

RESOLUTION NO. 24-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOMERSET, KENTUCKY AUTHORIZING AND APPROVING THE ISSUANCE OF TAXABLE INDUSTRIAL BUILDING REVENUE BONDS, IN ONE SERIES, TO BE ISSUED IN AN AGGREGATE COMBINED PRINCIPAL AMOUNT NOT TO EXCEED \$120,000,000, THE PROCEEDS OF WHICH SHALL BE USED TO FINANCE THE ACQUISITION, CONSTRUCTION, INSTALLATION, IMPROVEMENT, AND EQUIPPING OF AN INDUSTRIAL BUILDING FACILITY, OR FACILITIES, TO BE LEASED TO HORSE SOLDIER FARMS LLC, A FLORIDA LIMITED LIABILITY COMPANY, ITS AFFILIATES, SUCCESSORS, AND/OR ASSIGNS; AUTHORIZING AND APPROVING A LEASE AGREEMENT, BOND PURCHASE AGREEMENT AND SUCH OTHER RELATED DOCUMENTS, CERTIFICATES, AND AGREEMENTS; INCLUDING RELATED LENDER DOCUMENTS SUCH AS A FEE JOINDER TO THE LENDER'S MORTGAGE, COLLATERAL ASSIGNMENTS AND AUTHORIZING SUCH OTHER ACTIONS, NECESSARY OR REQUIRED, RELATED TO THE ISSUANCE OF THE BONDS AND THE FINANCING OF THE PROJECT.

WHEREAS, the City of Somerset, Kentucky (the "City" or "Lessor"), pursuant to the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes ("KRS" and the "Act"), is authorized to issue industrial building revenue bonds, in one series, for the purpose of financing industrial building facilities, as defined in the Act, such bonds being payable from lease payments generated from the leasing the industrial building facilities; and

WHEREAS, the issuance of industrial building revenue bonds, pursuant to the Act, promotes economic development within the Commonwealth of Kentucky (the "State") and the City, including the creation of new jobs, relieving conditions of unemployment, and encouraging the increase of industry in the State and the City, which constitutes a valid public purpose; and

WHEREAS, Horse Soldier Farms LLC, a Florida limited liability company organized and existing under the laws of Florida, and authorized to transact business in the Commonwealth of Kentucky, its affiliates, successors, and/or assigns (the "Company" or "Lessee"), proposes that the City, pursuant to the Act, assist the Company in financing the costs of all real and personal properties, including Equipment, constituting new industrial building facilities as defined by the Act, located within the geographical boundaries of the City to be utilized by the Company for a bourbon distillery and related facilities; and

WHEREAS, pursuant to the Act, the governing body of the City ("City Council") desires to authorize the issuance of its industrial building revenue bonds, in one series, at the request and with the approval of the Company, in an aggregate principal amount not to exceed \$120,000,000, for the purpose of financing (i) the costs of all real and personal properties, including Equipment, constituting new industrial building facilities, located within the geographical boundaries of the City to be utilized by the Company in the construction and operation of a manufacturing facility for the production of bourbon and related facilities, located within the geographical boundaries

of the City, (ii) the payment of accrued and/or capitalized interest, if any, due on the Bonds; and, (iii) the payment of Cost of Issuance as defined herein, for the issuance of the Bonds (herein the "Project"); and

WHEREAS, pursuant to the provisions of KRS §103.220 of the Act, the Company has made a request in writing, that the sale of the industrial revenue bonds, hereinafter identified and authorized, shall be made upon a negotiated basis; and

WHEREAS, upon the issuance and delivery of the Bonds, the proceeds from the sale of the Bonds will be used for the purpose of financing the acquisition, construction, installation, improvement, and equipping of the Facility, requiring a Lease Agreement, an Agreement in Lieu of Taxes, ("PILOT Agreement"), Bond Purchase Agreement, and such other Bond Documents as relates to the issuance and delivery of the Bonds.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOMERSET, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

Section 1. Definitions. The following terms, not otherwise defined herein, shall have the following meanings:

"Bond" or **"Bonds"** means the "City of Somerset, Kentucky Taxable Industrial Revenue Bonds (Horse Soldier Farms Project)" to be issued to finance the acquisition, construction, installation, improvement, and equipping of the Project, in an aggregate amount not to exceed \$120,000,000.

