

FINAL RESOLUTION

(KSV Vineyards, LLC Project – Keuka Springs Vineyards LLC)

A regular meeting of the Yates County Industrial Development Agency was convened on Wednesday, July 19, 2023.

The following resolution was duly offered by Dr. T. Cutler and seconded by J. Gaub, to wit:

Resolution No. 07/2023 - _____

RESOLUTION OF THE YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACCEPTING THE APPLICATION OF KSV VINEYARDS, LLC, FOR ITSELF AND/OR ON BEHALF OF AN ENTITY OR ENTITIES TO BE FORMED (COLLECTIVELY, THE "COMPANY") WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW, THE "PROJECT"), (ii) APPOINTING THE COMPANY AS AGENT OF THE AGENCY TO UNDERTAKE THE PROJECT; (iii) MAKING A DETERMINATION UNDER ARTICLE 8 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW IN CONNECTION WITH THE PROJECT; (iv) AUTHORIZING FINANCIAL ASSISTANCE TO THE COMPANY WITH RESPECT TO THE PROJECT IN THE FORM OF (a) A SALES AND USE TAX EXEMPTION, (b) A PARTIAL REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A TAX AGREEMENT; AND (c) A MORTGAGE RECORDING TAX EXEMPTION; (v) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York (the "State"), as amended, and Chapter 113 of the Laws of 1975 of the State (collectively, the "Act"), the **YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to promote, develop, encourage and assist in acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research, and recreational facilities as authorized by the Act, and in connection therewith to enter into straight lease transactions and provide other forms of financial assistance; and

WHEREAS, **KSV VINEYARDS, LLC**, for itself and/or on behalf of an entity or entities to be formed (collectively, the "Company"), has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (A) the acquisition by the Agency of a leasehold or other interest in certain real property located at 243 Route 54 East Lake Road, Town of Milo, Yates County, New York (the

"Land", being more particularly described as tax parcel No. 73.01-1-13) and the existing improvements located thereon consisting principally of an approximately 9,500 square foot (the "Existing Improvements"); (B) the planning, design and construction of an approximately 5,700 square foot addition to the Existing Improvements comprised of an approximately 2,500 square foot press pad and an approximately 3,200 square foot barrel barn to be leased by the Company to **KEUKA SPRINGS VINEYARDS LLC**, along with utility and site improvements, parking lots, curbage, landscaping and stormwater retention improvements (collectively, the "Improvements"); and (C) the acquisition and installation in and around the Improvements of certain items of equipment, machinery and other tangible personal property (the "Equipment"); and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the Act the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate and enter into an Agent, Financial Assistance and Project Agreement (the "Project Agreement"), a lease agreement (the "Lease Agreement"), a leaseback agreement (the "Leaseback Agreement"), a tax agreement (the "Tax Agreement") and related documents with the Company; (ii) take a leasehold interest in the Land, the Existing Improvements, the Improvements, the Equipment and the personal property constituting the Project (once the Lease Agreement, the Leaseback Agreement and the Tax Agreement have been negotiated); and (iv) provide financial assistance to the Company in the form of: (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) a partial real property tax abatement structured through the Tax Agreement, and (c) a mortgage recording tax exemption for financings undertaken to construct the Facility (collectively, the "Financial Assistance"); and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the Agency has received from the Company a Short Environmental Assessment Form ("SEAF") for the Project, and further declared itself Lead Agency, determined the Project to be an Unlisted Action as defined pursuant to 6 N.Y.C.R.R. § 617.2(al) of the SEQRA regulations, and conducted an uncoordinated review of the Project pursuant to SEQRA; and

WHEREAS, the Financial Assistance provided by the Agency to the Company shall not exceed \$100,000 and, therefore, a public hearing with respect to the Project is not required to be held by the Agency; and

WHEREAS, the Project Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement, Mortgage and related documents with respect to the Project are being negotiated and will be presented to the Chair, Vice Chair and/or Chief Executive Officer of the Agency for execution upon approval of this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Company has presented the Application in a form acceptable to the Agency. Based upon the representations made by the Applicant to the Agency in the Application, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of undertaking the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Applicant to develop the Project, thereby increasing employment opportunities in Yates County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Applicant or any other proposed occupant of the Project from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Applicant or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries

(F) Upon a thorough review and due consideration by the Agency of the SEAF for the Project, the Agency makes the following findings:

1. The Agency has considered the Project, including identifying the reasonable impacts associated with it, and comparing the same to the parameters and criteria set forth in 6 N.Y.C.R.R. §§ 617.1 and 617.3 of the SEQRA regulations.

