

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

BOARD OF DIRECTORS

Meeting Minutes February 12, 2015

8:00 AM – IDA Conference Room

1.0 Public Hearing

Present – Chairman – Thomas Sy, Vice Chairman – Eric Connor, Treasurer – Sallie Reed, Secretary – Marc Smith, Directors – Darlene DiCarlo and Robert Runk, and Legal Counsel - Brian Seaman, Administrative Director – David Kinyon, Kevin and Kelly Krupski - NY Beer Project, and Thomas Prohaska – Buffalo News, Kaley Lynch - Lockport Union-Sun & Journal; **Absent:** Director – Thomas Weeks.

Mr. Sy called the public hearing to order at 8:00 AM, and called on IDA Attorney Brian Seaman to read the Advertisement for the Public Hearing on the Application for IDA Assistance submitted by K Squared Properties, LLC and New York Beer Project, LLC. Mr. Kinyon reported that no written communications had been received regarding the proposed project. Mr. Runk inquired regarding the proposed timeline for the project. Mr. Krupski stated that the project is scheduled to open in October, and that he and Mrs. Krupski have received many favorable comments. In response to a question from Mr. Seaman, Mr. Krupski explained that the closest microbreweries are currently in Wilson and Barker; the Buffalo Brew Pub in Amherst differs from the New York Beer Project in that none of the Buffalo Brew Pub's product is available for sale off-site. There being no further questions or comments, Mr. Sy closed the public hearing.

2.0 General Business

Chairman Thomas Sy then convened the regular meeting of the Town of Lockport Industrial Development Agency to order at 8:07 AM.

2.2 Secretary's Report

On a motion by Mr. Smith seconded by Ms. Reed, the Board voted to approve the Minutes from the January 15, 2015 Board of Directors Meeting.

2.3 Treasurer's Report

Ms. Reed reviewed the financial reports for the period ending January 31, 2015. Following a discussion of the financial reports, on a motion by Mr. Connor seconded by Mr. Runk, the Board voted to approve the Financial Statements as presented. On a motion by Ms. Reed seconded by Ms. DiCarlo, the Board voted to approve the invoices and bills as presented. Ms. Reed further reported that as a result of efforts to place the Agency's funds in a depository that would not impose fees in excess of interest earned, it appears that M&T Bank will require a \$1 million minimum checking account balance with the balance of funds in a money market account with no fees.

3.0 Administrative Director's Report

In addition to his written report, Mr. Kinyon elaborated on the NYS Economic Development Council Conference, noting the presentations regarding Ethics and conflicts of interest. Of particular concern are provisions in the Governor's Executive Budget that would require IDAs to obtain State approval prior to including abatement from the State portion of sales tax as part of IDA incentive packages. Mr. Kinyon, Ms. Donovan and Ms. Carter have begun work on the

2014 PARIS Report, which must be submitted to the State Authorities Budget Office by March 31, 2015. Lumsden and McCormick will begin the Annual Audit on March 2. Mr. Kinyon also distributed a copy of a recent newspaper report regarding the STAMP Project in Genesee County. The State Department of Environmental Conservation has provided formal approval of the Drainage Plan for the east side of IDA Park Drive.

4.0 Old Business

5.0 New Business

5.1 New York Beer Project

RESOLUTION OF THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY (THE AGENCY) AUTHORIZING K SQUARED PROPERTIES, LLC AND/OR NEW YORK BEER PROJECT, LLC OR A RELATED ENTITY (THE LESSEE) TO ACQUIRE A PREMISES KNOWN AS 6933 SOUTH TRANSIT ROAD (FORMALLY 1020 SOUTH TRANSIT ROAD), TOWN OF LOCKPORT, NEW YORK (TAX MAP NO. 167.01-1-10.2) AND TO CONSTRUCT THERON A BUILDING AND FACILITY CONSISTING OF AN APPROXIMATELY 17,600 SQUARE FOOT BUILDING AND TO UTILIZE SAID PREMISES AS A BEER PRODUCT MANUFACTURING FACILITY (BREWERY) AND FOR RETAIL AND WHOLESALE DISTRIBUTION OF PRODUCT, AND FOR AN ASSOCIATED GASTROPUB, TASTING ROOMS AND RESTAURANT WITH BANQUET FACILITIES, AND TO ACQUIRE AND INSTALL MACHINERY AND EQUIPMENT REQUIRED IN CONNECTION THEREWITH AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE AND SECURITY AGREEMENT AND THE ERECTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH

