

**RESOLUTION OF THE COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE BUILDING RENOVATION AND REPAIR OF INDUSTRIAL EQUIPMENT BY FREEZE-DRIED INTERMEDIATE HOLDINGS LLC, TO BE LOCATED AT 111 WEST AVENUE IN THE VILLAGE OF ALBION, NEW YORK FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASE TO FREEZE-DRIED INTERMEDIATE HOLDINGS LLC, THE EXECUTION OF LEASE AGREEMENTS AND THE TAKING OF OTHER ACTIONS.**

**WHEREAS**, the County of Orleans Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 901-b of the General Municipal Law, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

**WHEREAS**, Freeze-Dried Intermediate Holdings LLC, d/b/a Thrive Foods, for itself or for affiliated individuals or entities (the "Company"), has entered into negotiations with officials of the Agency with respect to the development, renovation and equipping by the Agency without the proceeds of a bond issue of a project (the "Project") consisting of: (i) the renovation and maintenance upgrades of portions of its 250,000+/- square foot facility, including the renovation of the building's roof and exterior of the facility (the "Improvements"); (ii) the acquisition and installation therein and repairs to, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment"); and (iii) the conveyance of the Project pursuant to a lease of the Project to the Company, such Project to be located at 111 West Avenue in the Town of Albion, New York (the "Premises"); and

**WHEREAS**, the Company has submitted an application and other materials and information (collectively, the "Application") to the Agency to initiate the accomplishment of the Project; and

**WHEREAS**, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires a sales and use tax exemption for the renovation, maintenance and repair of its 250,000+/- square foot facility and equipment utilized therein, all at a cost of approximately \$5,001,875.00; that the Project is the first phase of the Company's plan to renovate and increase capacity at the facility over the next two years; that the Company anticipates that forty-five (45) full-time equivalent jobs will be created as a result of the Project at the end of three (3) years of operation thereof; and that if Agency financing is disapproved, the Company would likely not proceed with the Project; and

**WHEREAS**, the Agency has reviewed the Application and prepared a cost-benefit analysis with respect to the Project, and has considered the extent to which the Project will create permanent, private-sector jobs, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, and the extent to

which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

**WHEREAS**, the financial assistance to be provided by the Agency in connection with the Project, in the form of exemptions from sales and use taxes will not exceed \$100,000.00, therefore no public hearing with respect to the Project is required pursuant to General Municipal Law Section 859-a; and

**WHEREAS**, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it may induce the Company to proceed with the Project; and

**WHEREAS**, pursuant to State Environmental Quality Review Act, as amended, and the regulations adopted pursuant thereto by the New York State Department of Environmental Conservation, as amended (collectively, "SEQRA"), the Agency must determine the potential environmental significance of the Project and wishes to make such findings herein; and

**WHEREAS**, the Company has completed and submitted to the Agency Part 1 of an Environmental Assessment Form ("EAF") in accordance with the provisions of SEQRA; and

**WHEREAS**, the Agency has completed Part 2 of the EAF and has considered the proposed Project and reviewed the EAF and the criteria set forth in SEQRA in order to determine whether the Project will have a significant effect on the environment and wishes to make the findings required of an agency under SEQRA.

**NOW, THEREFORE, THE COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** The Agency hereby resolves that the proposed Project will not have a significant impact on the environment for the reasons more particularly set forth in the negative declaration prepared by the Agency and, in accordance with SEQRA, hereby adopts such negative declaration with respect to the Project. A copy of the EAF and the negative declaration are attached to this Resolution as Exhibit A.

**Section 2.** The Project is described in the recitals to this Resolution. The financial assistance (the "Financial Assistance") to be provided by the Agency in connection with the Project is an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$747,724.00.

**Section 3.** The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act.

**Section 4.** Reserved.

**Section 5.** The Agency hereby authorizes the Company, as an agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in the Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

**Section 6.** The Chairman, Vice Chairman, Secretary, Treasurer, and any Assistant Secretary of the Agency, the CEO/CFO and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

**Section 7.** The Company is authorized, as agent of the Agency, to initiate the renovation and maintenance of a building constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$747,724.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

**Section 8.** The Agency is hereby authorized to enter into a Project Agreement with respect to the provision of the Financial Assistance authorized herein (the "Project Agreement"), to acquire an interest in the Project site and construct a facility thereon, and execute and deliver a lease by the Company to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement") or Installment Sale Contract (the "Installment Sale Contract") between the Agency and the Company, and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the "Project Documents"), in a form satisfactory to Agency counsel. The Chairman, Vice Chairman, Secretary, Treasurer, any Assistant Secretary, or the CEO/CFO are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 9.** Reserved.

**Section 10.** Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

**Section 11.** Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

**Section 12.** In the event the Project Documents are not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest.

In addition to the foregoing, in the event the Agency determines that Company is in violation of a material term, or in the event that the Company closes the Project or relocates its operations to a location outside of the Village of Albion within the time period during which the Company is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a "Recapture Event"), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of all sales tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon

receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

**Section 13.** The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

**Section 14.** Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

**Section 15.** No covenant, stipulation, obligation or agreement herein contained or contained in the Project Documents or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

**Section 16.** Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all claims, liabilities, damages or losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. The Company shall promptly reimburse the Agency for all such costs and expenses within thirty days of the Agency's submission of an invoice to the Company. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect (except for the obligations in this Section 16), and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 17.** This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 11, 12 and 16 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company

to complete such transactions.

**Section 18.** This Resolution is subject to compliance with all local building and zoning requirements.

The above resolution was moved for adoption by Skyl Draper  
and seconded by Craig Tuohey.

ROLL CALL VOTE:

	<u>Yes</u>	<u>No</u>	<u>Absent</u>	<u>Abstain</u>
Carol D'Agostino	[ ✓ ]	[ ]	[ ]	[ ]
Merle Draper	[ ✓ ]	[ ]	[ ]	[ ]
John Fitzak	[ ✓ ]	[ ]	[ ]	[ ]
John Misiti	[ ✓ ]	[ ]	[ ]	[ ]
Craig Tuohey	[ ✓ ]	[ ]	[ ]	[ ]
Ed Urbanik	[ ]	[ ]	[ ✓ ]	[ ]

ADOPTED: January 23, 2023