Robert F. Hill*  
Secretary

[SEAL]