WHEREAS, K Squared Properties, LLC and New York Beer Project, LLC (Lessee) has entered into negotiations with the Town of Lockport Industrial Development Agency (the Agency) for assistance to construct a facility located at 6933 South Transit Road, Lockport, New York, which will be a building and grounds consisting of approximately 17,600 square feet and improved grounds. The Lessee will utilize said premises as a beer product manufacturing facility (brewery) and for retail and wholesale distribution of product, and for an associated gastropub, tasting rooms and restaurant with banquet facilities, and for acquisition and installation of machinery and equipment required in connection therewith, (the "Project"), and the lease of the project to the Lessee; and

WHEREAS, the Lessee has 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, including the following: the Lessee desires Agency financing to construct the Project for beer product manufacturing (brewery), sales, and wholesale and retail distribution of product; and for an associated gastropub, tasting room, and restaurant with banquet facilities purposes

with resultant increase in employment in the Town of Lockport; the Lessee will employ approximately twenty-one full-time employees and approximately thirty-five part-time employees after the project is fully completed; that but for the availability of financing and/or other assistance by the Agency, the Lessee and any Sublessee would not locate the project within the Town of Lockport, there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lockport, and the project will provide substantial increased employment and substantial capital investment; if Agency financing or other assistance is disapproved, the Lessee and the Sublessee would likely not proceed with the project; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee and the Sublessee to proceed with the project in the Town of Lockport; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

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

WHEREAS, the Agency has determined that the project be limited to the parcel depicted and known as 6933 South Transit Road, Town of Lockport, New York (formerly 1020 South Transit Road) (Tax Map No. 167.01-1-10.2); and

WHEREAS, to finance the project the Agency intends to execute and deliver a mortgage to allow for the project as aforesaid,

NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and installation of the Project and the financing or other 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 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) but for the availability of Agency assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; and (d) the Project will provide substantial employment and substantial capital investment. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that (e) the Project as represented is reasonably necessary to provide the purposes of the Act, and (f) the Project is an integral part of the Lessee's plan to proceed with the Project in the Town of Lockport.

Section 1(a). The Agency further finds and determines pursuant to General Municipal Law Section 862(2)(a),(b)and(c) that:

i. The facilities or property are primarily used in making retail sales to customers who personally visit such facility as defined therein;

ii. Notwithstanding, the provisions of General Municipal Law 862(a), the Agency finds that the predominant purpose of the Project is to make available goods and services which would not but for the Project be reasonably accessible to the residents of the Town of Lockport because there is a lack of reasonably accessible retail trade facilities offering such goods and services;

iii. This finding is based upon evidence contained in the Application of the applicant and evidence presented at the public hearing that there are no other facilities of the type of this project in the Town of Lockport, and that other microbreweries with associated restaurant, tasting rooms and retail sale of on premise made beer products with banquet facilities are not reasonably accessible; the closest similar facility is remotely located in Wilson, New York is over 19 miles from the Project facility and no such facilities are located in adjacent Towns or Cities in Niagara or Erie County;

iv. The Agency further finds that undertaking the Project will serve the public purpose of Article 18-A of the General Municipal Law by increasing the overall number of permanent, private sector jobs in the State of New York.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized, which Project will be financed through mortgage financing or through a lease only transaction, said mortgage financing in the principal amount not to exceed \$3,700,000.00 and from the Agency and the Lessee or its successor to a bank to be designated, its agents or assigns, (the "Lender") UCC-1 Financing Statements to the Lender and a Lease Agreement between the Agency and the Lessee each in substantially the same form approved by the Agency for prior transactions or in form approved by the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to execute, acknowledge and deliver each such Instrument and the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to affix the seal of the Agency on each such instrument, as applicable, and attest the same. All other provisions of the Resolution relating to the mortgage financing and the Lease Agreement, shall apply to such Instruments.

All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and contained in the mortgage financing, UCC-1 Financing Statements and the Lease Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement, as the case maybe, shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation or agreement herein contained or contained in mortgage financing, the UCC-1 Financing Statements and the Lease Agreement or any other agreement or instrument executed and delivered by the Agency in furtherance of this resolution shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agency or employee of the Agency in his individual capacity and neither the members of the Agency or any officer executing the mortgage financing, the UCC-1 Financing Statements and the Lease Agreement shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

The Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all agreements, 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 the mortgage financing, the UCC-1 Financing Statements and the Lease Agreement.

