

**RESOLUTION**

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on December 13, 2021, at 11:00 a.m. local time via videoconference as authorized by Chapter 417 of the Laws of 2021, which took effect on September 2, 2021.

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

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[     ]	[  √  ]
Edward T. Sykes	[  √  ]	[     ]
Carol Roig	[  √  ]	[     ]
Howard Siegel	[  √  ]	[     ]
Scott Smith	[  √  ]	[     ]
Paul Guenther	[  √  ]	[     ]
Sean Brooks	[  √  ]	[     ]

The following persons were also present:

Jennifer M. Flad, Executive Director  
John W. Kiefer, Chief Executive Officer  
Julio Garaicoechea, Project Manager  
Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by Paul Guenther, and seconded by Howard Siegel, to wit:

Resolution No. 38 - 21

***RESOLUTION APPROVING AMENDMENT OF THE PAYMENT IN LIEU OF TAXATION AGREEMENT BY AND BETWEEN THE AGENCY AND SVG 26 LLC (THE “COMPANY”)***

***WHEREAS***, by Title 1 of Article 18-A of the General Municipal Law of the State of New York (“State”), as amended, and Chapter 560 of the Laws of 1970 of the State, as amended and codified as Section 960 of the General Municipal Law (collectively, the “Act”), the Agency was created with the authority and power to own, lease and sell property as authorized by the Act; and

***WHEREAS***, on or about August 12, 2009, the CDC, Redford, LLC (“Redford”) and the Agency entered into a sale/leaseback transaction wherein the Agency acquired a fee interest in certain real property in the Town of Bethel (“Town”), County of Sullivan (“County”), State and identified on the Town tax map as Section 26, Block 1, Lot 6 and Section 22, Block 1, Lot 62 (“Project Land”) to facilitate the construction and equipping of a distillery, office, barrel storage house and restaurant/saloon (“Project”); and

**WHEREAS**, the Agency took title to Bethel Section 22, Block 1, Lot 62 by Bargain and Sale Deed from Redford to the Agency dated August 12, 2009, which Deed was recorded in the Office of the Clerk of Sullivan County on August 14, 2009 in Deed Liber 3603 at page 365; and

**WHEREAS**, the Agency took title to Bethel Section 26, Block 1, Lot 6 by Bargain and Sale Deed from Redford to the Agency dated August 12, 2009, which Deed was recorded in the Office of the Clerk of Sullivan County on August 14, 2009 in Deed Liber 3603 at page 371; and

**WHEREAS**, on or about May 1, 2018, Redford merged into CDC; and

**WHEREAS**, on November 19, 2019, CDC filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, initiating a bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Proceeding”); and

**WHEREAS**, on July 31, 2020, CDC and the Company entered into an Asset Purchase Agreement pursuant to the terms of which the Land and other assets of CDC were to be acquired by the Company (“APA”); and

**WHEREAS**, on May 3, 2021, the Company presented an application (“Application”) to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider (i) the continuation of financial assistance to the Company on the same terms as contemplated by the various agreements in place between the Agency and CDC at the time of commencement of the Bankruptcy Proceeding and (ii) the Agency enter into a lease/leaseback involving three (3) additional parcels of property which were required to be mortgaged by Sachem Capital Corp. (“Sachem Capital”) the lender providing financing to the Company to complete the transactions contemplated by the APA (“Additional Premises” and together with the Project Land, the “Leased Premises”); and

**WHEREAS**, the Agency and CDC entered into a Project Termination Agreement pursuant to which the prior transaction documents between the Agency and CDC were terminated; and

**WHEREAS**, the Agency transferred the Project Land to CDC and CDC transferred the Leased Premises to the Company; and

**WHEREAS**, in order to induce the Company to purchase and operate the Project, the Agency entered into a lease/leaseback transaction involving a lease of the Leased Premises from the Company to the Agency and a leaseback of the Leased Premises from the Agency to the Company; and

**WHEREAS**, the APA at Section 9.01 provides for “the closing of the transactions (emphasis added) contemplated hereby (the “Closing”) will take place after satisfaction or waiver of all of the conditions set forth in Section 8.01 and 8.02 of this Agreement or October 31, 2020 (or as soon thereafter as can reasonably be expected under the circumstances), at a time and place mutually agreeable to Seller and Purchaser or remotely, as the case may be.”; and

**WHEREAS**, the conditions set forth in Section 8.01 and 8.02 of the APA have been satisfied or waived; and

**WHEREAS**, CDC and the Company agreed that the Closing shall take place on or about May 19, 2021 (“Closing Date”); and

**WHEREAS**, Section 3.01 Consideration., defines the purchase price for the Purchased Assets (“Purchase Price”) “to include cash in the amount of Three Million Eighty-Eight Thousand Three Hundred Sixteen and 79/100 (\$3,088,316.79) Dollars; equity in the Buyer in exchange for Seven Hundred Forty-Seven Thousand Two Hundred Forty and 97/100 (\$747,240.97) Dollars of non-insider unsecured debt of Seller and equity in the Buyer in exchange for Three Million Three Hundred Thousand Three Hundred Eight and 00/100 (\$3,300,308.00) Dollars in insider unsecured debt of the Seller”; and

**WHEREAS**, Section 3.01(b)(iv) defines the non-insider equity grant (the “Non-Insider Equity Grant”) to be membership interest in the Company totaling eleven and thirty-seven hundredths (11.37%) percent to be issued as follows:

