

**RESOLUTION OF THE COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE ACQUISITION, RENOVATION AND EQUIPPING OF A 55,000+/- SQ. FT. FACILITY BY NIAGARA FOOD SPECIALTIES USA, INC. FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO AN INSTALLMENT SALE CONTRACT TO NIAGARA FOOD SPECIALTIES USA INC., THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENT AND/OR INSTALLMENT SALE CONTRACT AND THE TAKING OF OTHER ACTIONS.**

**WHEREAS**, the County of Orleans Industrial Development Agency, Albion, New York (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 Chapter 918 of the 1971 Laws of New York, 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**, Niagara Food Specialties USA, Inc., for itself or for related individuals or entities (the "Company"), has entered into negotiations with officials of the Agency with respect to the acquisition, renovation and equipping by the Agency without the proceeds of a bond issue of a 55,000+/- sq. ft. facility for commercial purposes (the "Project") and conveyance of the Project to the Company pursuant to an Installment Sale Contract or the lease of the Project to the Company, such Project to be located at 10190 Roosevelt Highway, Lyndonville, New York 14098 (the "Premises"); and

**WHEREAS**, the Company has submitted an application and a project information worksheet (collectively, the "Application") to the Agency to initiate the accomplishment of the above; and

**WHEREAS**, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the acquisition and renovation of an existing 55,000+/- sq. ft. facility, including the construction of a 700+/- sq. ft. addition, and the acquisition and installment of machinery, equipment, fixtures and furnishings, all to be located at the Premises, for commercial purposes in connection with the Company's specialty meat processing, distribution and sales business; that the Company anticipates that up to 19 full-time equivalent (FTE) employees will be employed at the Project at the end of three (3) years of operation thereof; that (i) but for the availability of financing by the Agency, it would not locate the Project within Orleans County or New York State, (ii) there will be no substantial adverse disruption of existing employment of facilities of a similar nature in Orleans County, (iii) the Project will retain present employment, provide substantial employment and substantial capital investment; that if Agency financing is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing is necessary to encourage the Company to proceed with the Project in Orleans County and in New York State; 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 and mortgage recording tax, 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**, based on the Application, the Agency hereby determines that the facility or property that is proposed to be primarily used in making retail sales to customers who personally visit the facility constituting the Project constitutes no more than one-third of the total Project cost; and

**WHEREAS**, based upon the Application, the Agency hereby determines that its assistance in financing the Project is reasonably necessary to encourage the Company to proceed with the Project; and

**WHEREAS**, the Agency further finds, based on the Application, that the Project will serve the public purpose of Article 18-A of the General Municipal Law by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in New York State; and

**WHEREAS**, the Agency desires to further encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in Orleans County; and

**WHEREAS**, the Company has not yet determined whether it will provide the funds necessary to complete the Project by using its own funds or by obtaining a conventional loan from a third party, and if the Company will finance the Project with funding from a third party the Company has requested that the Agency execute any and all documents required by the parties, including any collateral mortgages on the Project given to secure a loan(s) obtained by the Company to finance the cost of the Project; 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 the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, "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 regard to the Project.

**Section 2.** The foregoing Recitals are incorporated herein and made a part hereof. The Project is more particularly described as follows: the acquisition and renovation of an existing 55,000+/- sq. ft. facility, including the construction of a 700+/- sq. ft. addition, and the acquisition and installment of machinery, equipment, fixtures and furnishings, all to be located at the Premises, to be used by the Company for commercial purposes in connection with specialty meat processing, distribution and sales. The financial assistance to be provided in connection with the Project is more particularly described as follows: (i) a sales tax exemption for building materials and/or machinery, equipment, fixtures and furnishings purchased for incorporation into the Project or used at the Project location and having an aggregate cost not to exceed \$450,000.00; and (ii) a mortgage recording tax exemption for mortgage(s) in an amount up to \$2,008,000.00. The Agency hereby determines that the Project and the financial assistance by the Agency in connection therewith 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 3.** The Agency hereby authorizes the Company to proceed with the Project as herein authorized.

**Section 4.** The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

**Section 5.** The Chairman, Vice Chairman, Secretary, Treasurer, any Assistant Secretary or Assistant Treasurer, and the CEO/CFO are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and 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 6.** The Company is authorized as agent of the Agency, to initiate the acquisition and renovation of a building and construction of a building addition, and the acquisition of machinery and equipment which will be a part thereof, 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 \$450,000.00; 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 7.** The Agency is hereby authorized to enter into a Project Assistance Agreement with respect to the provision of financial assistance authorized herein and to acquire an interest in the Project site and renovate the facility thereon, and the execution and delivery of 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 form satisfactory to Agency counsel, are hereby authorized. The Chairman, Vice Chairman, Secretary, Treasurer, any Assistant Secretary or Assistant Treasurer, and the CEO/CFO are each authorized to execute such documents and to make or approve such amendments or modifications to the 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 8.** In the event the Company obtains one or more conventional loans to finance the cost of the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure such loans, and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel provided that the aggregate amount of such mortgages shall not exceed \$2,008,000. The Chairman, Vice Chairman, Secretary, Treasurer, any Assistant Secretary or Assistant Treasurer, and the CEO/CFO are each authorized to execute such collateral mortgages and to make or approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 9.** Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

**Section 10.** 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 11.** In the event a lease is 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 Company ceases to operate the Project (including a material alteration in the use of the Project, closure of the Project or reduction in the operations at the Project such that, in the Agency's judgment, the economic benefit to be derived from the Project is substantially impaired) or if there occurs a material non-compliance with or breach of the terms of the Project Documents, the Agency may in its sole discretion, (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 (x) 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 Inducement Resolution and (y) any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project. 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 12.** 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 13.** 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 14.** No covenant, stipulation, obligation or agreement herein contained or contained in the Company Lease, the Mortgage Agreement, the Agency Lease Agreement, Installment Sale Contract 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 15.** 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 10 and 11 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. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency's fee schedule.

The above resolution was moved for adoption by Paul D'Agostino and seconded by Kenneth Rush.

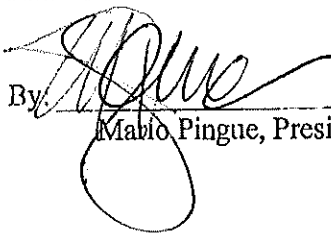
ROLL CALL VOTE:

	<u>Yes</u>	<u>No</u>	<u>Absent</u>	<u>Abstain</u>
Carol D'Agostino	[ ✓ ]	[ ]	[ ]	[ ]
E. John DeFilipps	[ ]	[ ]	[ ✓ ]	[ ]
Kenneth DeRoller	[ ✓ ]	[ ]	[ ✓ ]	[ ]
Merle Draper	[ ]	[ ]	[ ✓ ]	[ ]
Paul Hendel	[ ✓ ]	[ ]	[ ✓ ]	[ ]
John Misiti	[ ✓ ]	[ ]	[ ✓ ]	[ ]
Kenneth Rush	[ ✓ ]	[ ]	[ ]	[ ]

ADOPTED: February 8, 2019

ACCEPTED AND AGREED TO: February 8, 2019

NIAGARA FOOD SPECIALTIES USA, INC.

By:   
 Mario Pingue, President