

Motion By:

Seconded By:

J. Podi
J. Alocco

RESOLUTION

(University Ave. LLC / Black Button Distilling Project)
OSC Codes 2602-23-004A and 2602-23-005A

A regular meeting of the County of Monroe Industrial Development Agency (the "Agency"), was held at the Agency's Offices, 50 West Main Street, Rochester, New York 14614, on March 28, 2023 at 12:00 p.m.

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a certain Project more particularly described below.

RESOLUTION OF THE COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY ON MARCH 23, 2023, WITH RESPECT TO A CERTAIN PROJECT (AS DEFINED BELOW) BEING UNDERTAKEN BY UNIVERSITY AVE. LLC, OR A RELATED ENTITY FORMED OR TO BE FORMED (COLLECTIVELY, THE "COMPANY") AND 24LIGNE LLC D/B/A BLACK BUTTON DISTILLING, OR A RELATED ENTITY FORMED OR TO BE FORMED (COLLECTIVELY, THE "TENANT"); (ii) MAKING A DETERMINATION WITH RESPECT TO THE PROJECT PURSUANT TO SEQRA (AS DEFINED BELOW); (iii) APPOINTING THE COMPANY AND THE TENANT AS AGENTS OF THE AGENCY; (iv) AUTHORIZING FINANCIAL ASSISTANCE TO THE COMPANY AND THE TENANT IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, RENOVATION AND EQUIPPING OF THE PROJECT AND (B) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT ("PILOT AGREEMENT"); AND (v) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, PILOT AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 55 of the Laws of 1972 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, **UNIVERSITY AVE. LLC**, a New York limited liability company for itself or a related entity formed or to be formed (collectively, the "Company") and **24LIGNE LLC D/B/A/ BLACK BUTTON DISTILLING**, a New York limited liability company for itself or a related entity formed or to be formed (collectively, the "Tenant"), have requested that the Agency assist with a certain Project (the "Project"), consisting of: (A) the acquisition of a leasehold interest in a portion of a certain parcel of land located at 1344-1350 University Avenue in the City of Rochester, New York 14607 and all other lands in the City of Rochester where, by license or easement or other agreement, the Company or its designees are making improvements that benefit

the Project (collectively, the "Land"); (B) the renovation of approximately 31,000 square feet of space within the existing approximately 126,848 square-foot building located on the Land (the "Improvements") and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility") to be subleased to the Tenant for use as a distillery and retail tasting area; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, pursuant to Section 859-a of the Act, on Thursday, March 23, 2023, at 10:00 a.m., local time, at the Agency's offices, 50 West Main Street, Rochester, New York 14614, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance (as defined below) being contemplated by the Agency, whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, it is contemplated that the Agency will (i) negotiate a project agreement (the "Project Agreement"), pursuant to which the Agency will appoint the as its agent for the purpose of undertaking the Project, (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company and (iii) provide financial assistance (the "Financial Assistance") to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, renovation and equipping of the Facility and (b) a partial real property tax abatement structured through the PILOT Agreement; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transactions contemplated by the lease of the Facility; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project.

NOW, THEREFORE, BE IT RESOLVED by the County of Monroe Industrial Development Agency 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 application and other correspondence submitted by the Company to the Agency, 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) The Facility constitutes a "project", as such term is defined in the Act;
and

(c) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of undertaking the Project; and

(d) The action to be taken by the Agency will induce the Company to undertake the Project, thereby increasing employment opportunities in Monroe 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 civic, commercial, industrial, or manufacturing 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 plant or facility 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) Pursuant to SEQRA, the Project constitutes a "Type II Action" as said term is defined in SEQRA, and therefore no further action is required to be taken under SEQRA.

Section 2. The Agency hereby approves the cost/benefit report submitted by the Company listing the proposed cost/benefits of the Project.

Section 3. Subject to the Company and the Tenant executing respective Project Agreements 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 and the Tenant to proceed with the acquisition, renovation and equipping of the Project and hereby appoints the Company and the Tenant as the true and lawful agents of the Agency to acquire, renovate and equip the Facility, and such appointment includes the following activities as they relate to the construction, erection, completion, use, repair and maintenance of the Improvements and the purchase, use, lease, placement, installation, repair, maintenance and replacement of the Equipment, whether or not any materials or supplies described below are incorporated into or become an integral part of the Improvements or the Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, renovating, equipping, repairing and maintaining the Facility, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Improvements, Land or the Equipment, including all repairs, maintenance and replacement of all such property. Said agents are authorized to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agents for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and with the same validity as the Agency could do if acting on its own behalf. As agents of the Agency, the Company and the Tenant are authorized 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 and/or the Tenant

chooses; provided, however, the Project Agreements shall expire on **December 31, 2024** (unless extended for good cause by the Executive Director, Deputy Director, Chairman or Vice Chairman of the Agency) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered. The Executive Director, Deputy Director, Chairman or Vice Chairman of the Agency are authorized and directed to execute and deliver to said agent an appropriate letter on Agency letterhead describing the authority granted under this resolution.

Section 4. Based upon the representation and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves (i) 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 amount up to **\$381,225** which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$30,498**. The Agency agrees to consider any requests by the Company for increase 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) a partial real property tax abatement.

Section 5. Based upon the representation and warranties made by the Tenant in its application for financial assistance, the Agency hereby authorizes and approves (i) the Tenant 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 amount up to **\$2,600,000** which result in New York State and local sales and use tax exemption benefits not to exceed **\$208,000**. The Agency agrees to consider any requests by the Tenant for increase 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.

Section 6. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company and/or the Tenant, their respective 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 and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with 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 sales and use tax exemption benefits, the Company and/or the Tenant, their respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 7. The form and substance of the Lease Agreement, the Leaseback Agreement and the PILOT Agreement (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 8. The Executive Director, Deputy Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying 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 9. The Executive Director, Deputy Director, Chairman or Vice Chairman of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and PILOT Agreement are collectively referred to as, the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency (if any) to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Executive Director, Deputy Director, Chairman or Vice Chairman of the Agency shall approve, the execution thereof by the Executive Director, Deputy Director, Chairman or Vice Chairman of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 10. The Executive Director, Deputy Director, Chairman or Vice Chairman 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 such Executive Director, Deputy Director, Chairman or Vice Chairman of the Agency 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 11. This resolution shall take effect immediately.

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>
Jay Popli	X			
Troy Milne	X			
Lisa Bolzner	X			
Joseph Alloco	X			
Rhett King			X	
Norman Jones			X	
Ann L. Burr	X			

The Resolutions were thereupon duly adopted.

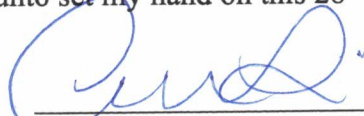
STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

I, the undersigned Executive Director of the County of Monroe Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the County of Monroe Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on March 28, 2023, 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 such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with Sections 103 and 104 of the New York Public Officers Law (Open Meetings Law) that all members of the Agency had due notice of the meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand on this 28th day of March, 2023.



Ana J. Liss, Executive Director