"Bond Certificate(s)" (sometimes referred to herein as "Bond" or "Bonds") means the document evidencing the Bonds, including any Additional Bonds, and establishing the term of the Bonds or Additional Bonds, interest rate, fixed or variable, redemption provisions, and such other provisions as may be required by the Act, the City, and/or the Bondholder.

"Bond Counsel" means Keating Muething & Klekamp PLL, Cincinnati, Ohio. .

"Bond Documents" means the Bonds, Lease Agreement, PILOT Agreement, Bond Purchase Agreement, Quitclaim Deed, Bond Certificate(s), any bill of sale, and/or all other documents and/or certificates necessary or required, to evidence the issuance of Bonds and financing of the acquisition, construction, installation, improvement, and equipping of the Facility, including bond purchase agreement, if required by the Bondholder and/or the Company and relating to the purchase and sale of the of Bonds and any security agreements, including a mortgage, if required.

"Bondholder" means the owner or owners of the Bonds, acquired pursuant to a private negotiated sale, and identified in the Bonds, which Bondholder may be the Company or an affiliate thereof.

"City" means the City of Somerset, Kentucky.

"Company Counsel" means _____.

“Cost of Issuance” means those expenses incident to the issuance of the Bonds, including, but not limited to, Bond Counsel fees, Company Counsel fees, publication cost, and any other cost associated with the issuance and delivery of the Bonds and the Project.

“Equipment” means all equipment and tangible personal property, whether attached to the Project or acquired separately by the Lessee and used at the Facility and which constitutes a part of the Project and is subject to the Lease Agreement and as listed or reported by the Lessee on the Miscellaneous Worksheet for personal property acquired with proceeds from the issuance of Industrial Revenue Bonds attached to Kentucky’s Tangible Personal Property Tax Return, Form No. 62A500, as revised.

“Facility” or **“Facilities”** means a manufacturing facility for the production of bourbon and related facilities, including real property improvements, fixtures, personal property and/or Equipment, which constitutes an Industrial Building, to be acquired, constructed, installed, improved, and equipped by Company, located within the geographical boundaries of the City, owned by City and leased to the Company.

“Industrial Building” or **“industrial building”** shall have the same meaning ascribed to such term in KRS §103.200 and specifically, KRS §103.200(1)(a).

“Lease Agreement” or **“Lease”** means the agreement, including any permitted amendments or supplements thereto, by and between the City, as lessor, and the Company, as lessee, providing for the lease of the Facility and Facility Site.

“PILOT Agreement” means the agreement, including any permitted amendments or supplements thereto, by and between the Company and the City providing for certain annual payments in lieu of *ad valorem* property taxes as relates to the Facility and Facility Site, dated June 12, 2023

“Quitclaim Deed” means the deed or deeds to the Facility Site from the Company, as grantor, to the City, as grantee, without general or special warranties of title and with reversionary interest in favor of the Company conveying legal title to the Facility Site prior to, or simultaneous with, the issuance and delivery of the Bonds to finance the Project, in compliance with KRS §103.285.

All other defined terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Bond Documents or in the Act.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms “hereof”, “hereby”, “hereto”, “hereunder”, and similar terms means this Resolution.

Section 2. Determination and Findings of City Council. For the purposes set forth in the preamble, which is incorporated as a part hereof, and pursuant to the Act, the City acting by and through its City Council hereby finds and determines as follows:

(A) The Facility will be located within the geographical boundaries of the City and constitutes an Industrial Building as defined by the Act.

(B) The financing of the Facility and Project is consistent, and complies with the provisions of the Act.

(C) The Facility consists of real property, real property improvements, fixtures, and personal property and/or Equipment, to be used in an activity, business or industry as described and set forth in the Act, specifically, KRS §103.200(1)(a).

(D) The Facility is to be acquired, constructed, installed, improved, equipped, and financed with the proceeds of the Bonds, issued at the request, and with the approval, of the Company, pursuant to the provisions of the Act.

(E) The acquisition, development, and construction of the Facility and the funding of the Project, creates long-term economic growth, will encourage the expansion of industry and commerce within the City, in accordance with the public policy of the State for economic development, creates new jobs, relieves conditions of unemployment, and promotes economic development within the State and the City.

(F) The City accepts conveyance of the Facility Site from the Company subject to the terms and conditions contained in the instruments of conveyance and in the Lease Agreement with respect thereto.