2. The Agency has classified the Project as an Unlisted Action pursuant to 6 N.Y.C.R.R. § 617.2(al) of the SEQRA regulations.

3. The Agency has considered the significance of the potential adverse environmental impacts associated with the Project by: (i) carefully reviewing and examining the responses to the SEAF, including the information in the Parts 1 and 2 of the SEAF, together with examining other available supporting information and documents concerning the Project; (ii) carefully reviewing impacts and potential impacts from the Project to land, stormwater and groundwater, wetlands, other water resources, and analyzing any impacts associated with agricultural district designation(s), as well as impacts and potential impacts associated with or to historic, archaeological and other recognized and/or protected resources, and impacts to threatened or endangered plant and animal species, impacts to transportation, including such impacts associated with traffic and considered impacts to community character and cumulative impacts if any, as well as impacts from sites where remedial activities were previously conducted, and considering each of the other potential impacts as required by applicable regulation; (iii) carefully considering the criteria set forth in 6 N.Y.C.R.R. § 617.7(c) in light of such potential impacts; and (iv) thoroughly analyzing the identified areas of relevant environmental concern.

Section 2. Based upon representations and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project, that would otherwise be subject to State and local sales and use tax in an amount up to **\$200,000.00**, which result in State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") not to exceed **\$16,000.00**. The Agency agrees to consider any requests by the Company for increase to the amount of Sales and Use Tax Exemption Benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 3. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any Sales and Use Tax Exemption Benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the Sales and Use Tax Exemption Benefits; (ii) the Sales and Use Tax Exemption Benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the Sales and Use Tax Exemption Benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the Sales and Use Tax Exemption Benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving Sales and Use Tax Exemption Benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (i) cooperate with the Agency in its efforts to recover or recapture any Sales and Use Tax Exemption Benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 4. Subject to the Company executing the Agent Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the undertaking of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to undertake the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; provided, however, the Agent Agreement shall expire on **December 31, 2023** (unless extended for good cause by the President/CEO of the Agency) if the Lease Agreement, Leaseback Agreement, Tax Agreement contemplated have not been executed and delivered.

Section 5. The Chair, Vice Chair and/or Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to execute (i) the Agent Agreement, pursuant to which the Agency appoints the Company as its agent to undertake the Project, (ii) a Lease Agreement, pursuant to which the Company leases the Project to the Agency, and (iii) a related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, (iv) the Tax Agreement, and (v) related documents; *provided that* (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project and (ii) the terms of the Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation therefrom have been complied with.

Section 6. The Chair, Vice Chair and/or Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to execute, deliver and record a mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by the Bank in such forms as approved by counsel to the Agency up to a maximum principal amount not to exceed **\$400,000.00**, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Lease Agreement, Leaseback Agreement and Tax Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chair, Vice Chair and/or Chief Executive Officer of the Agency shall approve, the execution thereof by the Chair, Vice Chair and/or Chief Executive Officer of the Agency to constitute conclusive evidence of such approval; provided, in all events, recourse against the Agency is limited to the Agency's interest in the Project.

Section 7. The Agency is hereby authorized to provide the Company with an exemption from mortgage recording taxes as permitted by New York State law in an amount not to exceed Four Thousand and 00/100 Dollars (**\$4,000.00**).

Section 8. The Financial Assistance provided by the Agency to the Company shall not exceed \$100,000 and, therefore, a public hearing is not required to be held by the Agency.

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 10. These Resolutions shall take effect immediately.

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

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Ryan Hallings	[]	[]	[]	[X]
Janice Gaub	[X]	[]	[]	[]
Sirene Garcia	[X]	[]	[]	[]
Dr. Kim Pinkey	[]	[]	[X]	[]
Mary Anne Rogers	[X]	[]	[]	[]
Dr. Tim Cutler	[X]	[]	[]	[]
Amy Storey	[]	[]	[X]	[]

The Resolutions were thereupon duly adopted.

CERTIFICATION
(KSV Vineyards, LLC Project)

STATE OF NEW YORK)
COUNTY OF YATES) *ss.:*

I, the undersigned Secretary of Yates County Industrial Development Agency, DO HEREBY CERTIFY:

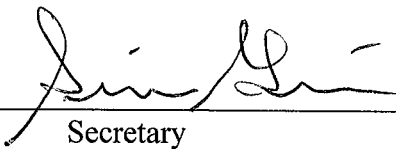
That I have compared the annexed extract of minutes of the meeting of Yates County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on July 19, 2023, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the Agency had due notice of the meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), the meeting was open to the general public and that public notice of the time and place of the meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 19th day of July, 2023.



Secretary