

FOR CONSIDERATION

June 15, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Woodbury (Nassau County) – Arizona Beverage Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions; Determination of No Significant Effect on the Environment

General Project Plan

I. Project Summary

Grantee: Hornell Brewing Co., Inc. (“Hornell” or the “Company”)

ESD* Investment: A grant of up to \$250,000, pending passage of the New York State budget, to be used for a portion of the cost of construction of a new 100,000-square-foot corporate headquarters facility.

* The New York State Urban Development Corporation doing business as the Empire State Development Corporation (“ESD” or the “Corporation”)

Project Locations: 60 Crossway Park Drive, Woodbury, Nassau County*
700 Columbia Street, Red Hook, Brooklyn

* Project activity site; other is job-retention site

NYS Empire Zone
(or equivalent): N/A

Proposed Project: Acquisition of land and construction of a new 100,000-square-foot facility, associated with relocation of the Company’s headquarters.

ESD Incentive Offer Accepted: July 3, 2007

Project Completion: October 2009

Number of Employees at Project Locations:

Initial employment at time of ESD Incentive Offer:	235
Current employment level:	336
Minimum employment by January 1, 2011:	285*

** Payrolls of Hornell Brewing Co., Inc. and Ferolito, Vultaggio & Sons, Inc., both count toward employment level.*

Grantee Contact: John Posillico, Director of Special Projects
60 Crossways Park Drive
Woodbury, NY 11797
Phone: (516) 812-0341
Fax: (516) 812-0441

Anticipated
Appropriation
Source:

Empire State Economic Development Fund

ESD Project No.: U634

Project Team:	Origination	Jack Guy
	Project Management	Wai Shiu
	Affirmative Action	Laverne Poole
	Finance	Jonevan Hornsby
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>	
Land Purchase	\$10,000,000	
Construction	29,172,000	
Indirect / Soft Costs	<u>7,000,500</u>	
Total Project Costs	<u>\$46,172,500</u>	
<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$250,000	0.54%
Company Equity	<u>45,922,500</u>	<u>99.46%</u>
Total Project Financing	<u>\$46,172,500</u>	<u>100.0%</u>

III. Project Description

A. Background

Hornell Brewing Co., Inc. and its operating entity Ferolito, Vultaggio & Sons, Inc. are ready-to-drink beverage manufacturers whose product lines include the tea, juice, water, and energy drinks marketed as “AriZona Iced Tea”. The Company was founded in 1971 in New York City as a beer distributor, started tea manufacturing in the early 1990’s, and has since grown to become one of the largest ready-to-drink tea manufacturers in the country, with over \$900 million in sales in 2009. Hornell’s largest customers are supermarket and discount store chains, beverage product wholesalers, and merchandisers. The Company’s products are sold throughout the U.S. and the world. Hornell’s competitors include Coca-cola, Pepsi, Nestle, and Cadbury Schweppes.

Hornell historically had two facilities in New York State – in Lake Success, Nassau County, a location that housed 120 employees and was the Company’s original corporate headquarters; and in Red Hook, Brooklyn, a strategic distribution hub with 115 distribution personnel, who primarily received direction and control from headquarters and served the Company’s immediate needs in the New York / New Jersey Metro area. These positions were designed to be located close to headquarters for greater coordination.

In September 2006, the lease expired for the Company’s Lake Success facility. Hornell had outgrown this site, and needed to build a new corporate headquarters to accommodate its workforce and growth. Due to the high costs of real estate in Long Island, Hornell considered relocating its headquarters to New Jersey, where it maintained significant manufacturing operations in Elizabeth and Irvington. Both locations had excess capacity. New Jersey actively courted Hornell with an incentive grant and tax benefits. The move would have caused both the Lake Success and Red Hook facilities to close and all positions to move out of New York State.

In order to induce Hornell to remain in Nassau County, ESD offered the Company a \$250,000 grant, which it accepted in July 2007. Hornell also received financial assistance from Nassau Industrial Development Authority including sales tax exemption, property tax abatement, and mortgage recording abatement.

B. The Project

The project consisted of the purchase of land at 60 Crossways Park Drive, Woodbury, and the construction of a new corporate headquarters for Hornell. The facility has a useable space of 100,000 square feet. Its occupants include the Company’s accounting, finance, marketing, human resource, product design, and executive offices. Hornell holds the master lease.

The project was completed in October 2009. As a result, Hornell was able to accommodate its expanding customer base and needs, house an increasing number of employees, and continue with the Company’s overall growth plans. Hornell has reached its employment commitment of 285 jobs, including 50 new positions, and is expected to maintain those jobs until January 2013.