Section 3. Authorization of Bonds. The City hereby authorizes the sale, issuance, execution, and delivery, pursuant to the authority of the Act and this Resolution, “**City of Somerset, Kentucky Taxable Industrial Building Revenue Bonds (Horse Soldier Farms Project)**” or other identifying name, in one or more series, denominations, and dated as determined by the City, with the consent of the Company, at the request, and with the approval, of the Company, for the purposes of financing the Project. The Facility Site and Facility will be leased to the Company, in accordance with the provisions of a Lease Agreement. The Bonds shall be designated “Taxable Industrial Building Revenue Bonds” or such other name which accurately describes the Bonds, to be issued for the Project, in one or more series, denominations, and dated, with the consent and approval of the Company, without further action of the City Council. The aggregate principal amount of all the Bonds shall not exceed \$120,000,000.

Section 4. Terms, Form, and Execution of the Bonds. The Bonds shall be issued for a twenty (20) year term in one denomination, shall be numbered, dated, and payable in substantially the form set forth in **Exhibit “A”** attached hereto, with such amendments, variations, omissions, and insertions as permitted by the Act and this Resolution, with approval from the Company and the Bondholder, and approved by Bond Counsel, without further action of the City Council.

The Bonds shall mature as provided therein, and/or pursuant to the Bond Documents, and have such terms, bear such interest, fixed or variable, and be subject to optional and/or mandatory redemption, as provided therein. The City Council hereby fixes and establishes the interest rate in effect from time to time on of the Bonds in the manner determined by the Company and the Bondholder pursuant to a private negotiated sale. The term for the Bonds shall be determined by the Company and the Bondholder, subject to early redemption as provided therein, or in any Bond Document, which term shall not exceed the term of years set forth in

KRS §103.220(1). The Bonds will be secured by a non-foreclosable statutory mortgage lien on the assets financed thereby as provided by KRS § 103.250.

The Bonds shall be executed on behalf of the City by the manual or facsimile signature of the Mayor and attested by the City Clerk. Any amendments to the Bond Documents shall be conclusively evidenced by execution by the Mayor, which execution and approval are hereby authorized, without further action of the City Council.

In case any officer whose signature shall appear on any of the Bond Documents shall cease to be such officer before the issuance or delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time.

Section 5. Private Negotiated Sale of the Bonds. At the request of the Company, as lessee, the sale of the Bonds shall be made privately, upon a negotiated basis, to the Bondholder. The Mayor and City Clerk are authorized and directed to make on behalf of the City the necessary arrangements to establish the date, location, procedure, and conditions for the delivery of the Bonds to the Bondholder, and to take all steps necessary to affect the due execution and delivery, to the Bondholder, the Bonds under the terms of the Act, this Resolution, and the Bond Documents.

Section 6. Authorization of the Lease Agreements, PILOT Agreement, Bond Purchase Agreement, Bond Documents, and Other Bond Documents, to be Executed by the City. The Mayor and City Clerk are authorized and directed to execute, acknowledge, and deliver, in the name and on behalf of the City, as lessor, a Lease Agreement, substantially in the form attached hereto as **Exhibit "B"**. The Lease Agreement may be amended, as required by the Company, with approval from the Mayor and Bond Counsel, without further action of the City Council, provided such amendments are not inconsistent with the provisions of this Resolution and comply with the provisions of the Act. Such amendments shall be conclusively evidenced by execution by the Mayor, which execution and approval are hereby authorized, without further action of the City Council.

The Bonds are issued subject to compliance with the PILOT Agreement dated June 12, 2023, attached as **Exhibit "C"**. The PILOT Agreement may be amended as required, and agreed to, by the Company, with approval from the Mayor, Bond Counsel, and the City Attorney, without further action of the City Council, provided such amendments are not inconsistent with the provisions of the Act and this Resolution. Such amendments shall be conclusively evidenced by execution by the Mayor, which execution and approval are hereby authorized, without further action of the City Council.

The Mayor and City Clerk are authorized and directed to execute, acknowledge, and deliver, in the name and on behalf of the City, a Bond Purchase Agreement, substantially in the form attached hereto as **Exhibit "D"**. The Bond Purchase Agreement may be amended as required, and agreed to, by the Company, with approval from the Mayor, Bond Counsel, and the City Attorney, without further action of the City Council, provided such amendments are not inconsistent with the provisions of the Act and this Resolution. Such amendments shall be conclusively evidenced by execution by the Mayor, which execution and approval are hereby authorized, without further action of the City Council.

