

**REVISED** RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING BREWFUN ENTERPRISES LLC (THE "LESSEE") AND BRAZEN BREWING LLC (THE "SUBLESSEE") TO ACQUIRE LAND AT THE PROPERTY LOCATED AT 5839 GENESEE STREET IN THE TOWN OF LANCASTER TO CONSTRUCT THEREON A NEW 6,000 SQUARE FOOT BREWERY AND TAPROOM FACILITY TO INCLUDE PARKING AND INFRASTRUCTURE FOR BREWERY PRODUCTION, TAPROOM AND OPERATION OF BREWERY, PLUS THE PURCHASE OF FIXTURES AND EQUIPMENT, AS AGENT FOR THE AGENCY FOR THE LEASE TO THE LESSEE AND/OR SUBLESSEE, AND TO AUTHORIZE THE LESSEE AND/OR SUBLESSEE TO RECEIVE BENEFITS INCLUDING SALES TAX ABATEMENT, MORTGAGE TAX ABATEMENT AND REAL PROPERTY TAX ABATEMENT THROUGH A PAYMENT IN LIEU OF TAX AGREEMENT.

WHEREAS, Brewfun Enterprises LLC (the "Lessee") and Brazen Brewing LLC (the "Sublessee") have entered into negotiations with officials of the Town of Lancaster Industrial Development Agency (the "Agency") with respect to the acquisition of an interest to construct a new 6,000 square foot Brewery and Taproom facility with associated infrastructures for brewery production, taproom and operation of brewery. located at 5839 Genesee Street in the Town of Lancaster, New York, and the purchase of fixtures and equipment in connection therewith. which facilities are to be acquired and/or leased by the Agency and leased back by the Agency to the Lessee and which fixtures and equipment are to be acquired by the Agency conveyed to the Sublessee through a Lease and Leaseback (the "Project"); and

WHEREAS, the Lessee and Sublessee have submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee and Sublessee, including the following: the Lessee and Sublessee desires Agency assistance to construct the Project with resultant continued employment in the Town of Lancaster; and it is anticipated that the Lessee and Sublessee will create and **employ 14 employees (more specifically 4 full time employees and 10 part time employees)** within two years after the Project is completed, the availability of financing and/or other assistance by the Agency will facilitate the Lessee's and Sublessee's ability to expand and upgrade Lessee's and Sublessee's business within the Town of Lancaster; the Lessee will continue to provide employment and substantial capital investment in the Town of Lancaster; and that Agency financing or other assistance is necessary to allow the Lessee and Sublessee to proceed with the Project in the Town of Lancaster; and

WHEREAS, the Agency held a public hearing on the Project on Tuesday, February 2,

2021 at 8:30 a.m., at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, pursuant to Section 859-A of the General Municipal Law; and

**WHEREAS, the Agency adopted an Inducement Resolution on February 2, 2021, which is now being amended to correct the employment projections and to clarify the benefits being given to the Applicant.**

WHEREAS, the Agency desires to further encourage the Lessee and Sublessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee and Sublessee to proceed with the Project in the Town of Lancaster;

**NOW, THEREFORE, THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:**

Section 1. The Agency hereby determines that the acquisition of the equipment, furnishing, and fixtures for the Project and the assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote, and is authorized by, and will be in furtherance of, the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee and Sublessee, as follows: (a) it would not have assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) that but for the availability of Agency financing or other assistance for the Project in such area, the Project would not be economically feasible; (c) there is anticipated to be an increase in the number of jobs at the facility (d) the Project will provide substantial employment and substantial capital investment; (e) the Project is necessary for the Lessee and Sublessee to maintain employment in the Town of Lancaster. (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the Agency entering into a lease and leaseback only transaction; (g) the Agency's assistance with the Project is an integral part of the Lessee's and Sublessee's plans to proceed in the Town of Lancaster; and (h) that the Project promotes economic development, enhances job opportunities, and will improve the general prosperity and economic welfare of the County of Erie.

Section 2. Notwithstanding the fact that the Project is anticipated to include a "taproom" for on-site consumption, the Agency finds that the primary purpose of the Project is manufacturing, rather than the making of retail sales to customers who visit the Facility, and less than one-third of the total project cost would be attributable to retail sales.

Section 3. The Agency hereby authorizes the Lessee and Sublessee to proceed with the Project with the estimated maximum cost to the Lessee of the Project not to exceed \$925,000.00, as herein authorized. The assistance by the Agency shall be financed through a

mortgage transaction with a lease and leaseback transaction between the Agency and the Lessee with further sublease to the Sublessee. Other than the mortgage tax abatement, sales tax abatement and real property tax abatement contemplated herein, no other financial assistance shall be provided unless and until it is further authorized.

Section 4. The Agency will undertake, as soon as particular terms and conditions of a Lease Agreement are determined to enter into a lease and leaseback with the Lessee and Sublessee.

Section 5. The Chairman, Vice Chairman, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee and Sublessee to assist in the acquisition and renovations of the Project.

Section 6. The Lessee is authorized to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in a combined amount up to **\$260,000.00** which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$23,000.00**. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 7. Any such action heretofore taken by the Lessee and/or Sublessee in initiating the acquisition and installation of the Project are hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee and/or Sublessee. By acceptance hereof, the Lessee and/or Sublessee agree to pay such expenses with respect to the Project and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof, if applicable.

Section 9. The Agency has determined that this Project is eligible for the **485-b equivalent 10 year payment in lieu of taxes (PILOT)**.

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. This resolution is also subject to (a) construction of space suitable for the purpose authorized herein, (b) provision for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 12. The execution and delivery of an Agent Agreement and lease/leaseback between the Agency and the Lessee, substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman or Secretary are hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. The Agency hereby determines, based upon information furnished to the Agency by the Applicant and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law ("SEQR"), as the contemplated actions are Type II actions that have been determined by SEQR not to have a significant adverse effect on the environment.

Section 14. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's and Sublessee's purposes or needs or the extent to which proceeds derived from the sale of any bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. The Lessee and Sublessee are satisfied that the Project is suitable and fit for Lessee's and sublessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee and Sublessee hereby agree to indemnify and hold the Agency harmless from any such loss, damage or expense.

Section 15. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Lessee and/or Sublessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should

any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null and void and of no further force and effect, and the Agency shall have no liability to the Lessee and Sublessee hereunder or otherwise.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. The provisions of the new Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 18. The provisions of the Town of Lancaster Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance shall be applicable to this Project.

Section 19. This revised resolution shall take effect immediately.

ADOPTED: March 9, 2021

ACCEPTED BY:

BREWFUN ENTERPRISES, LLC

By: 

Name: Herbert R. Schaub

Title: Member

BRAZEN BREWERY, LLC

By: 

Name: Andrew K. Schaub

Title: Member