

INDUCEMENT RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency was convened in public session on October 20, 2011, at 9:00 a.m., at 44 West Bridge Street, Oswego, New York.

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

PRESENT: Arthur W. Ospelt, Carolyn A. Rush, H. Leonard Schick,
Morris Sorbello and Gary T. Toth

ABSENT: Jonathan Daniels and Donald H. Kunzwiler

ALSO PRESENT: Kevin C. Caraccioli, David S. Dano and L. Michael
Treadwell

The following resolution was duly offered and seconded:

RESOLUTION UNDERTAKING THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF A CERTAIN PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT; APPROVING FINANCIAL ASSISTANCE IN THE FORM OF EXEMPTIONS FROM REAL PROPERTY TAX, MORTGAGE RECORDING TAX AND SALES AND USE TAX; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY

WHEREAS, the County of Oswego 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 234 of the Laws of 1973 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, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and 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 to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant “financial assistance” (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more “projects” (as defined in the Act); and

WHEREAS, Champlain Valley Specialty of New York, Inc., a New York business corporation, or an entity formed on its behalf (the “*Company*”), submitted an application to the Agency on or about September 28, 2011 (“*Application*”), a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “*Project*”) consisting of: (A) (i) the acquisition of a leasehold interest in approximately 5.68 acres of improved real property located at 8033 State Route 104 in the Town of Oswego, New York, Oswego County (the “*Land*”); (ii) the reconstruction and renovation of an approximately 27,000 square foot building for use as a fresh fruit processing facility on the Land (collectively the “*Facility*”); and (iii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings, including but not limited to manufacturing equipment for slicing, coring and treatment of fruit and packaging equipment for the packaging of processed fruit (collectively the “*Equipment*”) (the Land, Facility and Equipment are hereinafter collectively referred to as the “*Project Facility*”); (B) granting certain financial assistance in the form of exemptions from real property tax, mortgage recording tax, sales and use taxation (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Agency adopted a resolution on October 19, 2011 describing the Project and the financial assistance and authorizing a public hearing (“*Initial Resolution*”); and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on October 19, 2011 pursuant to Section 859-a of the Act, notice of which was published on October 8, 2011 in the Palladium Times, a newspaper of general circulation in the County of Oswego, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated October 6, 2011; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the preliminary agreement of the Agency to undertake of the Project constitutes such an action; and

WHEREAS, pursuant to SEQRA, the Agency has determined that the Project constitutes a Type II action, and therefore no further environmental review is required;

WHEREAS, the Company shall convey its right, title and interest in the Equipment to the Agency pursuant to a bill of sale (the “*Bill of Sale*”); and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance; (i) will induce the Company to develop the Project Facility in the County of Oswego; and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

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

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 2. Based upon the representations and projections made by the Company to the Agency, the Agency hereby makes the following determinations:

- a. Ratifies the findings in its Initial Resolution.
- b. The reconstruction, renovation and equipping of the Project Facility and the granting of any approved Financial Assistance constitutes a Type II action under SEQRA and no further environmental review is required.
- c. The granting of the Financial Assistance will be an inducement to the Company to develop the Project Facility in the Town of Oswego, County of Oswego.
- d. The commitment of the Agency to provide Financial Assistance to the Company will enable the Company to renovate, restore and equip the Project Facility for the benefit of the inhabitants of Oswego County.
- e. The reconstruction, renovation and equipping of the Project Facility will promote employment opportunities and prevent economic deterioration in the County of Oswego by the creation and preservation of both full and part-time jobs.
- f. The reconstruction, renovation equipping and operation of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the County of Oswego and the granting of the other Financial Assistance is necessary to finance the costs of the acquisition, reconstruction, renovation and equipping of the Project.