In the event that the Lessee shall request, in writing, that the City deliver a mortgage for the purpose of securing any financing that will be used to purchase the Bonds, either before or after the Bonds have been issued and delivered, and with the approval of the Bondholder, the Mayor and City Clerk are authorized and directed to execute, acknowledge, and deliver, in the name and on behalf of the City, such mortgage, as may be required by the Lessee, with the approval and consent of the Bondholder, without further action of the City Council, provided such mortgage is not inconsistent with the provisions of this Resolution, complies with the provisions of the Act, and does not create a liability of the City. Such mortgage shall be conclusively evidenced by execution by the Mayor, which execution and approval are hereby authorized, without further action of the City Council.

The Bond Documents shall be prepared by Bond Counsel, in the usual and customary form, which shall be approved by the Mayor, City Attorney, the Company, and the Bondholder, provided that the terms and provisions of the Bond Documents are not inconsistent with this Resolution or the Act and do not create a liability of the City. The approval of the Bond Documents shall be conclusively evidenced by their execution by the Mayor, which execution and approval are hereby authorized, without further action of the City Council.

The Mayor and City Clerk are each hereby separately authorized to execute all other the Bond Documents, and other commercially reasonable documents the lender providing financing for the Project may require, including, but not limited to, a fee-joinder to the mortgage, collateral assignment of the Bonds and Bond Documents, and to take any and all actions and to execute such financing statements, assignments, certificates, deeds of conveyance, and other instruments that may be necessary or appropriate, in the opinion of Bond Counsel, in order to affect the issuance of the Bonds, the intent of this Resolution, and the financing and leasing of the Facility Site and Facility, including execution, if needed, of documents relating to an energy assessment being assessed by the County of Pulaski, Kentucky.

Section 7. Assignment of Lease and Pledge of Lease Payments. The City hereby authorizes and approves the assignment of the Lease Agreement, without recourse to the City, to the Bondholder, which assignment shall be evidenced by this Resolution, the Lease Agreement, Bond Purchase Agreement, and/or such other documents or agreements required by Bond Counsel, the Company, and/or the Bondholder, and approved by the Mayor and the City Attorney, without further action of the City Council.

Subject to Sections 8 and 9 of this Resolution and KRS §103.230(2), the City will, solely from the payments due under the Lease Agreement (herein "**Lease Payments**"), pay, or cause to be paid, the principal, interest, and premium, if any, due on the Bonds, on the dates, at the places, and in the manner provided by the Bondholder. The City hereby pledges the Lease Payments to the Bondholder, as collateral security for payment of the principal, interest, and premium, if any, due on the Bonds. Further, with the assignment of the Lease Agreement and Lease Payments to the Bondholder, as set forth herein, the City will not receive Lease Payments, instead same being paid, or allocated, to the Bondholder for the payment of the principal, interest and premium, if any, due on the Bonds.

Section 8. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance, or agreement contained in this Resolution, in the Bond, in the Bond

Documents, including any other lender or financing documents and/or certificates required by Bond Counsel, the Bondholder, and/or the Lessee, to evidence the issuance of the Bonds, the financing of the Project, and providing collateral security for the payment of the Bonds, or under any judgment obtained against the City 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 of the City as such, past, present, or future, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof, or for or to any holder of the Bonds, or otherwise, of any sum that may be due and unpaid by the City upon 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 City or any receiver thereof, or for or to the Bondholder, or any holder of the Bonds, or otherwise, of any sums that may remain due and unpaid on the Bonds, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Bond Documents.

Section 9. No Debt or Tax Pledge. THE BONDS, OR ANY SERIES THEREOF, DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE. THE BONDS, OR ANY SERIES THEREOF, SHALL BE PAYABLE SOLELY FROM THE REVENUES AND SECURITY INTERESTS PLEDGED FOR THEIR PAYMENT, AND NEITHER MONEYS RAISED BY TAXATION NOR ANY OTHER GENERAL OR SPECIAL REVENUES OF THE CITY SHALL BE OBLIGATED OR PLEDGED FOR THE PAYMENT OF PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE BONDS, OR ANY SERIES THEROF.

