

PROJECT AUTHORIZING RESOLUTION
(Capstone Timothy Lane LLC Project – Town of Ontario)

A regular meeting of Wayne County Industrial Development Agency was convened on Friday February 28, 2020 at 9:30 a.m.

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

Resolution No. 2/2020 - __

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) APPOINTING CAPSTONE TIMOTHY LANE LLC, FOR ITSELF AND/OR ON BEHALF OF AN ENTITY OR ENTITIES TO BE FORMED (COLLECTIVELY, THE “COMPANY”) AS ITS AGENT TO UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE PROVISION OF CERTAIN FINANCIAL ASSISTANCE TO THE COMPANY (AS FURTHER DEFINED HEREIN); (iv) ADOPTING FINDINGS WITH RESPECT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (“SEQRA”); AND (v) AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

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, 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, Harbec Plastics, Inc. 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, Northern Development, LLC 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 Northern Development, LLC, 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 Northern Development, LLC's efforts to complete the NB Facility, and in exchange for the Company's willingness to assume the Agency's obligations

under the Master Lease Agreement, the Agency, pursuant to a certain Amended and Restated Leaseback Agreement, dated as of December 1, 2007 (the “2007 Leaseback Agreement”, and along with a related Amended and Restated Payment in Lieu of Tax Agreement, also dated as of December 1, 2007, and herein, the “2007 PILOT Agreement”), retained title to the Harbec Land and NB Land, along with all improvements and personal property constituting the Harbec Facility and NB Facility and leased its interest in same to Northern Development, LLC, such Amended and Restated Leaseback Agreement having superseded and amended and restated both the Harbec Lease Agreement and Master Lease Agreement; and

WHEREAS, in connection with the proposed combined acquisition of both the Harbec Facility and NB Facility, **CAPSTONE TIMOTHY LANE LLC**, for itself and/or for an entity or entities to be formed (collectively, the “Company”), has submitted an application to the Agency requesting the Agency’s assistance with a certain project (the “Project”) consisting of (i) the retention by the Agency of a leasehold interest in 369 NYS Route 104 in the Town of Ontario, Wayne County, New York (said parcel being identified as tax map number 61117-00-282664) and 317 NYS Route 104 in the Town of Ontario, Wayne County, New York (said parcel being identified as tax map number 61117-00-232664) collectively comprising approximately 12.64 acres of real property (collectively, the “Land”) along with the existing improvements located thereon comprised of five (5) buildings including approximately 89,158 square feet of manufacturing and commercial tenanted spaces (the “Existing Improvements”); (ii) the planning, design, construction and operation of an approximately 30,000 square foot addition to the Existing Improvements located at 369 NYS Route 104 to accommodate expanded manufacturing, office and related space to be owned by the Company and leased to Harbec Plastics, Inc. (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Land and Existing Improvements and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land, Existing Improvements and the Improvements, the “Facility”); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”); and

WHEREAS, on January 24, 2020, the Agency adopted an initial resolution (the “Initial Project Resolution”) which (i) accepted the Company’s application, (ii) authorized the scheduling and conduct of a public hearing in compliance with the Act, (iii) described the contemplated forms of financial assistance to be provided by the Agency (the “Financial Assistance”, as described herein); and (iv) authorized the negotiation of an Agent and Financial Assistance and Project Agreement (the “Agent Agreement”), Lease Agreement (the “Lease Agreement”), Leaseback Agreement (the “Leaseback Agreement”) and Payment-in-lieu-of-Tax agreement (the “PILOT Agreement”) to be entered into with respect to the Project; and

WHEREAS, in accordance with the Initial Project Resolution, the Agency published and forwarded a Notice of Public Hearing to the Town of Ontario (the “Town”), the County of Wayne (the “County”), and the Wayne Central School District (the “School”, and together with the Town and County, the “Affected Tax Jurisdictions) at least ten (10) days prior to said Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, pursuant to Section 859-a of the Act, the Agency held a public hearing on Wednesday February 26, 2020 at 9:30 a.m. local time, at the Town of Ontario Town Hall, 1850 Ridge Road, Ontario, New York, 14519 with respect to the Project (the “Public Hearing”) and the proposed Financial Assistance (as further defined herein) being contemplated by the Agency 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 also being attached hereto within **Exhibit A**; and