C. Financial Terms and Conditions

1. The Company shall pay a commitment fee of 1% of the \$250,000 capital grant (\$2,500) upon execution of the grant disbursement agreement. In addition, at the time of disbursement, the Company will reimburse ESD for all out-of-pocket expenses incurred in connection with the project.

2. The Company will demonstrate no material adverse change in its financial condition prior to disbursement.
3. The Company or the Company's shareholders will contribute at least 10% in equity to the Project. Equity is defined as any non-debt source of capital, and should be auditable through Company financial statements or Company accounts, if so requested by ESD.
4. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Locations for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Locations for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.
5. Up to \$250,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$125,000) upon completion of the project substantially as described in these materials, as evidenced by a certificate of occupancy, documentation of \$35,000,000 in project costs, and documentation of the employment of at least 235 Full-time Permanent Employees at the Project Locations*, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 25% of the grant (\$62,500) will be disbursed upon documentation of the employment of at least 260 Full-time Permanent Employees at the Project Locations (Employment Increment of 25), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 25% of the grant (\$62,500) will be disbursed upon documentation of the employment of at least 285 Full-time Permanent Employees at the Project Locations (Employment Increment of 25), provided Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESDC of an invoice and such other documentation as ESDC may reasonably require. Expenses must be incurred on or after July 3, 2007 to be considered eligible project costs. All disbursements must be requested by April 1, 2011.

** Payrolls of Hornell Brewing Co., Inc. and Ferolito, Vultaggio & Sons, Inc. both count toward employment level.*

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$250,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount

of assistance approved by the Directors.

7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an “Employment Shortfall”), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee’s number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment*	235
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A	B
Reporting Date	Employment Goals
February 1, 2011	235+X+Y
February 1, 2012	235+X+Y
February 1, 2013	235+X+Y

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=25, and Employment Goals shall equal $[235 + X = 260]$ if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Y = Grantee’s Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Y=25, and Employment Goals shall equal $[235 + X + Y = 285]$ if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

** Payrolls of Hornell Brewing Co., Inc. and Ferolito, Vultaggio & Sons, Inc. both count toward employment goals.*

IV. Statutory Basis

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms.

As a result of this project, the Company will retain 235 jobs which were at risk of relocation to another state. In addition, the Company will create 50 new jobs.

2. The proposed project would be unlikely to take place in New York State without the requested assistance.

Without ESD assistance, the Company's NY facilities would likely have been relocated to an existing facility in New Jersey.

3. The project is reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$17,098,694;
- Fiscal cost to NYS government is estimated at \$855,065;
- Project cost to NYS government per direct job is \$3,203;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$1,535;
- Ratio of project fiscal benefits to costs to NYS government is 20.00:1;
- Fiscal benefits to all governments (state and local) are estimated at \$31,087,771;
- Fiscal cost to all governments is \$3,302,776;
- All government cost per direct job is \$12,372;
- All government cost per total job is \$5,929;
- The fiscal benefit to cost ratio for all governments is 9.41:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$168,057,308, or \$301,707 per job (direct and indirect);
- The economic benefit to cost ratio is 50.88:1;
- Project construction cost is \$36,172,500 which is expected to generate 283 direct job years and 180 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.12 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 1 year.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

4. The requirements of Section 10(g) of the Act are satisfied.

No residential relocation is required because there are no families or individuals residing on the site.

V. Environmental Review

The Nassau County Industrial Development Agency, as lead agency, has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation. This review found the project to be an Unlisted Action, which would not have a significant effect on the environment. The lead agency issued a Negative Declaration on December 18, 2006. ESD staff reviewed the Negative Declaration and supporting materials and concurs. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

VI. Affirmative Action

ESD’s Non-discrimination and Affirmative Action policy will apply. The Company is encouraged to include minorities and women in any job opportunities created by the project, and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the project.

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolutions
New York State Map
Project Finance Memorandum
Cost-Benefit Analysis

June 15, 2010

Woodbury (Nassau County) – Arizona Beverage Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) – Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Arizona Beverage Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) – Project (the “Project”), the Corporation hereby determines pursuant to Sections 16-m and 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms;
2. The project would be unlikely to take place in New York State without the requested assistance;
3. The project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs;
4. There are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the Chairman and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the Chairman and Chief Executive Officer of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the Chairman and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Hornell Brewing Co., Inc. a grant for a total amount not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000) from the Empire State Economic Development Fund, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the Chairman and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the Chairman and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the Chairman and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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June 15, 2010

Woodbury (Nassau County) – Arizona Beverage Capital – Empire State Economic
Development Fund – General Development Financing (Capital Grant) –
Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the Arizona Beverage Capital Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

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