

RESOLUTION NO. 026, SERIES 2022

AN INDUCEMENT RESOLUTION OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE "ISSUER") GIVING PRELIMINARY APPROVAL TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A NEW MANUFACTURING FACILITY TO BE LOCATED AT 801 LOGAN STREET, LOUISVILLE, KENTUCKY, 40204; SUCH FACILITY TO BE OPERATED BY FERNCLIFF, LLC (THE "COMPANY"), AND USED FOR THE DISTILLING AND PRODUCTION OF WHISKEY AND OTHER SPIRITS ON SITE; GIVING PRELIMINARY APPROVAL TO THE ISSUANCE OF TAXABLE AND/OR TAX-EXEMPT INDUSTRIAL BUILDING REVENUE BONDS IN ONE OR MORE SERIES AT THE APPROPRIATE TIME TO PAY THE COST OF ACQUISITION, CONSTRUCTION AND EQUIPPING OF SAID PROJECT; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT BETWEEN THE ISSUER AND THE COMPANY; AND TAKING OTHER PRELIMINARY ACTIONS.

SPONSORED BY: COUNCIL MEMBER ARTHUR

WHEREAS, Ferncliff, LLC is a Kentucky limited liability company (the "Company") qualified to do business in the Commonwealth of Kentucky ("Kentucky"); and

WHEREAS, the Company proposes to undertake an industrial building project, within the meaning of the Industrial Buildings for Cities and Counties Act, as amended, Sections 103.202 to 103.285 of the Kentucky Revised Statutes (the "Act") consisting of (i) the acquisition, construction and equipping of a facility for the production of whiskey and other spirits on site, with related facilities that may include a tasting room, events center and gift shop, to be located at 801 Logan Street, Louisville, Jefferson County, Kentucky 40204, (ii) the reimbursement to the Company for costs already incurred and paid with respect to the foregoing, and (iii) the payment of certain costs of issuance (collectively the "Project"); and

WHEREAS, the acquisition, construction and equipping of the Project will create employment, increase manufacturing in Kentucky, result in investment within Louisville/Jefferson County Metro Government (the “Issuer”) and otherwise serve public purposes, as set forth in the Act; and

WHEREAS, the Issuer is authorized by the Act to issue taxable and/or tax-exempt industrial building revenue bonds and to loan the proceeds thereof to a company for the purpose of defraying the cost of the acquisition, construction and equipping of an industrial building project, all in furtherance of the purposes of the Act and for the public benefit of the residents and inhabitants of the region, upon such terms and conditions as the Act may require and as the Issuer may deem advisable; and

WHEREAS, based upon an estimate of the costs of the Project, the Company has requested that the Issuer at the appropriate time issue its taxable and/or tax-exempt industrial building revenue bonds (the “Bonds”) pursuant to the Act in an amount not to exceed \$10,000,000, such Bonds to be sold and delivered to a financial institution (the “Lender”) and the proceeds thereof loaned to the Company to defray the costs of the acquisition, construction and equipping of the Project, and the costs incident to the authorization, sale and issuance of the Bonds; and

WHEREAS, the Company has requested that the Issuer at the appropriate time enter into a bond purchase and loan agreement (the “Loan Agreement”) with the Company and the Lender, pursuant to which the Lender will purchase the Bonds, the Issuer will loan the proceeds of the Bonds to the Company and the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal,

premium, if any, and interest on the Bonds, together with all related fees in connection with such Bonds, as the same become due and payable; and

WHEREAS, the Company has requested that the Issuer give its preliminary approval to the Project and the issuance of the Bonds so that the Company can submit an application to the Kentucky Private Activity Bond Allocation Committee and, if successful, receive an allocation of “volume cap” pursuant to the Internal Revenue Code, which is a condition precedent to issuing the Bonds on a tax-exempt basis and thereby achieving the lowest possible interest rate for the Bonds; and

WHEREAS, it is deemed necessary and advisable that a Memorandum of Agreement between the Issuer and the Company be executed setting forth the agreements of the parties with respect to the financing of the Project, the issuance of the Bonds to defray the costs thereof, and the payments to be made by the Company with respect to the Project; and

WHEREAS, it is appropriate to provide the preliminary approvals set forth herein in order to assist the Company with the Project, all in furtherance of the purposes of the Act and for the public benefit of the residents and inhabitants of the region.