Section 10. Establishment of Funds. The City is authorized to established such funds as may be requested by the Company and/or Bondholder, including, but not limited to a (i) sinking fund or bond fund to be used only for the payment of principal, interest, and premium, if any, due on the Bonds, including accrued and/or capitalized interest, if any; (ii) project or construction fund; and (iii) any other fund required by the Act or deemed necessary and appropriate by the Company or Bondholder.

Section 11. Notice to State Local Debt Officer; Appointment of Bond Counsel. At the direction of the Mayor, Bond Counsel is hereby directed to prepare and submit a notice to the Kentucky Department for Local Government, State Local Debt Officer in compliance with KRS §65.117. James E. Parsons, with Keating Muething & Klekamp PLL, hereby is selected as Bond Counsel.

Section 12. Severability. If any section, paragraph, or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

Section 13. Open Meetings Law. The City Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of the City Council, and that all deliberations of the City Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 14. Preamble Incorporated; Confirmation of Inducement Resolution; Acceptance of Conveyance of Facilities.

(a) The Preamble to this Resolution hereby is incorporated within the body of this Resolution as fully as if copied in full in this Section 14.

(b) The City hereby confirms and ratifies all prior discussions between the Company and responsible officials of the City whereby the City agreed to authorize and issue the Bonds for the Company in order to finance the acquisition, construction, installation, improvement, and equipping of the Facility and the financing thereof.

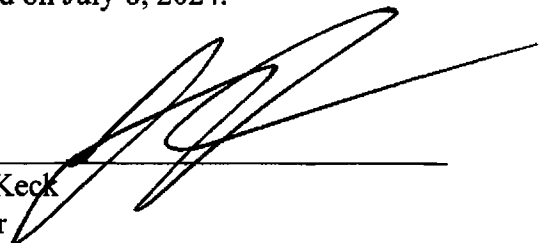
(c) The City hereby accepts the conveyance of each of the Facilities, subject to the terms and provisions contained in each instrument of conveyance and in each Lease Agreement.

Section 15. Additional Bonds.

Additional Bonds may be issued by the City, without further action of the City Council, at the request of the Company, for the purpose of financing any expansion or completion of the Project or the Facility, which Additional Bonds shall be on a parity, as to the security and source of payment, with the Bond. The amount of Additional Bonds, together with the Bonds authorized by the Resolution, shall not exceed \$120,000,000. The issuance of Additional Bonds shall be evidenced by a Bond Certificate. The Mayor and City Clerk are hereby authorized to execute and deliver any Additional Bonds and such other documents and certificates necessary or required to evidence the issuance of Additional Bonds.

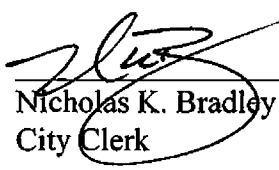
[Signatures and Certification for Resolution on the following page S-1]

INTRODUCED, SECONDED, AND GIVEN ADOPTED at a duly convened meeting of the City Council of the City of Somerset, Kentucky, held on July 8, 2024.



Alan Keck
Mayor

Attest:

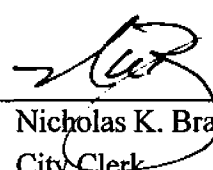


Nicholas K. Bradley
City Clerk

CERTIFICATE

I, Nicholas K. Bradley, do hereby certify that I am the duly qualified and acting Clerk of the City of Somerset, Kentucky; that the foregoing is a true and complete copy of the foregoing Resolution was duly adopted by the City Council of the City of Somerset, Kentucky, at a duly convened public meeting properly held on July 8, 2024; that said Resolution appears as a matter of public record in the official records of the City Council; that said meeting was duly held in accordance with all applicable requirements of Kentucky law, including KRS §§61.805 to 61.850; that a quorum was present at said meeting; that said Resolution has not been amended, modified, revoke, or repealed; and that same is now in full force and effect.

IN TESTIMONY, WHEREOF, witness my signature this July 9, 2024.

By: 

Nicholas K. Bradley,
City Clerk

EXHIBIT "A"

BOND

EXHIBIT "B"
LEASE AGREEMENT

EXHIBIT "C"
PILOT AGREEMENT

EXHIBIT "D"
BOND PURCHASE AGREEMENT