Section 3. 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 or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, 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 4. The Agency will undertake, as soon as it is furnished with sufficient information as to the particular amount, interest rate, maturities, redemption and other terms to permit mortgage financing, to use its best efforts to proceed, subject to agreement among the Agency, the Lessee and mortgage financing, as to terms in all agreements to be entered in to with respect to the Project, mortgage financing to finance the Project in an amount not to exceed \$3,700,000.00, if mortgage financing is utilized, or in the alternative undertake as soon as particular terms and conditions of a Lease Agreement are determined enter into a lease only transaction.

Section 5. The Chairman, Administrative Director, Treasurer of the Agency and other appropriate officials or Board Members 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 to assist in acquisition and construction of the Project.

Section 6. The Lessee is authorized to construct the building and appurtenances located at 6933 South Transit Road, as needed and acquisition and installation of machinery and equipment required in connection therewith and to advance such funds as may be necessary to

accomplish such purposes, subject to reimbursement for all qualifying expenditures out of the proceeds of the mortgage financing. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, or Administrative Director may deem necessary in order to accomplish the above.

Section 7. Any such action heretofore taken by the Lessee in construction of the Project is hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the mortgage financing, or in the event such proceeds are insufficient after payment of other costs of the Project or if mortgage financing does not take place due to inability to consummate the transaction herein contemplated (other than by fault of the Agency), shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses 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.

Section 9. This resolution is subject to Agency approval of payment in lieu of taxes agreement for municipal services. Should the Lessee or any of its subtenants vacate the premises prior to the expiration of the arrangement for payment in lieu of taxes, the Lessee shall use its best efforts to obtain new subtenants, so that no application will be necessary for reduction in assessed value, it being the intent of the Agency that payments in lieu of taxes will be maintained at the level called for by its standard policy at all times while it holds title to the Project. The PILOT shall be for a period of 10 years with payments in lieu of taxes in accordance with an initial payment of 20% of the amount of Taxes and with incremental increases in percentage of 5% per year.

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall continue to be effective (except with respect to matters contained in Section 7 hereof) if prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency shall adopt a resolution authorizing the mortgage, to finance the costs of the Project as herein authorized or enters into a lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. This resolution is also subject to (a) the construction of space suitable for the purpose authorized herein (b) approval by the Agency of the Sublease including any information that the Agency deems necessary to verify compliance with the New York State Industrial Development Agency Act and (c) provision in any Sublease 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 a lease or an amendment to the existing lease between the Agency and the Lessee, being substantially in the form approved by the Chairman,

Administrative Director or any member of the Board of Directors is 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 Lessee 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, as the contemplated actions will not have a significant adverse effect on the environment.

Section 14. The mortgage financing to be issued shall not be exempt from Federal Income Taxation. Therefore, this resolution is not subject to compliance with the provisions of Section 103 of the Internal Revenue Code of 1954 as amended (the "Code") or to an appropriate allocation under the State law pursuant to the Deficit Reduction Act of 1984.

Section 15. 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 purposes or needs or the extent to which proceeds derived from mortgage financing, will be sufficient to pay the cost of the construction, renovation and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for lessee'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 property 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 hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

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

Section 17. This resolution shall take effect immediately.

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

ERIC W. CONNOR AYE

DARLENE S. DICARLO AYE

SALLIE P. REED	<u>AYE</u>
ROBERT M. RUNK	<u>AYE</u>
MARC R. SMITH	<u>AYE</u>
THOMAS A. SY	<u>AYE</u>
R. THOMAS WEEKS	<u>ABSENT</u>

The Resolution was thereupon declared duly adopted on the 12th day of February, 2015.

State of New York

ss:

County of Niagara

I, the undersigned Chairman of the Town of Lockport Industrial Development Agency, DO HEREBY CERTIFY that (i) I have compared the annexed extract of the minutes of the meeting of the Town of Lockport Industrial Development Agency (the "Issuer") held on _____, 2015, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Issuer and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I, FURTHER CERTIFY that (i) all members of the Issuer had due notice of such meeting, (ii) pursuant to Section 99 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 99, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer this ____ day of _____, 2015.

THOMAS A. SY, Chairman

On a motion by Ms. Reed seconded by Ms. DiCarlo, the Board voted to enter Executive Session for the purpose of consultation with attorney. On a motion by Mr. Smith seconded by Mr. Runk, the Board voted to leave Executive Session.

6.0 Adjournment

On a motion by Mr. Connor seconded by Mr. Runk, the Board voted to adjourn at 8:56 AM.

Respectfully submitted,
Marc R. Smith, Secretary