

APPROVING RESOLUTION

A regular meeting of the Orange County Industrial Development Agency held on February 15, 2023 at 4:30 p.m. (local time) at the Orange County Government Center Community Room, 255 Main Street, Goshen, New York.

The meeting was called to order by Chairman Torelli and upon the roll being duly called, the following members were:

MEMBERS PRESENT: Torelli, Tamburri, Odock, Rinaldi, Greene, Palladino

THE FOLLOWING PERSONS WERE ALSO PRESENT: B. Fioravanti, S. Katzoff, K. Reilly, D. Brady, C. Lemmar

The following Resolution was offered by M. Greene and seconded by G. Palladino:

RESOLUTION APPROVING THE REAPPOINTMENT OF THE COMPANY AND ITS SUB-AGENTS AS AGENTS OF THE AGENCY UNTIL DECEMBER 31, 2023; AND AUTHORIZING THE EXECUTION OF ANY AND ALL NECESSARY DOCUMENTS

WHEREAS, the Orange County Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 390 of the Laws of 1972 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, at the request of 13th Avenue Fish Market, Inc. ("**13th Ave.**"), on behalf of 360 Middletown Holdings LLC (the "**Company**"), by resolution dated November 14, 2019 (the "**Inducement Resolution**") the Agency agreed to undertake a project (the "**Project**") consisting of: (A) the acquisition by the Agency of a leasehold interest in an approximately 7.8±-acre parcel of land located at 360 Crystal Run Road in the Town of Walkill, Orange County, New York (the "**Land**") together with the existing approximately 31,534 square-foot warehouse building thereon (collectively the "**Existing Improvements**"); (B) the renovation and reconstruction of the Existing Improvements to house the Freund's Fish Market expansion of its production line and scope of distribution, to be implemented in six phases, including, but not limited to, (i) kosher Japanese food products, (ii) raw fish production, (iii) gelfite fish production, (iv) breeding machinery, (v) wholesale appetizing products, and (vi) frozen foods (collectively, the "**Improvements**"), and (C) the acquisition in and around the Improvements of certain items of

equipment, machinery and other tangible personal property (the "**Equipment**"; and, collectively with the Land, the Existing Improvements and the Improvements, the "**Facility**"); (B) the granting of certain financial assistance including some or all of the following: exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Company and Agency entered into a lease transaction, dated as of December 1, 2019, to effectuate the undertaking of the Project and the conference of the approved Financial Assistance (the "**Lease Transaction**"). As part of the Lease Transaction for purposes of undertaking and completing the Project Facility, the Company was appointed as the agent of the Agency through December 31, 2021 (the "**Appointment**"), and was awarded an amount not to exceed \$153,359 in exemptions from State and local sales and use tax (the "**Exemption**"); and

WHEREAS, by letter dated December 13, 2021, the Company advised of unexpected delays in construction due to the ongoing impacts of COVID-19. As such, the Company requested and on January 19, 2022 the Agency approved the extension of their Appointment from December 31, 2021 to December 31, 2022 to provide them an opportunity to complete the Project (the "**Extension**"); and

WHEREAS, by correspondence dated January 10, 2023, January 18, 2023 and February 8, 2023, the Company advised the past three years were faced challenges as vendors and contractors were struggling with workforce shortages which resulted in delays. The Company has completed a lot of the work but still needs to put in the new floor, install new doors on the blast freezer, update some of the refrigeration and electricity and obtain some pieces of new equipment; and

WHEREAS, in light of the delays, the Company is requesting a reappointment of their agency appointment from February 15, 2023 to December 31, 2023 to provide them an opportunity to complete the Project (the "**Reappointment**"); and

WHEREAS, as of January 10, 2023, the Company has a balance of approximately \$35,178.90 in unused State and local sales and use tax exemption remaining available for the Project (the "**Remaining Exemption**"). The Company is not requesting any additional financial assistance; and

WHEREAS, the Reappointment is in furtherance of the Financial Assistance that was previously approved for the Project, which underwent an environmental review pursuant to the State Environmental Quality Review Act ("**SEQRA**"), and the present Reappointment request is insubstantial and does not require reconsideration or further review by the Agency under SEQRA.

