

**AGENT RESOLUTION  
SDMD ENTERPRISES, LLC DBA MAGNUS RIDGE WINERY PROJECT**

A regular meeting of Yates County Industrial Development Agency (the "Agency") was convened in public session in the offices of the Agency located at One Keuka Business Park in Penn Yan, Yates County, New York on July 21, 2010 at 8:00 o'clock a.m., local time.

The meeting was called to order by the Chairman of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Kevin T. Bailey	Chairman
Craig E. Densmore	Secretary
Jerry C. Hiller	Treasurer
Rodman Williams	Assistant Treasurer/Secretary
Robert Corcoran	Member
James Long	Member
Tim Dennis	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Steve Griffin	Chief Executive Officer
Ryan Hallings	Empire Zone Coordinator
Doreen Jensen	Chief Financial Officer

The following resolution was offered by Rod Williams, seconded by Craig Densmore, to wit:

Resolution No. \_\_\_\_\_

RESOLUTION APPOINTING SDMD ENTERPRISES, LLC DBA MAGNUS RIDGE WINERY AS AGENT OF YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY FOR THE PURPOSE OF UNDERTAKING AND COMPLETING A PROJECT FOR THE BENEFIT OF THE SDMD ENTERPRISES, LLC DBA MAGNUS RIDGE WINERY.

WHEREAS, Yates County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18 A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 113 of the 1975 Laws of New York, as amended, constituting Section 893-b of said General Municipal Law (said Chapter and the

Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, SDMD Enterprises, LLC dba Magnus Ridge Winery, a New York limited liability company (the "Company") submitted an application (the "Application") to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A)(1) the acquisition of an interest in an approximately 16 acre parcel of land located at 6148 Route 14, in the Village of Dundee and the Town of Starkey, Yates County, New York (the "Land"), (2) the construction on the Land of a facility complex to contain in the aggregate approximately 7,400 square feet of space (collectively, the "Facility"), (3) the acquisition and installation of certain machinery and equipment therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a commercial facility to be owned and operated by the Company as a wine producing, hospitality, café and gift shop facility and any other directly or indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on June 16, 2010 (the "Public Hearing Resolution"), the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on June 29, 2010 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on June 29, 2010 on a public bulletin board at the offices of the Agency, located at One Keuka Business Park, in the Town of Penn Yan, Yates County, New York, (C) caused notice of the Public Hearing to be published on June 30, 2010 in the Chronicle-Express, a newspaper of general circulation available to the residents of the Town of Starkey, Yates County, New York, (D) conducted the Public Hearing on July 16, 2010 at 10:00 a.m., local time at the Town of Starkey Town Hall, located at 40 Seneca Street, in the Village of Dundee, Yates County, New York, and (E) prepared a report of the Public Hearing (the "Public Hearing Report") fairly

summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43 B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency has been informed that (1) the Town of Starkey Planning Board (the "Planning Board") was designated to act as "lead agency" with respect to the Project, and (2) the Planning Board issued a Determination of Non Significance on December 1, 2009 (the "Negative Declaration"), determining that (a) the acquisition, construction and installation of the Project Facility will not have a "significant effect on the environment" and (b) an environmental impact statement need not be prepared with respect to the Project; and

WHEREAS, although the lease agreement or installment sale agreement and related documentation (collectively, the "Project Documents") have not yet been prepared, the Company has indicated to the Agency that the Company desires to commence the Project prior to completion of the Project Documents between the Agency and the Company related to the Project; and

WHEREAS, in order to preserve the sales tax exemption which forms a major portion of the Financial Assistance, the Agency now desires to temporarily formalize its understandings with the Company regarding the undertaking and completion of the Project by the Company as agent of the Agency;

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

Section 1. In order to preserve the sales tax exemption which forms a major part of the Financial Assistance, and in order to facilitate the commencement of the Project, the Company is hereby temporarily appointed the true and lawful agent of the Agency (A) to undertake and complete the acquisition, renovation and installation of the Project Facility, as the stated agent for the Agency, (B) to make, execute, acknowledge and deliver all contracts, orders, receipts, writings and instruments necessary in connection therewith, and in general to do all things as may be requisite or proper for undertaking and completing the Project with the same powers and the same validity as the Agency could do if acting in its own behalf and (C) to pay all fees, costs and expenses incurred in the acquisition, renovation and installation of the Project Facility from its own funds, said temporary appointment being intended to last until the earlier to occur of (1) the execution and delivery of the Project Documents or (2) September 15, 2010 (or such later date as may be agreed to in writing by the Agency), said temporary appointment to be subject to the following conditions:

- (1) The Company will, on behalf of the Agency, undertake and complete the acquisition, renovation and installation of the Project Facility in accordance with the plans of the Company described in the Application (the "Plans").

