

RESOLUTION
(Alpina Foods LLC Project)

A regular meeting of Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, June 2, 2011, at 4:00 p.m.

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

Resolution No. 06/2011 - 01

RESOLUTION AUTHORIZING THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER TO (i) UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW) FOR THE BENEFIT OF ALPINA FOODS LLC (THE "COMPANY"); (ii) NEGOTIATE, EXECUTE AND DELIVER A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS; (iii) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND (C) IF NECESSARY, AN EXEMPTION FROM THE NEW YORK STATE MORTGAGE RECORDING TAX; AND (iv) EXECUTE 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 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (hereinafter called "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 industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **ALPINA FOODS LLC** (the "Company") has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition or retention by the Agency of fee title to or a leasehold interest in approximately 10-acres of land located in the Genesee Valley Agri-Business Park at 5142 State Route 5, in the Town of Batavia, Genesee County, New York (the "Land"), (ii) the construction and equipping on the Land of an approximately 28,000 square-foot specialty yogurt production/manufacturing facility and related improvements and infrastructure (the "Improvements"), (iii) the acquisition in and around the Land and the Improvements of certain items of equipment and other tangible personal property (the "Equipment," and collectively with the Land and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, constructing, and equipping the Project pursuant to an agent agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (the "PILOT Agreement") and related documents, with the Company, (iii) take or retain title to or a leasehold interest in the land, improvements, equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) a real property tax abatement through the PILOT Agreement and (c) if necessary, an exemption from the New York State mortgage recording tax; and

WHEREAS, pursuant to Section 859-a of the Act, on May 3, 2011, at 4:00 p.m., at Batavia Town Hall, Conference Room, 3833 West Main Street Road, Batavia, New York 14020, the Agency held a public hearing with respect to the Project and the proposed financial assistance being contemplated by the Agency (the "Public Hearing"), whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the minutes of said Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions prior to the Public Hearing are attached hereto as Exhibit A; and

WHEREAS, the Town of Batavia Planning Board (the "Town"), by a findings statement, dated 4/4/08, determined that the requirements of the New York State Environmental Quality Review Act ("SEQRA," codified as 6 NYCRR Part 617) have been met and consistent with social, economic, and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating those mitigative measures that were identified as practicable (collectively, the "SEQRA Findings"); and

WHEREAS, the Lease Agreement, Leaseback Agreement and PILOT Agreement, and related documents have been negotiated and are presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Genesee County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other facility or plant to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(F) The Agency acknowledges that the Town made the SEQRA Findings as Lead Agency under SEQRA and the requirements of SEQRA have been satisfied.

Section 2. Subject to the Company executing the Agent Agreement attached hereto as Exhibit C and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on **December 31, 2012** (*unless extended for good cause by the Chief Executive Officer of the Agency*) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 3. The Chairman, Vice Chairman, Executive Vice President and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to negotiate and enter into (A) the Agent Agreement, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, and (C) the PILOT Agreement; *provided, that*, (i) the rental payments under the Leaseback Agreement include

payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 4. 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 5. These Resolutions shall take effect immediately upon adoption.

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

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
John F. Andrews	[x]	[]	[]	[]
James L. Vincent	[x]	[]	[]	[]
James W. Fulmer	[x]	[]	[]	[]
Hollis Upson	[x]	[]	[]	[]
L. William Benton	[x]	[]	[]	[]
Wolcott T. Hinchey	[x]	[]	[]	[]
Charlie Cook	[x]	[]	[]	[]

The Resolutions were thereupon duly adopted.

EXHIBIT A

NOTICE DOCUMENTS

[Attached]



April 15, 2011

NOTICE LETTER

To: Chief Executive Officers of
Affected Tax Jurisdictions on Schedule A

Re: **Genesee County Industrial Development Agency d/b/a Genesee
County Economic Development Center: Alpina Foods LLC Project**

Ladies and Gentlemen:

On Tuesday, May 3, 2011, at 4:00 p.m. local time, at Batavia Town Hall, Conference Room, 3833 West Main Street Road, Batavia, New York 14020, the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency") will conduct a public hearing regarding the above-referenced project. Attached is a copy of the Notice of Public Hearing describing the project and the financial assistance contemplated by the Agency. The Notice has been submitted to *The Daily News* for publication.

You are welcome to attend such hearing at which time you will have an opportunity to review the project application and present your views, both orally and in writing, with respect to the project. We are providing this notice to you, pursuant to General Municipal Law Section 859-(a), as the chief executive officer of an affected tax jurisdiction within which the project is located.

Very truly yours,

GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY d/b/a
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER

Schedule A

Chief Executive Officers
of Affected Tax Jurisdictions

Genesee County Manager
Old Courthouse
7 Main Street
Batavia, New York 14020

Genesee County Legislature
Attn: Chairman
Old Courthouse
7 Main Street
Batavia, New York 14020

Town of Batavia
Attn: Town Supervisor
Batavia Town Hall
3833 West Main Street Road
Batavia, New York 14020

Batavia City School District
Attn: Superintendent
39 Washington Avenue
Batavia, New York 14020

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Article 18-A of the New York General Municipal Law will be held by the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency") on Tuesday, May 3, 2011, at 4:00 p.m. local time, at Batavia Town Hall, Conference Room, 3833 West Main Street Road, Batavia, New York 14020, in connection with the following matter:

Alpina Foods LLC (the "Company") has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition or retention by the Agency of fee title to or a leasehold interest in approximately 10-acres of land located in the Genesee Valley Agri-Business Park at 5142 State Route 5, in the Town of Batavia, Genesee County, New York (the "Land"), (ii) the construction and equipping on the Land of an approximately 28,000 square-foot specialty yogurt production/manufacturing facility and related improvements and infrastructure (the "Improvements"), (iii) the acquisition in and around the Land and the Improvements of certain items of equipment and other tangible personal property (the "Equipment," and collectively with the Land and the Improvements, the "Facility").

The Agency will acquire (or retain) title to, or a leasehold interest in, the Facility and lease the Facility back to the Company. The Company will operate the Facility during the term of the lease. At the end of the lease term, the Company will purchase the Facility from the Agency, or if the Agency holds a leasehold interest, the leasehold interest will be terminated. The Agency contemplates that it will provide financial assistance (the "Financial Assistance") to the Company in the form of sales and use tax exemptions and a mortgage recording tax exemption, consistent with the policies of the Agency, and a real property tax abatement or exemption.

A representative of the Agency will be at the above-stated time and place to present a copy of the Company's project Application (including a cost-benefit analysis) and hear and accept written and oral comments from all persons with views in favor of or opposed to or otherwise relevant to the proposed Financial Assistance.

Dated: April 19, 2011

By: GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY D/B/A
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER