

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AMENDATORY RESOLUTION

**UPSTATE NIAGARA COOPERATIVE, INC., AND/OR INDIVIDUAL(S) OR
AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED
ON ITS BEHALF**

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, September 24, 2025 at 12:00 p.m.

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

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING (i) ADDITIONAL FINANCIAL ASSISTANCE TO UPSTATE NIAGARA COOPERATIVE, INC. (THE "COMPANY") IN AMOUNTS EXCEEDING THE AMOUNTS PREVIOUSLY APPROVED BY THE AGENCY; AND (ii) THE EXECUTION OF 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 293 of the Laws of 1970 of the State of New York, as amended (collectively, the "Act"), the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (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, commercial and other facilities as authorized by the Act; and

WHEREAS, UPSTATE NIAGARA COOPERATIVE, INC. or on behalf of an affiliated entity formed or to be formed (the "Company") originally submitted an application to the Agency (the "Application") requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition by the Agency of a leasehold interest in certain property located on V/L North America Drive, Town of West Seneca, Erie County, New York and all other lands in the Town of West Seneca where, by license or easement or other agreement, the Company or its designees are making improvements that benefit the Project (the "Land"), (ii) the construction on the Land of an approximately 250,000 sq. ft. addition to the existing 222,851 sq. ft. warehouse facility to be utilized for manufacturing as well as storage for finished goods, ingredients and packaging (the "Improvements"), and (iii) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and, together with the Land and the Improvements, the "Original Facility"); and

WHEREAS, by resolution adopted on September 25, 2024 (the "Original Resolution") the Agency authorized financial assistance to the Company with respect to the Application in the form of (a) an exemption benefit 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 Facility or used in the acquisition, construction, reconstruction and/or renovation, rehabilitation or equipping of the Facility, and (b) a partial

abatement from real property taxes benefit consistent with the Agency’s Economic Inclusion PILOT Policy, dated as of April 26, 2023 (the “EIP Policy”) through a 10 year Tier 2 payment in lieu of tax agreement (the “PILOT Agreement”) with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption benefit and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the “Financial Assistance”); and

WHEREAS, on May 29, 2025, the Company submitted an amended application (the “Amended Application”) to the Agency amending its Project (hereinafter, the “Modified Project”) confirming that (i) the Improvements contemplated for the Original Facility have decreased in size and will now consist of the construction on the Land of an approximately 165,000 square-foot addition to the existing 222,851 sq. ft. warehouse facility to be utilized for manufacturing as well as storage for finished goods, ingredients and packaging (the “Modified Improvements” and with the Equipment and the Land, the “Modified Facility”), (ii) Project costs have increased due to an increase in construction costs; and (iii) requesting an increase in Financial Assistance for the Modified Project in the form of an increase in the real property tax abatement benefit, an increase in the sales and use tax exemption benefit, and (iv) the addition of a mortgage recording tax exemption benefit (collectively, the “Modified Financial Assistance”); and

WHEREAS, pursuant to General Municipal Law Section 859-a, on June 30, 2025 at 9:00 a.m. at the Town of West Seneca Community Center & Library, located at 1300 Union Road, West Seneca, NY 14224, the Agency held a public hearing with respect to the Modified Project and the proposed Modified Financial Assistance (as hereinafter defined) being contemplated by the Agency (the “Second Public Hearing”) whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, the Project is located within the Town of West Seneca (the “Town”) Industrial Park (the “Industrial Park Project”); and

WHEREAS, the Industrial Park Project entailed and entails the acquisition and development of an industrial, warehousing, and distribution park of approximately 400-500 acres within the Town to ultimately be developed as various individual parcels within the Industrial Park by private developers; and

WHEREAS, the Town, in accordance with Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereto in 6 N.Y.C.R.R. Part 617 (collectively referred to as the “State Environmental Quality Review Act” and/or “SEQR”), undertook coordinated review with respect to the Industrial Park Project, established itself as Lead Agency as defined in SEQR, and determined that the Industrial Park Project was a Type I Action; and

WHEREAS, the Agency, on or about October 11, 1989, affirmed and confirmed the status of the Town as “Lead Agency” within the meaning of and for all purposes of complying with SEQR with respect to the Industrial Park Project; and

WHEREAS, on August 12, 1991, the Town accepted the Final Environmental Impact Statement (the “FEIS”) for the Industrial Park Project; and