MG Consulting Anna Babuder	3.00%	\$197,240.97
Nadja Gardon	6.39%	\$420,000.00
Rita Danilenko	1.98%	\$130,000.00
	11.37%	\$747,240.97; and

**WHEREAS**, Section 3.01(b)(v) defines the insider equity grant (the “Insider Equity Grant”) to be membership interest in the Company totaling twelve and fifty-five hundredths (12.55%) percent to be issued as follows:

S. Cohen	8.84%	\$2,324,956.00
Audrey Cohen	0.86%	\$ 225,352.17
Julius Cohen Trust	2.85%	\$ 750,000.00
	12.55%	\$3,300,308.17; and

**WHEREAS**, by Resolution No. 16 of 2021 duly adopted by the Agency on May 10, 2021, the Agency authorized the continuation of financial assistance to the Company on the same terms as contemplated by the various agreements in place between the Agency and CDC at the time of commencement of the CDC bankruptcy proceeding; (ii) authorizing the Agency to enter into a lease/leaseback transaction with the Company; and (iii) authorizing execution of one or more mortgages in favor of Sachem Capital Corp. securing a loan to the Company in an amount not to exceed \$2,500,000; and

**WHEREAS**, except for the issuance of the Non-Insider Equity Grant and Insider Equity Grant, CDC and the Company closed on all transactions contemplated by the APA on May 24, 2021; and

**WHEREAS**, the Agency consented to the issuance of membership interest in the Company to allow the Non-Insider Equity Grant and Insider Equity Grant to occur on a Post-Closing basis without additional action or consent by the Agency; and

**WHEREAS**, on or about the 24<sup>th</sup> day of May, 2021, the Agency and the Company entered into the following transaction documents:

- (i) Bill of Sale to Agency;
- (ii) Bill of Sale to Company;
- (iii) Lease to Agency and memorandum thereto;
- (iv) Leaseback to Company and memorandum thereto; and
- (v) Payment in Lieu of Taxation Agreement (“PILOT Agreement”); and

**WHEREAS**, Section 7(a)(iii) of the PILOT Agreement established an employment goal of five (5) full time equivalent employees with respect to the period October 1, 2020 through September 30, 2021 (“Employment Goals”); and

**WHEREAS**, by letter to the Agency dated November 22, 2021, the Company (“Company Request Letter”) advised the Agency that due to unforeseen delays in issuance of certain licenses for the production and sale of alcoholic beverages, the Employment Goals were not met for the October 1, 2020 to September 30, 2021 employment year; and

**WHEREAS**, the Company has requested the Agency amend the PILOT Agreement so the first year following the Closing that Employment Goals shall apply is the employment year October 1, 2021 to September 30, 2022; and

**WHEREAS**, the Agency in recognition of the facts and circumstances detailed in the Company Request Letter is willing to amend the PILOT Agreement establishing the employment year October 1, 2021 to September 30, 2022 as the first post-closing period to which Employment Goals apply.

***NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:***

Section 1. The request of the Company to amend Section 7 of the PILOT Agreement to establish the employment year October 1, 2021 to September 30, 2022 as the first post-closing period to which Employment Goals apply.

Section 2. The Chairman, Executive Director or Chief Executive Officer of the Agency, each acting individually, are hereby authorized, on behalf of the Agency, to execute and deliver the amendment to the PILOT Agreement.

Section 3. The foregoing resolutions are conditioned upon each of the following:

- a) The Company shall pay the Agency an Administrative Fee in the amount of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars.
- b) The Company shall pay to the Agency’s legal counsel all fees and expenses related to preparation and execution of the amendment to the PILOT Agreement.

Section 4. The Chief Executive Officer, Executive Director or Counsel to the Agency, each acting individually, are hereby authorized and directed (i) to distribute copies of this resolution to the Company; and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 5. This resolution shall take effect immediately.

THE MEMBERS VOTED ON THE FOREGOING RESOLUTION AS FOLLOWS:

Suzanne Loughlin	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Edward T. Sykes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Carol Roig	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Howard Siegel	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Scott Smith	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Sean Brooks	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

The resolutions were thereupon duly adopted.

STATE OF NEW YORK :  
:SS.:  
COUNTY OF SULLIVAN :

I, the undersigned Secretary of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the Agency with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.
2. Such resolution was passed at a meeting of the Agency duly convened via conference call on December 13, 2021 at 11:00 a.m., at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[     ]	[ √ ]
Edward T. Sykes	[ √ ]	[     ]
Carol Roig	[ √ ]	[     ]
Howard Siegel	[ √ ]	[     ]
Scott Smith	[ √ ]	[     ]
Paul Guenther	[ √ ]	[     ]
Sean Brooks	[ √ ]	[     ]


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

Suzanne Loughlin	[   ] Yes	[   ] No	[ √ ] Absent	[   ] Abstain
Edward T. Sykes	[ √ ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Carol Roig	[ √ ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Howard Siegel	[ √ ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Scott Smith	[ √ ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Paul Guenther	[ √ ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Sean Brooks	[ √ ] Yes	[   ] No	[   ] Absent	[   ] Abstain

and therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103(a) and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public via videoconferencing and public notice of the time and place of said meeting was duly given in accordance with such Sections 103(a) and 104, (iii) the meeting in all respects was duly held via videoconference as authorized by Chapter 417 of the Laws of 2021, and (iv) there was a quorum present throughout.

*IN WITNESS WHEREOF*, I have hereunto set my hand and seal on the 13<sup>th</sup> day of December, 2021.

  
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Carol Roig, Secretary