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (“COUNCIL”) AS FOLLOWS:

SECTION I: It is hereby found, determined and declared that (i) the recitals set forth in the preambles to this Resolution, which are incorporated in this Section by reference, are true and correct; (ii) the total amount of money to be provided through the issuance of the Bonds for the acquisition, construction and equipping of

the Project will not exceed \$10,000,000; (iii) the Company has represented that it has sufficient financial resources to construct the Project, to place it in operation and to continue to operate, maintain and insure the Project throughout the term of the Bond issue, meeting when due the obligations of the proposed Loan Agreement; and (iv) sufficient safeguards will be provided by the Loan Agreement to ensure that all money provided by the Issuer from the proceeds of the sale of the Bonds will be expended by way of direct expenditure or reimbursement, solely and only for the purposes of the Project as required by such applicable federal and state law.

SECTION II: It is hereby found, determined and declared that the cost of the acquisition, construction and equipping of the Project will be paid out of the proceeds of the Bonds and such contributions of the Company as may be necessary to complete the Project; **THAT NONE OF THE BONDS WILL BE GENERAL OBLIGATIONS OF THE ISSUER; THAT NEITHER THE BONDS NOR THE INTEREST THEREON CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF THE ISSUER, OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS; THAT THE BONDS, BOND PREMIUM, IF ANY, AND THE PAYMENT OF INTEREST THEREON SHALL BE SECURED AND PAYABLE SOLELY AND ONLY BY A PLEDGE OF AMOUNTS TO BE PAID BY THE COMPANY UNDER A LOAN AGREEMENT; AND THAT NO PART OF SAID PROJECT COSTS WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, REVENUES, ASSETS, PROPERTIES OR OTHER CONTRIBUTIONS OF THE ISSUER OR THE COMMONWEALTH OF KENTUCKY OR ANY OTHER POLITICAL SUBDIVISION THEREOF.**

SECTION III: No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement therein contained against any past, present or future officer, member, employee or agent of the Issuer, as such, either directly or through the Issuer, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees or agents as such shall be expressly waived and released as a condition of and consideration for the adoption of this Resolution and the issuance of the Bonds.

SECTION IV: In order to assure the financing of the Project in the Issuer with the resultant public benefits which will flow therefrom, it is deemed necessary and advisable that the Memorandum of Agreement hereinafter referred to be approved and executed for and on behalf of the Issuer. Accordingly, the Memorandum of Agreement by and between the Company and the Issuer substantially in the form and with the contents set forth in Exhibit A attached hereto and incorporated herein by reference is hereby approved and the Mayor is hereby authorized and directed to execute and deliver said Memorandum of Agreement, and the Metro Council Clerk is hereby authorized and directed to attest same.

SECTION V: The Company is hereby authorized to enter into such contracts and undertakings as may be required for the acquisition, construction and equipping of the Project, subject to any and all further approvals of the Issuer as may be required in connection with the final site and the construction of the Project (including, but not limited to, all necessary planning and zoning approvals,

construction permits and the like), and subject to any other approvals herein described.

SECTION VI: The Company has requested, and the Issuer hereby approves, the employment of Frost Brown Todd LLC as Bond Counsel. Bond Counsel is authorized and directed to take any other legal action necessary or appropriate in connection with the issuance of the Bonds. The Jefferson County Attorney is authorized and directed to assist Bond Counsel in any appropriate manner.

SECTION VII: No Issuer funds shall be expended on the Project, except such as are derived from Bond proceeds.

SECTION VIII: The Company has advised the Issuer that, to the extent the issuance of Bonds goes forward on a tax-exempt basis in an amount not to exceed \$10,000,000, the Company may use a portion of the proceeds of the Bonds to reimburse itself for preliminary costs related to the Project. As such, this Resolution constitutes a declaration of official intent to reimburse for purposes of Internal Revenue Code Regulation 1-150-2.

SECTION IX: This Resolution has been adopted in order to express the preliminary support of the Issuer for the Company moving forward with the Project and in order for the Company to submit an application for an allocation of Federal “volume cap” which is needed in order to issue the Bonds on a tax-exempt basis. The Issuer's commitment to issue the Bonds shall not be binding or final until the Issuer has enacted a further resolution or ordinance setting forth the terms on which such Bonds are to be issued.

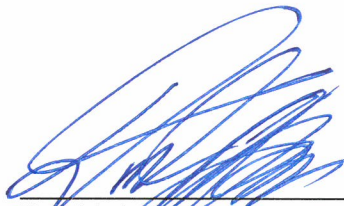
SECTION X: To the extent any resolution or part thereof is in conflict herewith, the provisions of this Resolution shall prevail and be given effect.

SECTION XI: This Resolution shall become effective upon its passage and approval or otherwise becoming law.