WHEREAS, on September 23, 2024, the Town completed its review of the Original Project and related materials and the FEIS and specifically determined that there were no potentially significant adverse environmental impacts associated with the Project, that no further environmental impact statement is necessary; and that the environmental impacts resulting from the Original Project are consistent with the provisions of the FEIS as related to the Industrial Park Project; and

WHEREAS, on September 8, 2025, the Town completed its review of the Modified Project and reaffirmed the Town’s September 23, 2024 determination as described above; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to amend the Original Resolution and to adopt a resolution describing the Modified Project and the Modified Financial Assistance that the Agency is contemplating with respect to the Modified Project.

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

Section 1. All recitals, findings and determinations of the Agency contained in the Original Resolution are hereby reaffirmed, ratified, restated and incorporated herein by reference as if set forth herein in their entirety, except as modified by this Resolution.

Section 2. With respect to the foregoing, and based upon the representations and warranties made by the Company in its Amended Application, Agency Policy Committee review of and recommendations related to the Modified Project and its July 10, 2025 resolution to recommend Agency approval of same, the Agency approves the Modified Project and hereby confirms that the Improvements contemplated for the Original Facility have decreased in size and will now consist of the construction on the Land of an approximately 165,000 square-foot addition to the Company’s existing 222,851 sq. ft. warehouse facility.

Section 3. Any and all references to Project as so referred to in the Original Resolution shall hereinafter be deemed to reference the Modified Project, as described within this Amendatory Resolution.

Section 4. Based upon the representations and warranties made by the Company in its Amended Application, subject to the terms and conditions as described herein, and Agency Board member review, discussion and consideration of same, the Agency hereby amends Section 3(A) and 3(B) of the Original Resolution in its entirety to read as follows:

A. Financial Assistance. With respect to the foregoing, and based upon the representations and warranties made by the Company in its Amended Application for Financial Assistance, the Agency hereby:

(i) 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 estimated amount up to \$70,000,000, which may result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed \$6,125,000. The Agency may consider any requests by the Company for increases 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

(ii) authorizes and approves that the value of the mortgage recording tax exemption benefit (“mortgage recording tax exemption benefits”) shall not exceed \$1,890,000; and

(iii) authorizes and approves that the real property tax abatement benefits (“PILOT benefits”) to be provided over the term of the PILOT Agreement are estimated to be approximately \$3,997,609, resulting in estimated total PILOT payments of \$2,831,640 over the term of the PILOT Agreement.

B. Terms and Conditions of Financial Assistance. Pursuant to Section 875(3) of the New York General Municipal Law, and per the policies of the Agency, 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 New York State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits, and/or partial abatements from real property taxes 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 New York State and local sales and use tax exemption benefits; (ii) the New York State and local 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 New York State and local 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 New York State and local sales and use tax exemption benefits and/or mortgage recording tax exemption benefits, and/or the partial abatement from real property taxes 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 the Investment Commitment, the Employment Commitment, and/or the Local Labor Commitment, said commitments, as described below, being 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 New York State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits, and/or the partial abatement from real property taxes benefits are taken in cases

where the Company fails to comply with the Equal Pay Commitment and/or the Unpaid Real Property Tax Policy Commitment, as described below, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project.

As a condition precedent of receiving Financial Assistance, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must cooperate with the Agency in its efforts to recover or recapture any Financial Assistance, and promptly pay over any such amounts to the Agency that the Agency demands.

Section 5. Based upon the representations and warranties made by the Company in its Amended Application, subject to the terms and conditions as described herein, and Agency Board member review, discussion and consideration of same, the Agency hereby finds, determines and hereby amends Section 3(C)(i) of the Original Resolution in its entirety to read as follows:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$216,750,000 (which represents the product of 85% multiplied by \$255,000,000, being the total project cost as stated in the Company’s Amended Application).

Section 6. Unless otherwise amended pursuant to the terms contained herein, the terms of the Original Resolution shall remain unchanged.

Section 7. 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 8. All actions heretofore undertaken by the Agency and the Company as agent of the Agency are ratified and approved and the Agency and the Company, as agent of the Agency, are hereby authorized to continue to undertake the Modified Project.

Section 9. These Resolutions shall take effect immediately.

Dated: September 24, 2025