- g. The Project will not result in the removal of any commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

Section 3. Subject to the conditions set forth in Section 4.02 of the Agreement (hereinafter defined), the Agency will: (i) acquire a controlling interest in the Project Facility pursuant to a lease agreement (the “*Lease*”) to be entered into between the Company and the Agency and the Bill of Sale; (ii) lease the Project Facility to the Company pursuant to a sublease agreement (the “*Sublease*” and with the Lease and the Bill of Sale, the “*Lease Documents*”) to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance; (iv) provided that no event of default shall have occurred and be continuing under the Lease Documents or any loan documents, execute and deliver all other certificates and documents necessary or appropriate for the grant of the Financial Assistance requested by the Company in connection with financing for the Project, subject to terms and conditions acceptable to the Agency in their sole discretion.

Section 4. The form and substance of the proposed agreement (in the form and on the terms and conditions as presented at this meeting and attached hereto as Exhibit “A”) (the “*Agreement*”) between the Agency and the Company setting forth the preliminary undertakings of the Agency and the Company with respect to the Project Facility are hereby approved. The Chairman or Chief Executive Officer of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, in substantially the same form as presented at this meeting and attached hereto as Exhibit “A”, with changes in terms and form as shall be consistent with this Resolution and as the Chairman or Chief Executive Officer shall approve consistent with this Resolution and upon advice of counsel. The execution thereof by the Chairman or Chief Executive Officer shall constitute conclusive evidence of such approval.

Section 5. Subject to the due execution and delivery by the Company of the Agreement, the Company is appointed the true and lawful agent of the Agency to proceed with the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment made by this Section 5 shall not be effective until the Agreement referred to in Section 4 hereof is duly executed and delivered by the Company.

Section 6. No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above 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.

Section 7. A copy of this Resolution, together with the 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.

Section 8. The Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 9. Counsel to the Agency and special Agency counsel are hereby authorized to work with the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the grant of Financial Assistance.

Section 10. This Resolution shall take effect immediately.

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

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Jonathan Daniels				X
Donald H. Kunzwiler				X
Arthur W. Ospelt	X			
Carolyn A. Rush	X			
H. Leonard Schick	X			
Morris Sorbello	X			
Gary T. Toth	X			

The resolution was thereupon declared duly adopted.

State of New York)
) ss.:
County of Oswego)

I, the undersigned Chief Executive Officer of the County of Oswego Industrial Development Agency, Do Hereby Certify that (i) I have compared the annexed extract of the minutes of the meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) held on October 20, 2011, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I Further Certify that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Agency on October 20, 2011.

L. Michael Treadwell
Chief Executive Officer

(SEAL)

EXHIBIT "A"

AGENCY/COMPANY AGREEMENT

This Agreement is between the County of Oswego Industrial Development Agency (the "**Agency**"), and Champlain Valley Specialty of New York, Inc., a business corporation organized and existing under the laws of the State of New York, or an entity formed on its behalf (the "**Company**").

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this Agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, the "**Act**") to grant "financial assistance" (as defined in the Act) in connection with "Projects" (as defined in the Act) and to lease or sell the same upon such terms and conditions as the Agency may deem advisable.

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order 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 to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to grant financial assistance.

1.03. The Company has requested that the Agency undertake a project (the "**Project**") consisting of: (A) (i) the acquisition of a leasehold interest in approximately 5.68 acres of improved real property located at 8033 State Route 104 in the Town of Oswego, New York, Oswego County (the "**Land**"); (ii) the reconstruction and renovation of an approximately 27,000 square foot building for use as a fresh fruit processing facility on the Land (collectively the "**Facility**"); and (iii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings, including but not limited to manufacturing equipment for slicing, coring and treatment of fruit and packaging equipment for the packaging of processed fruit (collectively the "**Equipment**") (the Land, Facility and Equipment are hereinafter collectively referred to as the "**Project Facility**"); (B) granting certain financial assistance in the form of exemptions from real property tax, mortgage recording tax, sales and use taxation (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.04. The Company hereby represents to the Agency that undertaking the Project, the appointment of the Company as the agent of the Agency for the acquisition,

reconstruction, renovation and equipping of the Project Facility and the grant of Financial Assistance (A) will be an inducement to it to develop and operate the Project Facility in the County of Oswego; and (B) will not result in the removal of any commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State.

