

Resolution A - 4/30/2010

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD APPOINTING POMONA PACKING, LLC ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF POMONA PACKING, LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AS AGENT OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, RENOVATING AND EQUIPPING THE FACILITY, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY.

WHEREAS, Pomona Packing, LLC, a New York limited liability company, on behalf of itself and/or the principals of Pomona Packing, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "**Company**"), has applied to the Wayne County Industrial Development Agency (the "**Agency**") for assistance in connection with the acquisition of three (3) existing buildings totaling approximately 64,500 square feet (the "**Buildings**"), located on an approximately 48 acre parcel of land located at 11814 West Main Street, Village of Wolcott, Wayne County, New York (more specifically identified as tax map number 75117-15-582379) (the "**Land**"), the construction of an approximately 988 square foot breezeway connecting the Buildings, and the renovation and equipping of the Buildings including, but not limited to, a new MAF fresh apple packing line, new warehouse style refrigerator compressors/motors and new taping and box folding machines (the "**Improvements and Equipment**"), to be leased by the Agency to the Company, and used by, the Company for the sizing, sorting and packaging of fresh apples for wholesale distribution (together with the Land, the Improvements and Equipment, the "**Facility**"), including the following as they relate to the appointment of the Company as agent of the Agency pursuant to Section 5 hereof with respect to the acquisition, renovation and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, renovation and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, renovation and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; and

WHEREAS, the Agency will either acquire fee title to, or hold a leasehold interest in, the Facility and lease the Facility to the Company, all pursuant to 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 the same may be amended from time to time (collectively, the "**Act**"); and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company, consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes in connection with any future financing or refinancing of the costs

of acquiring, renovating and equipping of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency, all to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, prior to the closing of the transaction described herein, a public hearing (the "**Hearing**") will be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency or the location or nature of the Facility can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of the transaction described herein, and such notice (together with proof of publication) will be substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as Exhibit B; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed transfer of a leasehold interest in the real and personal property is either an inducement to the Company to maintain and expand the Facility in Wayne County or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the "**SEQR Act**" or "**SEQR**"), the Agency constitutes a "State Agency"; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the "**Questionnaire**") with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Wayne County Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. Based upon the Questionnaire completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the acquisition, renovation, equipping and operation of the Facility is an "unlisted" action, as that term is defined in the SEQR Act. The Agency also determines that the action will not have a "significant effect" on the environment, and, therefore, an environmental impact statement

will not be prepared. This determination constitutes a negative declaration for purposes of the SEQRA Act. Notice of this determination shall be filed to the extent required by the applicable regulations under the SEQRA Act or as may be deemed advisable by the Chairman or Executive Director of the Agency or counsel to the Agency.

Section 2. The acquisition, renovation and equipping of the Facility by the Agency, the leasing thereof to the Company and the provision of financial assistance pursuant to the Act will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Wayne County and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act, and the same is, therefore, approved.

Section 3. The form and substance of a proposed inducement agreement (in substantially the form presented to this meeting) by and among the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to the development of the Facility (the "Agreement") is hereby approved. The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, with such changes in terms and form as the Executive Director shall approve. The execution thereof by the Executive Director shall constitute conclusive evidence of such approval.

Section 4. Subject to the conditions set forth in Section 4.02 of the Agreement, the Agency shall (i) acquire, renovate and equip the Facility, and (ii) lease (with an obligation to purchase) or sell the Facility to the Company.

Section 5. The Company is hereby appointed the true and lawful agent of the Agency to acquire, renovate and equip the Facility on behalf of the Agency, with the authority to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, suppliers, vendors and other such parties as it may choose. The terms and conditions for the appointment of the Company as agent of the Agency for the purposes described in this Section 5 are set forth in the form of the attached letter addressed to the Company, marked as Exhibit C to this resolution. The form of such letter is incorporated herein by reference and is approved and adopted by the Agency, the Executive Director and all other duly authorized officials of the Agency are authorized to execute and deliver such letter to the Company. The appointment described above includes the following activities as they relate to the acquisition, renovation and equipping of the Facility, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, renovation and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with the acquisition, renovation and equipping of the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under the Facility. This agency appointment includes the power to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and with the same validity as

would the Agency if acting on its own behalf. The aforesaid appointment of the Company as agent of the Agency to acquire, renovate and equip the Facility shall expire at the earlier of (A) the completion of such acquisition, renovation and equipping of the Facility, or (B) December 31, 2010; provided, however, such appointment may be extended at the discretion of the Executive Director of the Agency for up to six (6) additional months, or by the Agency Board for any period beyond such six (6) months, upon the written request of the Company, if such activities and improvements are not completed by such time. This agency appointment expressly excludes the Company from purchasing any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The aforesaid appointment of the Company is subject to the adoption by the Agency of its Final Authorizing Resolution prior to the closing of the transactions described herein.

Section 6. Counsel to the Agency is authorized and directed to work with Transaction Counsel (Nixon Peabody LLP) to prepare, for submission to the Agency, all documents necessary to effect the transfer of the real estate and personal property described in the foregoing resolution.

Section 7. The Chairman, Executive Director, Counsel to the Agency and all members of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Company, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 8. This resolution shall take effect immediately.

STATE OF NEW YORK        )  
                                  : SS.:  
COUNTY OF WAYNE        )

I, the undersigned Secretary of the Wayne County Industrial Development Agency,  
DO HEREBY CERTIFY THAT:

I have compared the foregoing copy of a resolution of the Wayne County Industrial Development Agency (the "Agency") with the original thereof on file in the office of the Agency, and the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.

Such resolution was passed at a meeting of the Agency duly convened in public session on April 30, 2010, at 9:30 a.m., local time, at 16 William Street, Lyons, New York, at which meeting the following members were:

Present: David Spickerman, Willard Milliman, Marvin Decker

Excused: James Hoffman, Robert Havrilla

Also Present: John Morell, Esq., P.Churchill, J.VanDusen, M. Leisenring

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

Voting Aye  
David Spickerman  
Willard Milliman  
Marvin Decker

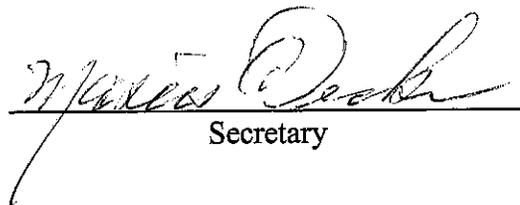
Excused  
James Hoffman  
Robert Havrilla

and, therefore, the resolution was declared duly adopted.

The Agreement (as defined in the foregoing resolution) and the application of the Company (as defined in the foregoing resolution) are in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, pursuant to Sections 103(a) and 104 of the Public Officers Law (Open Meetings Law), (ii) said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103(a) and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of April 30, 2010.

  
Secretary