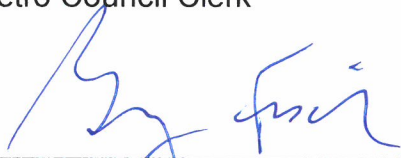
This Resolution was given a first reading at a duly convened meeting of the Council, held on the 17th day of February, 2022, and given second reading an approval at a duly convened meeting of the Council held on the 3rd, day of March, 2022.



Sonya Harward
Metro Council Clerk



David James
President of the Council



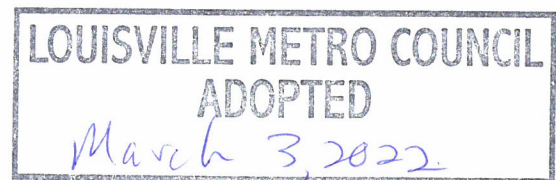
Greg Fischer
Mayor

03/08/2022

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney



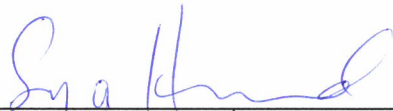
By: Karina M Ferguson

R-031-22 Inducement Resolution for MOA with Ferncliff LLC Relating to Industrial Revenue Bonds (If)

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Metro Council Clerk of the Louisville/Jefferson County Metro Government, and as such Clerk, I further certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by the Legislative Council of said Issuer at a duly convened meeting held on the 3rd day of March, 2022, signed by the Mayor and President of the Council, duly filed and recorded in my office, all as appears from the official records of said Legislative Council in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Issuer this 4th day of March, 2022.



Sonya Harward, (KYNP32529)
LOUISVILLE METRO COUNCIL CLERK

(SEAL)

EXHIBIT A

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT executed as of _____, 2022, by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** (the “Issuer”), a political subdivision of the Commonwealth of Kentucky, and **FERNCLIFF, LLC**, a limited liability company duly organized and existing under the laws of the Commonwealth of Kentucky (the “Company”).

Recitals

A. The Issuer is authorized by the Industrial Buildings for Cities and Counties Act (the “Act”), KRS 103.210 *et seq.*, to issue revenue bonds and use the proceeds thereof to finance the costs of acquisition of industrial facilities for use in the industrial operation of a private business enterprise, in order to accomplish the public purposes of promoting the economic development of the Commonwealth of Kentucky (the “Commonwealth”), relieving conditions of unemployment, and encouraging the increase of industry therein.

B. The Company, as borrower, has applied to the Issuer for the issuance of industrial building revenue bonds (the “Bonds”) of the Issuer, in order to finance (i) the acquisition, construction and equipping of a facility for the production of whiskey and other spirits on site, with related facilities that may include a tasting room, events center and gift shop, to be located at 801 Logan Street, Louisville, Jefferson County, Kentucky 40204, (ii) the reimbursement to the Company for costs already incurred and paid with respect to the foregoing, and (iii) the payment of certain costs of issuance (collectively the “Project”)

C. Pursuant to KRS 103.230(1), the Company has requested in writing of the Mayor of the Issuer that the sale of the Bonds be made privately upon a negotiated basis.

D. The Legislative Council of the Issuer has found and determined that the Project will tend to accomplish the public purposes of the Act by promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein.

E. The Issuer proposes to issue the Bonds to finance the cost of the Project and desires to authorize the Company to proceed with the Project and to be reimbursed out of the proceeds of the Bonds for any costs of the Project incurred prior to the issuance of the Bonds.

F. The Company has requested that the Issuer at the appropriate time enter into a loan agreement (the “Loan Agreement”) with the Company and the Lender, pursuant to which the Lender will purchase the Bonds, the Issuer will loan the proceeds of the Bonds to the Company and the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal, premium, if any, and interest on the Bonds, together with all related fees in connection with such Bonds, as the same become due and payable.

G. The Company has requested that the Issuer give its preliminary approval to the Project and the issuance of the Bonds so that the Company can submit an application to the

Kentucky Private Activity Bond Allocation Committee and, if successful, receive an allocation of “volume cap” pursuant to the Internal Revenue Code, which is a condition precedent to issuing the Bonds on a tax-exempt basis and thereby achieving the lowest possible interest rate for the Bonds. The Company and the Issuer agree that the Bonds will not be issued on a tax-exempt basis unless the Kentucky Private Activity Bond Allocation Committee awards an allocation of “volume cap” to the Project.

Section 1. Representations and Undertakings of the Company. The Company represents, undertakes, covenants, and agrees as follows:

A. The Company intends to use the Project at all times during the term of the aforementioned Loan Agreement or the sooner termination of such Loan Agreement, for the purposes hereinbefore indicated.