WHEREAS, the Town of Ontario Planning Board reviewed the proposed Project as lead agency pursuant to the State Environmental Quality Review Act, as codified under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, “SEQRA”) and related Environmental Assessment Form (“EAF”) and issued a negative declaration (the “Negative Declaration”), a copy of which, along with the EAF, are attached hereto as **Exhibit B**; and

WHEREAS, in furtherance of the foregoing, the Agency desires to authorize (i) the appointment of the Company as agent of the Agency to undertake the Project; (ii) the execution and delivery of a Deed to the Company, the Agent Agreement, Lease Agreement, the Leaseback Agreement, the PILOT Agreement, and related documents; (iii) the provision of the Financial Assistance to the Company, which shall include (a) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction and equipping of the Facility, (b) a mortgage recording tax exemption for financings undertaken to construct the Facility; and (c) a partial real property tax abatement through the execution of an agreement with the Agency regarding payments in lieu of real property taxes to be made for the benefit of the Affected Tax Jurisdictions; and (iv) the review and ratification of findings pursuant to SEQRA in connection with the Project.

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

Section 1. Based upon the representations made by the Company to the Agency in the Application, 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 other interest in the Land, the Existing Improvements, Improvements and the Equipment constituting the Facility, (ii) lease or sell the Agency’s interest in the Land, Existing Improvements, Improvements and Equipment constituting the Facility to the Company pursuant to a lease agreement or sale agreement, and (iii) enter into a Straight Lease Transaction with the Company; and

(C) The action to be taken by the Agency will induce the Company to undertake the Project, thereby increasing employment opportunities in the Town of Sodus, which is located within Wayne County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) 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

(E) Based upon a review of the Application, the EAF and the Negative Declaration submitted to the Agency, the Agency hereby:

(i) consents to and affirms the status of the Town Planning Board as Lead Agency for review of the Facility, within the meaning of, and for all purposes of complying with SEQRA;

(ii) ratifies the proceedings undertaken by the Town Planning Board as Lead Agency under SEQRA with respect to the construction and equipping of the Facility pursuant to SEQRA; and

(iii) finds that the Project involves an "unlisted action" (as such quoted term is defined under SEQRA). The review is "uncoordinated" (as such quoted term is defined under SEQRA). 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 term is defined under SEQRA); and (iii) no "environmental impact statement" (as such quoted term is defined under SEQRA) need be prepared for this action. This determination constitutes a "negative declaration" (as such quoted terms are defined under SEQRA) for purposes of SEQRA.

Section 2. Subject to (i) the Company executing the Agent Agreement and Leaseback Agreement, and (ii) 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 to proceed with the acquisition, renovation, construction, reconstruction, rehabilitation 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, 2020 (*unless extended for good cause by the Executive Director of the Agency*).

Section 3. Based upon the representation and warranties made by the Company the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately **3,500,000.00**, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed **\$280,000.00**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 4. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for financial assistance; (v) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (vi) hereby defined as a “Recapture Event”).

As a condition precedent of receiving sales and use tax exemption benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, mortgage recording tax benefits and/or real property tax abatements abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 5. The Chairman, Vice Chairman and/or Executive Director (or Deputy Executive Director) of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement, Lease Agreement, Leaseback Agreement, PILOT Agreement, PILOT Mortgage, and related documents with such changes as shall be approved by the Chairman, Vice Chairman, the Executive Director and counsel to the Agency upon execution.

Section 6. The Chairman (or Vice Chairman), Executive Director (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 (hereinafter with the Straight Lease Documents, 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 (or Vice Chairman), Executive Director (or Deputy Executive Director) of the Agency shall approve, the execution thereof by the Chairman (or Vice Chairman), Executive Director (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 7. 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 8. These Resolutions shall take effect immediately upon adoption.

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.	✓			
Jeannie Brockmyre	✓			
Julie Dilella			✓	
Kaye Stone-Gansz <i>motion</i>	✓			
Ken Miller <i>yes</i>	✓			
Pamela Heald			✓	
Robert DeBadts			✓	

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:

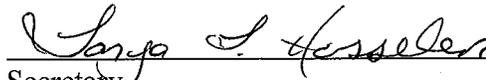
That I have compared the foregoing extract of the minutes of the meeting of the Wayne County Industrial Development Agency (the "Agency") including the resolution contained therein, held on February 28, 2020, with the original thereof on file in my office, and that the same is a true and correct copy 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 28th day of February, 2020.


Secretary

[SEAL]

EXHIBIT A
PUBLIC HEARING MATERIALS

EXHIBIT B
SEQRA MATERIALS