

RESOLUTION NO. _____, 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 _____ day of _____, 2022, and given second reading and approval at a duly convened meeting of the Council held on the _____, day of _____, 2022.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____

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 ____ day of _____, 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 ____ day of _____, 2022.

Sonya Harward,
LOUISVILLE METRO COUNCIL CLERK

(SEAL)