

PROJECT AGREEMENT

THIS PROJECT AGREEMENT, made as of the 12th day of April, 2024 (the "Effective Date"), is by and between **COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 121 North Main Street, Albion, New York 14411 (the "Agency"); and **RPB BAKER FRUIT LLC**, a limited liability company duly formed and validly existing under the laws of the State of New York with offices at 99 West Avenue, Lyndonville, New York 14098 (the "Company").

WITNESSETH:

WHEREAS, 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 (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to promote, develop, encourage and assist in the acquiring, construction, reconstruction, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities including industrial pollution control facilities and thereby advance the job opportunities, health, 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, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 918 of the 1971 Laws of New York, as amended (which, together with the Enabling Act, is referred to herein as the "Act"), for the benefit of the County of Orleans and inhabitants thereof; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency for the Agency's assistance with respect to the renovation and equipping by the Agency without the proceeds of a bond issue of a project (the "Project") consisting of (i) the renovation and equipping of an existing 68,000+/- square foot cold storage facility and related site improvements (the "Improvements"); (ii) the acquisition and installation therein, 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 101 Cadbury Way in the Village of Holley, New York (the "Premises"); and

WHEREAS, by Resolution adopted on April 12, 2024 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project, subject to the Company entering into this Project Agreement and, pursuant to the Resolution and this Project Agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses in accordance with this Agreement; and

WHEREAS, pursuant to the Resolution, the Agency has agreed to provide to the Company in connection with the Project certain benefits, exemptions and other financial assistance

consisting of: (a) an exemption from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project or used in the acquisition, construction or equipping of the Project, and (b) an exemption from mortgage recording tax (collectively, the sales and use tax exemption and the mortgage recording tax exemption are hereinafter referred to as the "Financial Assistance"); and

WHEREAS, the Company has estimated in the Application the value of the Financial Assistance sought by the Company in connection with the Project and the Agency has authorized in the Resolution an exemption from New York State and local sales and use taxes for purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$1,186,000.00 and an exemption from mortgage recording tax for mortgages aggregating an amount not to exceed \$2,958,000.00; and

WHEREAS, the Resolution authorizes the Agency to acquire an interest in the Project and to enter into the Project Documents (as defined in the Resolution) which will provide for the completion of the Project by the Company and the provision of the Financial Assistance by the Agency, all in accordance with Act and the Resolution; and

WHEREAS, pursuant to the Act, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement, which sets forth certain terms and conditions under which the Financial Assistance will be provided to the Company.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Purpose of Project. It is understood and agreed by the parties hereto that the Agency has agreed to provide the Financial Assistance in connection with the Project and to enter into the Project Documents in order to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project to advance the job opportunities, health, general prosperity and economic welfare of the people of the Orleans County, New York and to otherwise accomplish the public purpose of the Act.

2. Reserved.

3. Limitation on Sales Tax Exemption. In accordance with the Resolution, the Company covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$1,186,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$94,880.00.

4. Scope of Agency. The Company agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and equipping of the Project as defined above. The right of the Company to act as agent of the Agency shall expire on April 30, 2025, unless extended as contemplated by the Resolution. The aggregate

amount of work performed as agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into by the Company as agent for the Agency shall include the following language:

"This contract is being entered into by RPB Baker Fruit LLC (the "Agent"), as agent for and on behalf of the County of Orleans Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency (the "Project") for the benefit of the Agent consisting of the renovation and equipping of an existing 68,000+/- square foot cold storage facility and related site improvements (the "Improvements"), to be located at 101 Cadbury Way in the Village of Holley, New York (the "Premises"). The machinery, equipment, furnishings, fixtures and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the sales tax exemption letter of the Agency attached hereto; and the Agent hereby represents that it will comply with the terms of the sales tax exemption letter to be issued by the Agency to the Agent. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

5. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project:

(a) The Company is a limited liability company duly formed and validly existing under the laws of the State of New York (the "State"), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which they are bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an

adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

(e) The Company covenants that the Project will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Premises except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Premises or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Premises, (iv) that no underground storage tanks will be located on the Premises, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agree to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Premises, the Company agrees to pay the expenses of same to the Agency upon demand, and each agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in Orleans County, New York, except for temporary periods during ordinary use.

(g) Following the adoption of the Resolution and the execution and delivery of this Agreement, the Agency will complete and within thirty (30) days of appointment forward to the New York State Department of Taxation and Finance the "**IDA Appointment of Project Operator or Agent For Sales Tax Purposes**" (NYS Form ST-60) for the Project. The Company shall immediately notify the Agency of its appointment of any agents or subagents in connection with the Project and shall, on request of the Agency, complete and submit to the Agency a NYS Form ST-60 for each such agent or subagent.

(h) The Company further covenants and agrees to file an annual statement with the New York State Department of Taxation and Finance on "**Annual Report of Sales and Use Tax Exemptions**" (NYS Form ST-340) regarding the value of sales and use tax exemptions the Company, its respective agents, subagents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, that such copy shall be provided in no event later than February 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(i) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using ***“IDA Agent or Project Operator Exempt Purchase Certificate” (NYS Form ST-123***, a copy of which is attached hereto as Exhibit A.) and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the purchase invoice should state, “I, a duly authorized representative of RPB Baker Fruit LLC (the “Company”), certify that it is a duly appointed agent of the County of Orleans Industrial Development Agency and that it is purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agent agreement with the County of Orleans Industrial Development Agency.” The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: “the name of the Project, the street address of the Project site, and IDA project number.” ***Until the Project is completed, the Company will forward to the Agency on an annual basis by February 15 of each year, a listing of all vendors, costs of purchases and estimated sales/use tax for each vendor. Upon request of the Agency, the Company will also forward to the Agency all Form ST-123’s issued by the Company to sellers to the Agency within 30 days following the issuance of the Form ST-123 by the Company.***

(j) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

6. Termination, Modification and/or Recapture of Agency Financial Assistance.

(a) In the event that the Company closes the Project or relocates its operations to a location outside of the County of Orleans or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in the 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) modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) 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 the Resolution and this Agreement, and/or (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 agrees and covenants that it will (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.

