

**PROJECT AUTHORIZING RESOLUTION - Attachment Four 4/27/18**  
*(NMM Properties, LLC – 2018 Expansion Project)*

A regular meeting of the Wayne County Industrial Development Agency was convened on April 27, 2018 at 9:30 a.m.

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

Resolution No. 4/2018 - \_\_

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) (i) ACCEPTING THE APPLICATION OF NMM PROPERTIES, LLC (THE “COMPANY”) WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW); (ii) AUTHORIZING THE UNDERTAKING OF THE PROJECT AND APPOINTING THE COMPANY AS ITS AGENT TO UNDERTAKE SAME; (iii) AUTHORIZING THE PROVISION OF FINANCIAL ASSISTANCE (AS MORE FULLY DEFINED BELOW) TO THE COMPANY; (iv) MAKING FINDINGS WITH RESPECT TO THE PROJECT PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; AND (v) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AN AGENT AND FINANCIAL ASSISTANCE AND PROJECT AGREEMENT 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, (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, the Agency previously undertook a certain project (the “2012 Project”) for the benefit of NMM Properties, LLC consisting of: (i) i) the acquisition by the Agency of fee title to, or a leasehold interest in, an approximately 9.32 acres of land located at or adjacent to 1503 Canandaigua Road in the Town of Macedon, Wayne County (the “Land”, being more particularly described as TMID Nos. 62111-10-289726, 62111-10-309731, 62111-10-303700 and 62111-10-264691; and collectively referred to as the “Macedon Commons Shopping Center”) and the existing improvements thereon consisting of approximately 73,278 square feet of retail space contained within three (3) principal buildings and related parking areas, curbage, lighting, site improvements and amenities (collectively, the “2012 Existing Improvements”); (ii) the reconstruction and renovation of certain portions of the Existing Improvements, including (a) the reconfiguring and renovation of certain tenant spaces, and (b) the renovation and reconstruction of certain parking areas, curbage, lighting, site improvements and amenities (collectively, the “2012 Improvements”); and (iii) and acquisition of and installation in and

around the Land, Existing Improvements and Improvements by the Company of machinery, equipment, furniture, fixtures and other items of tangible personal property (the "2012 Equipment" and, collectively with, the Land, 2012 Existing Improvements and 2012 Improvements, the "2012 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 "2012 Straight Lease Transaction"); and

WHEREAS, in furtherance of the 2012 Straight Lease Transaction, the Agency and Company entered into (i) an Agent Agreement, (ii) a Lease Agreement, (iii) a Leaseback Agreement, (iv) a PILOT Agreement, and (v) related documents (collectively, the "2012 Agency Documents"), whereby the Agency appointed the Company to undertake the 2012 Project and provided the Company and Operator with certain forms of financial assistance (the "2012 Financial Assistance"); and

WHEREAS, 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 the 2012 Project and 2012 Facility through the 2012 Straight Lease Transaction; (ii) the appointment of the Company as agent of the Agency to undertake the planning, design, construction and reconstruction of improvements to the 2012 Facility consisting of renovation, reconstruction and modifications to approximately 20,000 square feet of space to be leased by the Company to CORE ATHLETIX, LLC for operation as a commercial gymnasium and training facility (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the 2012 Facility and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with the Improvements, the "Facility"), such Facility to be undertaken by the Agency and Company primarily through an Agent and Project and Financial Assistance Agreement (the "Agent Agreement") and the continued enforcement of the 2012 Agency Documents; and

WHEREAS, the Agency is contemplating providing financial assistance to the Company with respect to the Project (collectively, the "Financial Assistance") 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 Facility or used in the construction and equipping of the Facility; and (B) a mortgage recording tax exemption for financings undertaken in connection with the Project; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the Project and the Financial Assistance, with such Financial Assistance to not exceed \$100,000; and

WHEREAS, the Agency has identified the Project as a "Type II Action" as defined 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") for which no formal SEQRA review is necessary; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution authorizing (i) the acceptance of the Application; (ii) the undertaking of the Project and appointing the Company to undertake same as agent of the Agency; (iii) the provision of the Financial Assistance to the Company; and (iv) the execution and delivery of the Agent

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 enter into the Agent Agreement and retain its interests under the 2012 Agency Documents; and

(C) Subject to the terms and conditions set forth herein, 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 capital investment, housing and employment opportunities in the Town of Macedon, 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) Based upon a review of the Application, the Agency has identified the Project as a "Type II Action" as defined 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") for which no formal SEQRA review is necessary.

(G) Based upon the Agency's prior review of the Application submitted by the Company, along with supporting materials, the Project will include facilities or property that are primarily used in making retail sales, as defined within Section 862(2) of the Act, to customers who personally visit the Facility. Notwithstanding the foregoing, and based upon the

Application and supporting materials prepared and presented by the Company to the Agency, and pursuant to Section 862(2)(b) of the Act, the predominant purpose of the Project will be to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the Town of Macedon because of a lack of reasonably accessible retail trade facilities offering such goods or services. In accordance with the foregoing, and pursuant to Section 862(2)(c) of the Act, the Agency hereby finds that the undertaking of the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in the State.

Section 2. The Agency hereby accepts the Application and authorizes the undertaking of the Project, including the provision of the Financial Assistance to the Company. The Chairman, Vice Chairman, and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement with such changes as shall be approved by the Chairman, Vice Chairman and/or the Executive Director upon execution; provided, the Agent Agreement includes 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.

Section 3. Subject to (i) the receipt by the Agency of a Confirming Certificate from the Chairman of the Board of Supervisors of the County pursuant to Section 862(2)(c) of the Act, (ii) the Company executing the Agent Agreement, and (iii) 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, 2018 (*unless extended for good cause by the Executive Director of the Agency*).

Section 4. 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 **\$297,500.00**, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed **\$23,800.00**. 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 5. 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 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 Chairman, Vice Chairman, the Executive Director and/or the Chief Executive Officer of the Agency are hereby authorized and directed to negotiate and execute the Agent Agreement, along with related documents.

Section 8. Harris Beach PLLC, as Transaction Counsel for the Agency, and Converse & Morell, as Agency General Counsel, is hereby authorized to work with counsel to the Company and others to prepare for submission to the Agency all documents necessary to effect the undertaking of the Project.

Section 9. 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 10. 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.	XX			
James Hoffman	XX			
Steven LeRoy	XX			
Robert Havrilla			XX	

The resolutions were thereupon duly adopted.

STATE OF NEW YORK     )  
COUNTY OF WAYNE     ) ss:

I, the undersigned Assistant 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 April 27, 2018, 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 27<sup>th</sup> day of April, 2018.

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Assistant Secretary

[SEAL]