(2) The Company will not revise the Plans in any material respect without the prior written consent of the Agency, which consent may not be unreasonably withheld or delayed but may be subject to such reasonable conditions as the Agency may deem appropriate.

(3) Title to all materials, equipment, machinery and other items of property intended to be incorporated in or installed as part of the Project Facility shall vest in the Agency immediately upon delivery to the Project Facility site, at which time such materials, machinery and other items of property shall become the sole property of the Agency. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third persons. Title to the Project shall be conveyed by the Agency to the Company pursuant to the provisions of the Project Documents.

(4) All materials, equipment, machinery and other items of personal property intended to be incorporated in or installed as part of the Project Facility shall be ordered and purchased by the Company, as agent of the Agency, and invoices therefore shall be directed to the Company, as agent of the Agency. The Agency hereby appoints the Company as agent of the Agency to make such purchases of said materials, equipment, machinery and other items of personal property; provided, however, that NO SUCH CONTRACT SHALL RESULT IN THE ASSUMPTION BY THE AGENCY OF ANY OBLIGATION TO PAY ANY COSTS AND EXPENSES, and the Company shall be solely liable for and shall agree to pay all funds necessary to make all payments required under such contracts.

(5) The Company shall indemnify, defend and hold the Agency (and its members, officers, agents, employees and servants) harmless from all claims and liabilities for labor, services, materials and supplies, including equipment, ordered or used in connection with the undertaking and completion of the Project (including any expenses incurred by the Agency and its members, officers, agents, employees and servants, in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether or not such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to the authority conferred upon it by this Resolution.

(6) The Company shall indemnify, defend and hold the Agency (and its members, officers, agents, employees and servants) harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever in relation to the Project, including any expenses incurred by the Agency (and its members, officer, agents, employees and servants) in defending any claims, suits or actions which may result as a result of the foregoing.

(7) The Company shall give or cause to be given all notices and comply or cause compliance with all laws, ordinances, rules, regulations and requirements of all governmental agencies and public authorities applying to or affecting the undertaking and

completion of the Project (the applicability of all such laws, ordinances, rules, regulations and requirements shall be determined both as if the Agency were deemed to be the owner of the Project Facility and as if the Company and not the Agency were deemed to be the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents, employees and servants harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the undertaking and completion of the Project shall be procured promptly by the Company.

(8) The Company shall agree, and by executing this Resolution does agree, that as agent for the Agency the Company will comply with all laws applicable to the Agency in connection with the undertaking and completion of the Project by the Agency (the applicability of all such laws, ordinances, rules, regulations and requirements shall be determined both as if the Agency were deemed to be the owner of the Project Facility and as if the Company and not the Agency were deemed to be the owner of the Project Facility).

(9) The Company is hereby authorized to advance such funds as may be necessary to acquire, construct and install the Project Facility as agent of the Agency. Any costs or expenses incurred by the Agency or by the Company as agent of the Agency with respect to the Project shall be paid by the Company.

(10) The Company shall supply the Chairman or Vice Chairman of the Agency with a certificate of insurance coverage evidencing (a) a general liability insurance policy maintained by the Company as insured and naming the Agency as additional insured and providing coverage in the minimum amounts of ONE MILLION DOLLARS (\$1,000,000) per occurrence, (b) an excess liability insurance policy maintained by the Company as insured and naming the Agency as additional insured and providing coverage in the minimum amounts of FIVE HUNDRED THOUSAND DOLLARS (\$500,000), and (c) , unless waived by the Agency, a separate umbrella liability policy protecting the Company and the Agency with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000), which insurance policies shall also (i) name the members, officers, agents, employees and servants of the Agency as additional insureds, with respect to the Agency's liability arising out of the operations of the Company in connection with the Project Facility, and (ii) provide contractual liability insurance coverage insuring the Company's obligation to indemnify, defend and save harmless the Agency and its members, officers, agents, employees and servants, pursuant to paragraphs (5) and (6) of Section 1 of this Resolution.

(11) The Company shall supply the Chairman or Vice Chairman of the Agency with policies, or certificates evidencing such policies, of workers' compensation insurance, disability benefits insurance and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or the Agency who are located at or assigned to work on the Project.

(12) The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company), employee or servant of the Agency in his individual capacity, and the members, officers, agents (other than the Company), employees and servants of the Agency shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby.

(13) The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the Yates County, New York, and neither the State of New York nor the Yates County, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project (excepting funds payable pursuant to paragraphs (5), (6) and (15) of this Section 1 of this Resolution).

(14) Notwithstanding any provision of this Resolution to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (a) the Agency shall have been requested to do so in writing by the Company and (b) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent (other than the Company), employee or servant of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

(15) Payment by the Company of all fees and expenses incurred by the Agency with respect to the Project, including (A) the Agency's administrative fee with respect to the Project and (B) the fees and expenses of Agency counsel and/or special Agency counsel related to the Project.