B. Subject to the Kentucky Private Activity Bond Allocation Committee’s award of “volume cap” and final approval of issuance of the Bonds by the Issuer, the Company will cause contracts to be entered into for, or will otherwise provide for, the acquisition and construction of the Project.

C. Prior to or contemporaneously with the delivery of any Bonds, the Company will enter into the Loan Agreement with the Issuer under the terms of which the Company will obligate itself to (i) undertake and complete the acquisition and construction of the Project, and (ii) to pay to the Issuer amounts sufficient in the aggregate to pay the principal of, interest on, and premium, if any, on the Bonds, as and when the Bonds shall become due and payable, such Loan Agreement to contain such other provisions as shall be agreed upon by the Issuer and Company.

D. The Company will protect and hold harmless the Issuer, all members of the Legislative Council of the Issuer, and all of the Issuer’s officers, employees, and agents from all expense and liability arising from or in connection with the Project and the Bonds.

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

Section 2. Undertakings of the Issuer. Subject to the fulfillment of the several conditions herein stated, the Issuer agrees as follows:

A. It will from time to time authorize or cause to be authorized the issuance and sale of the Bonds pursuant to the terms of the Act as then in force in an aggregate principal amount that is not expected to exceed \$10,000,000.

B. It will adopt or cause to be adopted such proceedings and authorize the execution of such documents as may be necessary or acceptable for (i) the authorization, issuance, and sale of the Bonds upon a negotiated basis, (ii) the acquisition and construction of the Project, and (iii) the Loan Agreement relating to the Project and the Bonds, all as shall be authorized by law and upon terms which shall be mutually satisfactory to the Issuer and the Company.

C. The aggregate payments stipulated under the Loan Agreement shall be sufficient (in addition to the covenants of the Company to properly maintain and insure the Project) to pay the principal, interest on and premium, if any, on all Bonds as and when the same become due and payable and to pay all other costs associated therewith.

D. It will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings as it may deem appropriate.

Section 3. General Provisions.

A. The law firm of Frost Brown Todd LLC, Louisville, Kentucky, is hereby designated as bond counsel in connection with the authorization, issuance and sale of the Bonds.

B. All commitments of the Issuer and the Company pursuant to this Memorandum of Agreement are subject to the condition that on or before one year from the date hereof (or such other date as shall be mutually satisfactory to the Issuer and the Company) the Issuer and the Company shall have agreed to mutually acceptable terms and conditions with respect to the aforementioned Loan Agreement and all other documents required in connection with the Bonds and the Project.

C. This Memorandum of Agreement, and the Resolution approving it, constitute the present intent of the Issuer to issue the aforementioned Bonds at a later date.

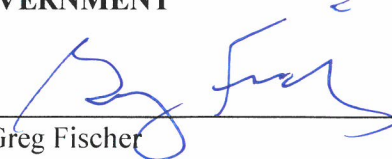
D. IT IS UNDERSTOOD AND AGREED THAT THE BONDS, WHEN AND IF ISSUED, SHALL NEVER BE A GENERAL OBLIGATION OF THE ISSUER BUT A SPECIAL LIMITED OBLIGATION PAYABLE SOLELY IN THE AMOUNTS PAYABLE UNDER A LOAN AGREEMENT AND OTHER REVENUES OF THE PROJECT. NEITHER THE ISSUER, THE COMMONWEALTH OF KENTUCKY, NOR ANY POLITICAL SUBDIVISION OF THE COMMONWEALTH OF KENTUCKY SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR INTEREST ON SUCH BONDS OR OTHER COSTS INCIDENT THERETO.

E. It is further understood and agreed that no recourse under or upon any obligation, covenant, acceptance or agreement contained in this Memorandum of Agreement, the Resolution or the Bonds or any related documents, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of this

Memorandum of Agreement and any related documents and the issuance of the Bonds.

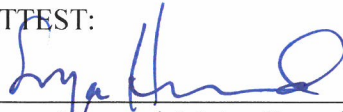
IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum of Agreement by their officers thereunto duly authorized on the day and year first above written.

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

By 
Greg Fischer
Mayor

[SEAL]

ATTEST:



Sonya Harward, Metro Council Clerk
(KYNP32529)

APPROVED AS TO FORM AND LEGALITY
Michael J. O'Connell, Jefferson County Attorney

By: _____
_____, an Assistant County
Attorney and Attorney for
Louisville/Jefferson County Metro Government

FERNCLIFF, LLC

By: _____

Its: _____