NOW, THEREFORE, be it resolved by the members of the Orange County Industrial Development Agency as follows:

(1) Based upon the representations made by the Company to the Agency, including but not limited to there being no event of default under the Lease Documents (as defined herein), the Agency hereby makes the following findings and determinations:

(a) The granting of the Reappointment does not require reconsideration or further review under SEQRA.

(b) The Agency authorizes the Reappointment for purposes of completing the Project through and including **December 31, 2023**, conditioned upon the Company: (i) representing and warranting that there are no events of default under any of the documents executed and delivered by the Company in conjunction with the Lease Transaction, including but not limited to a lease agreement, a leaseback agreement, a project agreement and an environmental compliance and indemnification agreement, each dated as of December 1, 2019 (collectively, the "**Lease Documents**"); (ii) confirming that all insurance executed and delivered in conjunction with the Project and the Lease Transaction remains in full force and effect all in accordance with the Lease Documents and will submit to the Agency proof of insurance naming the Agency as an additional insured pursuant to the Agency's requirements under the Lease Documents; (iii) submitting to the Agency any applicable information requested by the Agency with respect to the Reappointment so that they can accurately track and report Project and Financial Assistance information as required under the Act; (iv) executing and delivering any and all documents required by the Agency in connection with the Reappointment and to carry out the intent of this Resolution; (v) submitting any applicable administrative fees and all legal fees incurred by the Agency in exchange for the Agency's grant of the Reappointment; and (vi) submitting any proof required by the Agency demonstrating that the Company has not realized State and local sales and use tax exemptions in excess of what was authorized for the Project.

(c) This Reappointment shall be the final appointment as agent of the Agency for purposes of completing the Project. No additional extension or reappointments shall be permitted.

(2) The Agency is authorized to execute all documents necessary to effectuate the Reappointment (collectively, the "**Reappointment Documents**") including but not limited to revisions or amendments of the Lease Documents, issuance of a new Sales Tax Appointment Letter and an amendment or extension of the appropriate "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each of the Company and any sub-agents in accordance with the Lease Documents; and each the Chairman, the Vice Chairman, Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the documents, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein as the (Vice) Chairman deems appropriate and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions

contemplated by this Resolution. The execution thereof by the Chairman, the Vice Chairman, Chief Executive Officer constitutes conclusive evidence of such approval.

(3) Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Agency and others to prepare, for submission to the Chairman, Vice Chairman and/or Chief Executive Officer, all Documents necessary to effect the intent of this Resolution.

(4) The Company shall provide or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the Agency and the State Commissioner of Taxation and Finance (the “*Commissioner*”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project’s receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request.

(5) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(6) The Secretary or the Chief Executive Officer of the Agency are hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(7) This Resolution shall become effective immediately. A copy of this Resolution, together with any attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u><i>Yea</i></u>	<u><i>Nay</i></u>	<u><i>Absent</i></u>	<u><i>Abstain</i></u>
Michael Torelli	X			
Dean Tamburri	X			
Vincent Odock	X			
James Rinaldi	X			
Marc Greene	X			
Giovanni Palladino	X			
Susan Walski			X	

The Resolutions were thereupon duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

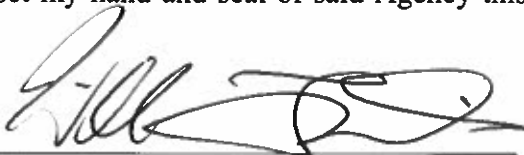
I, the undersigned Chief Executive Officer of the Orange County Industrial Development Agency, **DO HEREBY CERTIFY:**

That I have compared the foregoing extract of the minutes of the meeting of the Orange County Industrial Development Agency (the "Agency") including the resolution contained therein, held on February 15, 2023, with the original thereof on file in the office of the Agency, 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 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
15th day of February, 2023.



William Fioravanti, Chief Executive Officer

(S E A L)