

AUTHORIZING RESOLUTION
(Nepperhan Farms LLC)

A regular meeting of the City of Yonkers Industrial Development Agency was convened on Wednesday February 24, 2016 at 9:00 a.m.

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

Resolution No. 02/2016 - 07

RESOLUTION OF THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF NEPPERHAN FARMS 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 THE 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 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 83 of the Laws of 1982 of the State of New York, as amended (hereinafter collectively called the "Act"), **CITY OF YONKERS 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, **NEPPERHAN FARMS LLC**, for itself or on behalf of an entity to be formed (the "Company"), has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of the acquisition and installation of certain machinery, equipment and other items of tangible personal property (the "Equipment") in furtherance of the internal renovation by the Company of the existing approximately 14,000 square-foot building with loading dock known as 1217 Nepperhan Avenue, Yonkers, New York, and shown on the tax maps of the City of Yonkers as 3.-3395-42.60 and 33 for use as a retail supermarket; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, reconstructing, renovating and equipping the Project, (ii) negotiate and enter into an Agent Agreement (the "Agent Agreement") and related documents, and (iii) provide financial assistance (the "Financial Assistance") to the Company in the form of a sales and use tax exemption for purchases and rentals related to the acquisition, reconstruction, renovation and equipping of the Project; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on February 23, 2016, at 5:30 p.m., local time, at the offices of the Agency at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701, the Agency held a public hearing with respect to the Project and the Financial Assistance being contemplated by the Agency (the "Public Hearing"). At the Public Hearing, 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 - together with the Notice of the Public Hearing published and forwarded to the affected taxing jurisdictions ten (10) days prior to said Public Hearing - is attached hereto as Exhibit A; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; 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 Agreement and related documents; and

WHEREAS, the Project constitutes a "retail" project as defined under Section 862 of the Act and as such requires additional findings by the Agency.

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

Section 1. The Company has presented the Application and related information in a form acceptable to the Agency. Based upon the representations made 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, reconstructing, renovating 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 the City of Yonkers, New York, 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 the Agency's review of the Application submitted by the Company, along with supporting materials, and in accordance with the findings of the Agency herein, 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, the predominant purpose of the Project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the City of Yonkers, New York, within which the proposed Project would be located (along with surrounding areas) 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. Based upon the review by the Agency of the Application submitted by the Company with respect to the Project, the Agency finds that the proposed action constitutes a "Type II action" pursuant to 6 N.Y.C.R.R. § 617.5 and therefore is exempt from review under SEQRA.

Section 3. The Public Hearing held by the Agency on February 23, 2016, concerning the Project and the Financial Assistance was duly held in accordance with the Act.

Section 4. 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, President, Executive Director and/or the CFO 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, President, Executive Director and/or the CFO 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 5. Subject to (i) the receipt by the Agency of a Confirming Certificate from the Mayor of the City of Yonkers, New York, pursuant to Section 862(2)(c) of the Act in the

form attached hereto as **Exhibit B**, and (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, reconstruction, renovation 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, 2016** (unless extended for good cause by the Executive Director of the Agency).

Section 6. 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 **\$1,900,000.00**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$168,625.00**. 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 7. 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 8. 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 9. These Resolutions shall take effect immediately.

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Mayor Mike Spano	[✓]	[]	[]	[]
Martin Ball, Sr.	[✓]	[]	[]	[]
Deputy Mayor Susan Gerry	[✓]	[]	[]	[]
Melissa Nacerino	[]	[]	[]	[✕]
Hon. Cecile D. Singer	[]	[]	[]	[✕]
Peter Kischak	[✓]	[]	[]	[]
Robert Maccariello	[]	[✕]	[]	[]

The Resolutions were thereupon duly adopted.

Resolution No. 02/2016 - 07
Authorizing Resolution: Nepperhan Farms LLC
February 24, 2016

SECRETARY'S CERTIFICATION
(Nepperhan Farms LLC – Authorizing Resolution)

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

I, the undersigned, Secretary of the City of Yonkers Industrial Development Agency DO HEREBY CERTIFY:

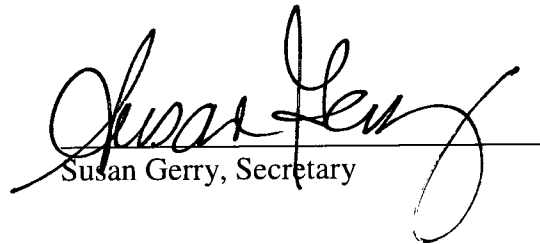
That I have compared the annexed extract of minutes of the meeting of the City of Yonkers Industrial Development Agency (the "Agency"), including the resolution contained therein, held on February 24, 2016, with the original thereof on file in my office, and that the same is a true and correct copy of 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 29 day of February, 2016.



Susan Gerry, Secretary

[SEAL]

Resolution No. 02/2016 - 07
Authorizing Resolution: Nepperhan Farms LLC
February 24, 2016

EXHIBIT A

Notice of Public Hearing
Notice Letter
Affidavit of Publication of The Journal News
Minutes of Public Hearing Held on February 23, 2016

EXHIBIT B

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

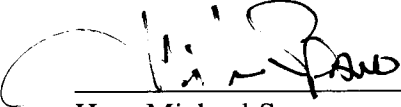
**PROJECT CONFIRMATION PURSUANT TO
GENERAL MUNICIPAL LAW SECTION 862(2)(c)**

NEPPERHAN FARMS LLC PROJECT

By Resolution adopted on February 24, 2016 (the "Project Authorizing Resolution"), the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") authorized the undertaking of a certain project (the "Project") for the benefit of **NEPPERHAN FARMS LLC** (the "Company") consisting of the acquisition and installation of certain machinery, equipment and other items of tangible personal property (the "Equipment") in furtherance of the internal renovation by the Company of the existing approximately 14,000 square-foot building with loading dock known as 1217 Nepperhan Avenue, Yonkers, New York, and shown on the tax maps of the City of Yonkers as 3.-3395-42.60 for use as a retail supermarket (the "Facility").

In making its determination to authorize the undertaking of the Project and the provision of financial assistance to the Company (the "Financial Assistance"), the Agency recognized that under Section 862(2)(a) of the General Municipal Law of the State of New York (the "GML"), more than one-third of the total cost of the Project will involve facilities or property that will be primarily used in making retail sales to customers who will be personally visiting the Facility. Pursuant to GML Section 862(2)(b)(ii), the Agency is permitted to provide the Financial Assistance to retail projects where the predominant purpose of the would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the City of Yonkers, New York, within which the proposed project would be located (along with surrounding areas) because of a lack of reasonably accessible retail trade facilities offering such goods or services. Pursuant to and in accordance with the Project Authorizing Resolution, the Agency (i) authorized the undertaking of the Project and the provision of the Financial Assistance, and (ii) pursuant to Section 862(2)(c) of the Act, the Agency found 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. The undersigned, being Mayor of the City of Yonkers, New York, and Chief Executive Officer of the City of Yonkers, New York, hereby acknowledges and confirms the findings made by the Agency as described above and as contained within the Agency's Project Authorizing Resolution. Said findings were made, and my confirmation is being made, pursuant to GML Section 862(2)(c), and as such, the undersigned hereby confirms the proposed action of the Agency with respect to the Project.

Dated: February 24, 2016



Hon. Michael Spano
Mayor, City of Yonkers