(b) In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from the New York State portion of any Sales Taxes in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder or under the Resolution, or which exemption is in excess of the amounts authorized hereunder or under the Resolution, or is otherwise not permitted under this Agreement or the 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 Agreement, the Resolution or in any other document executed and delivered by the Company in connection therewith (collectively, the "Project Documents") then the Company shall be required to remit to the Agency an amount equal to the amount of New York State portion of any Sales 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 the New York State portion of any Sales Taxes, together with any relevant penalties and interest.

(c) The rights of the Agency pursuant to this Section 6 and the obligation of the Company and the Agency each to cooperate with the Agency in its exercise of those rights shall survive the termination of this Agreement.

7. Annual Reporting. As a condition to receiving the Financial Assistance, the Company agrees to deliver to the Agency on an annual basis a certified statement enumerating (i) the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. In addition, the Company shall report, on an annual basis, the value of Financial Assistance received and the amount of Project costs incurred and paid by the Company.

8. Compliance with Laws. By entering into this Agreement, the Company certifies, under penalty of perjury, that the Company and any other owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

9. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members, employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss

or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or the Premises or arising by reason of or in connection with the occupation, or the use thereof or the presence on, in or about the Project or Premises or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, rehabilitating, constructing, renovation, equipping, owning and leasing of the Project or the Premises, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents (except the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to any loss, liability or claim arising solely from the willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified. The provisions of this Section 9 and the obligations of the Company hereunder shall survive a termination of this Agreement.

10. Insurance Required. Effective as of the date hereof and until the expiration or termination of the right of the Company to act as an agent of the Agency hereunder, the Company shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Project under a blanket insurance policy or policies covering not only the Project but other properties as well. Such insurance shall have a commercially reasonable deductible.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$2,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$2,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law.

11. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 10 hereof shall name the Agency as an additional insured, as its interest may appear, on a primary and non-contributory basis. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with commercially reasonably deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interests may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Agency (as applicable), except in the event of non-payment, in which at least ten (10) days prior written notice of the cancellation shall be delivered to the Company and the Agency. All insurance requirements in Section 10 may be satisfied by blanket policies subject to the reasonable approval by the Agency; provided, however, that approval or acceptance by a commercial lender (if any) in connection with the financing of the Project shall not require approval by the Agency. All or some of Section 10 insurance requirements may be satisfied by an Owner Controlled Insurance Program ("OCIP") subject to approval by the Agency; provided, however, that approval or acceptance by a commercial lender in connection with the financing of the Project shall not require approval by the Agency.

(b) All such policies of insurance, or a certificate or certificates of insurance that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Company shall furnish evidence to the Agency that the policy has been renewed or replaced or is no longer required by this Agreement.

12. Default/Termination of Agreement. Should the Company fail to comply with any of its obligations under this Agreement and such failure shall continue for a period of thirty (30) days after notice of such default is sent by the Agency to the Company or the , the Agency shall have the right to revoke the designation of the Company as an agent for the Agency and may elect to terminate its involvement with the Project, in which event the Company shall be required to pay all sales taxes which would have been levied in connection with acquisition, construction and installation of all improvements of the real property and machinery and equipment which constitute the Project. In addition, as set forth in the Resolution, in the event the Project Documents have not been executed by Company by the expiration date (as such date may be extended) or termination of the Resolution, the Company shall 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 machinery and equipment which constitute the Project. The designation of the Company as an agent for the Agency shall terminate as set forth in Section 4 of this Agreement, provided, however, that the obligation of the Company to (a) provide reports for the time period for which any Financial Assistance was received in accordance with the Resolution and (b) cooperate in the exercise by the Agency of its rights and remedies under this Agreement shall survive any termination of this Agreement.

13. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

14. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

15. Notices. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, certified mail, return receipt requested as follows:

To the Agency: COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT
AGENCY
121 North Main Street
Albion, New York 14411
Attention: CEO/CFO

With a copy to: Hurwitz Fine P.C.
1300 Liberty Building
Buffalo, New York 14202
Attention: Kevin J. Zanner, Esq.

To the Company: RPB BAKER FRUIT LLC
99 West Avenue
Lyndonville, NY 14098
Attention: David D'Anniballe

With a copy to: Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604
Attention: Kristin F. Zimar, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or when delivery of same is refused by the recipient or when personally delivered in the manner provided in this Section.

16. Governing Law/Consent to Jurisdiction. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Orleans County, New York.

17. Payment of Fees and Expenses.

(a) By executing this Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (i) legal services in connection with the Project, including but not limited to those provided by the Agency's Counsel, and (ii) other consultants retained by the Agency in connection with the Project; with all such charges to be paid

by the Company at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore.

(b) The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.


18. **WAIVER OF TRIAL BY JURY. THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGREEMENT, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

[Signature Page Follows]

[Signature Page to Project Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date above.

COUNTY OF ORLEANS INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Michael Dobell
Title: CEO/CFO

RPB BAKER FRUIT LLC

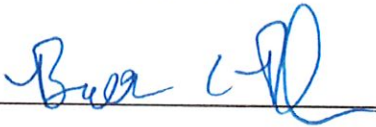
By: 
Name:
Title:

EXHIBIT A

NYS FORM ST-123