(16) (A) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that the Company as agent of the Agency must annually file a statement with the New York State Department of Taxation and Finance (the "Annual Sales Tax Report"), on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this subsection (16), the Company shall immediately cease to be the agent of the Agency in connection with the Project. A current sample form of such Annual Sales Tax Report required to be completed by the Company pursuant to this Resolution is attached hereto as Exhibit A. For future filings of the Annual Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Annual Sales Tax Report.

(B) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act.

(17) The Company acknowledges receipt of notice of Section 874(9) of the Act, which requires that the Company as the agent must file within thirty (30) days of the date of this Resolution a statement with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. A current sample form of such Thirty-Day Sales Tax Report required to be completed by the Company pursuant to this Resolution is attached hereto as Exhibit B. For future filings of the Thirty-Day Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Thirty-Day Sales Tax Report.

(18) The foregoing appointment of the Company as agent of the Agency is subject to the condition that, in the event that Project Documents are not executed and delivered by the Agency and the Company on or before September 15, 2010 (or such later date as may be agreed to in writing by the Agency), the foregoing appointment of the Company as agent of the Agency may be revoked by the Agency, retroactive to the date of this Resolution, and thereupon the Agency shall notify the New York State Department of Taxation and Finance of such revocation.

(19) The Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (a) the New York State Department of Labor Community Services Division and (b) the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the project is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)). The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(20) The following additional conditions: None.

Section 2. This Resolution shall take effect upon the date that all of the following shall have occurred: (A) the Company shall have accepted the provisions of this Resolution; (B) the Company shall have delivered two copies of this Resolution, with the acceptance clauses

thereof fully executed by the Company, to the Chairman or Vice Chairman of the Agency; (C) the Company shall have obtained the insurance policies required by paragraphs (10) and (11) of Section 1 hereof and shall have delivered evidence thereof to the Chairman or Vice Chairman of the Agency, such evidence to be in such form as the Chairman or the Vice Chairman of the Agency shall deem appropriate; (D) the Company shall have paid the Agency's administrative fee with respect to Project and other expenses and fees set forth in paragraph (15) of this Resolution; and (E) the Agency shall deliver to the Company a copy of this Resolution with the receipt and acknowledgment executed by the Agency.

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

Kevin T. Bailey	VOTING	<u>Yes</u>
Craig E. Densmore	VOTING	<u>Yes</u>
Jerry C. Hiller	VOTING	<u>Yes</u>
Rodman Williams	VOTING	<u>Yes</u>
Robert Corcoran	VOTING	<u>Yes</u>
James Long	VOTING	<u>Yes</u>
Tim Dennis	VOTING	<u>Yes</u>

The foregoing Resolution was thereupon declared duly adopted

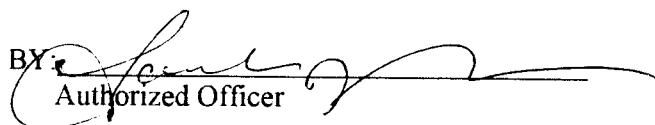


ACCEPTANCE

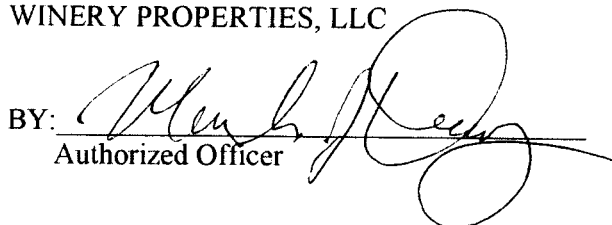
The Company hereby accepts the appointment to act as agent of the Agency in connection with the Project and the Company accepts the provisions of this Resolution, including the conditions contained in Section 1 of this Resolution, and agrees to comply with such provisions and conditions.

IN WITNESS WHEREOF, the Company has caused this Acceptance to be executed in its name as of this \_\_\_ day of July, 2010.

SDMD ENTERPRISES, LLC DBA MAGNUS  
RIDGE WINERY

BY:   
Authorized Officer

WINERY PROPERTIES, LLC

BY:   
Authorized Officer

RECEIPT

The undersigned hereby acknowledges receipt of the items called for in Section 2 of this Resolution and acknowledges that therefore this Resolution is in full force and effect.

YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

ACCEPTANCE

The Company hereby accepts the appointment to act as agent of the Agency in connection with the Project and the Company accepts the provisions of this Resolution, including the conditions contained in Section 1 of this Resolution, and agrees to comply with such provisions and conditions.

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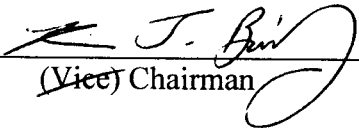
SDMD ENTERPRISES, LLC DBA MAGNUS  
RIDGE WINERY

BY: \_\_\_\_\_  
Authorized Officer

RECEIPT

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YATES COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:  \_\_\_\_\_  
(Vice) Chairman