1.05. On October 20, 2011, the Agency adopted a resolution (the “**Inducement Resolution**”) determining that the acquisition, reconstruction and equipping of the Project Facility and the leasing of the same to the Company will promote and further the purposes of the Act.

1.06 In the Resolution, subject to the execution of this Agreement by the Company and other conditions set forth therein and herein the Agency has agreed to appoint the Company as its agent for the purposes of reconstructing, renovating and equipping the Project Facility, entering into contracts and doing all things requisite and proper for reconstructing, renovating and equipping the Project Facility.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated the Company as the Agency’s agent for acquiring, reconstructing, renovating and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such documents as may be necessary or advisable for (A) the designation of the Company as the Agency’s agent, (B) the acquisition, reconstructing, renovation and equipping of the Project Facility, and (C) the leasing and subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. The Agency will enter into the agreement to lease the Project Facility to the Company (the “**Agency Lease**”). The Agency Lease shall contain all provisions required by law and such other provisions as shall be mutually satisfactory to the Agency and the Company.

2.04. The Company may proceed with the acquisition, reconstruction, renovation and equipping of the Project Facility and advance such funds as may be necessary to accomplish such purposes.

2.05 Subject to Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency for the reconstruction, renovation and equipping of the Project Facility, and to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the reconstructing, renovation and equipping of the Project Facility, all

with the same powers and the same validity as if the Agency were acting in its own behalf.

Article 3. Undertakings on the Part of the Company. Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein, the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing).

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility.

(c) The Company shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(e) The Company shall provide and carry worker's compensation and disability insurance as required by law and comprehensive liability insurance with such coverages (including, without limitation, owner's protective coverage for the benefit of the Agency and contractual coverage covering the indemnities herein provided for), with such limits and with such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates of insurance in form satisfactory to the Agency evidencing such insurance.

(f) The Company shall include the Agency as a named insured under all public liability insurance policies obtained by the Company with respect to the Project Facility.

3.02. The Company agrees that as agent of the Agency or otherwise, it will comply with all the requirements of all federal, state and local law, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or the Company with respect to the Project, the acquisition, reconstruction, renovation and equipping of the Project Facility and the financing thereof. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute), it will comply with all the requirements Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company hereby ratifies and confirms its obligations to pay an administrative fee to the Agency in the amount of .50% of the Project costs. Such amount is due and payable in full at closing.

3.07 The Company hereby ratifies and confirms its obligations to pay an annual administrative reporting fee of \$500.00 to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

3.08 Whenever practicable, the Company and/or its agents, employees and contractors agree to hire from the local labor pool during the reconstruction period of the Project Facility.

Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Company and shall remain in effect until the Agency Lease becomes effective. It is the intent of the Agency and the Company that this Agreement be superseded in its entirety by the Agency Lease.

4.02. It is understood and agreed by the Agency and the Company that grant of Financial Assistance and the execution of the Agency Lease and related documents are subject to (A) obtaining all necessary governmental approvals; (B) approval by the members of the Agency;

(C) approval by the Company; and (D) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder.

4.03. The Company agrees that it will reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency and special counsel to the Agency and indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder.

4.04. If for any reason the Agency Lease is not executed and delivered by the Company and the Agency on or before eighteen (18) months from the execution hereof, the provisions of this Agreement (other than the provisions of Articles 3.01, 3.02, 3.03, 3.05 and 4.03 above, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses which were authorized by the Company and incurred by the Agency in connection with the acquisition, renovation, restoration and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for reconstruction or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project Facility; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency, counsel for the Agency and special Agency counsel incurred in connection with the Project and will pay the fees of counsel for the Agency and special Agency counsel for legal services relating to the Project or the proposed financing thereof.

IN WITNESS WHEREOF, the parties hereto have entered in this Agreement as of _____, 2011.

**COUNTY OF OSWEGO INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
L. Michael Treadwell, Chief Executive Officer

**CHAMPLAIN VALLEY SPECIALTY OF NEW
YORK, INC.**

By: _____
Name: _____
Title: _____