ORDINANCE NO. 2015-42

AN ORDINANCE RATIFYING THE COMMUNITY REINVESTMENT AREA AGREEMENT WITH RIVERTOWN BREWING COMPANY AND BARREL HOUSE, LLC; AUTHORIZING THE CITY MANAGER TO EXECUTE THE COMMUNITY REINVESTMENT AREA AGREEMENT SUBSTANTIALLY IN THE FORM ATTACHED TO THIS ORDINANCE UPON RECEIPT OF NOTIFICATION OF MONROE CITY SCHOOL AND DECLARING AN EMERGENCY.

WHEREAS, the Council adopted Emergency Resolution No. 44-2007 on August 14, 2007, describing the boundaries of a Community Reinvestment Area (the "CRA") and determined that such area contains the conditions described in Section 3735.65(B) of the Code and confirmed said area as a Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, the housing officer of the City has received an application for tax abatement within the CRA by The Rivertown Brewing Company and Barrel House, LLC (the "Company") in connection with the construction of an approximately 31,000 square foot new building (the "Project"), as described Exhibit A on certain real property within the boundaries of the CRA (the"Project Site"), as more specifically described on Exhibit B attached hereto.

WHEREAS, Company anticipates that it will equip and occupy the Project Site or the Project and hire employees at the Project Site; and;

WHEREAS, the Project Site is located in the Monroe Local School District (the "School District") and the Butler Technology and Career Joint Vocational School District (the "JVSD") and the respective Boards of Education of the School District and the JVSD have been notified in accordance with Section 5709.83 of the Revised Code; and

WHEREAS, in order to induce the Company to undertake the Project, this Council has determined to authorize the execution and delivery by the City of a Community Reinvestment Area Agreement (the "CRA Agreement"), a form of which is on file with the Clerk of Council;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHO, THAT:

SECTION 1: That this Council hereby approves the CRA Agreement substantially pursuant to the terms and conditions contained in each, copies of which are on file in the office of the Clerk of Council and attached to this Ordinance as Exhibit "C". The City Manager is authorized to sign the CRA Agreement, with such changes, which are in the judgment of the City Manager. not materially adverse to the City, as the City Manager shall approve.

SECTION 2. That pursuant to division (D) of Section 3735.671 of the Ohio Revised Code, this legislative authority has determined to waive the requirement of the annual fee provided in that section.

SECTION 3. That any officer or employee of the City, acting alone or together, is hereby authorized to take such actions or execute and deliver such instruments as may be necessary to implement the provisions of the CRA Agreement or the abatement provided therein.

SECTION 4. That, if any section, phrase, sentence or portion of this Ordinance is, for any reason, held invalid or unconstitutional by a Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 5. That this Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law, including ORC Sec. 121.22.

SECTION 6: This measure shall take effect and be in full force from and after the earliest period allowed by law.

PASSED: December 7, 2015

ATTEST:

Clerk of Council

APPROVED:

Mayor

First Reading: November 24, 2015

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised C

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

Clerk of Council
City of Monroe, Ohio

COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Agreement (this "Agreement") is made and entered into by and between the City of Monroe, Ohio an Ohio municipal corporation, with its main offices located at 233 South Main Street, Monroe, Ohio (hereinafter referred to as "City") and The Rivertown Brewing Company and Barrel House, LLC, an Ohio limited liability company with its principal office located at 3590 South Heartwood Road, Amelia Ohio 45102 (hereinafter referred to as "Company"), under the following circumstances:

WHEREAS, the Council adopted Emergency Resolution No. 44-2007 on August 14, 2007, describing the boundaries of the Community Reinvestment Area and determined that such area contains the conditions described in Section 3735.65(B) of the Code and confirmed said area as a Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, Company desires to construct a new building of approximately 31,000 square feet to be used for the Company's marketing, manufacturing, warehouse and distribution operations, as more particularly described on the site plan attached hereto as Exhibit A (the "Project"), which will be located on certain real property within the boundaries of the Community Reinvestment Area as more specifically described on Exhibit B hereto (the "Project Site"), provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, Company anticipates that it will equip and occupy the Project Site or the Project and hire employees at the Project Site; and

WHEREAS, the City, having the appropriate authority, desires to provide Company with incentives available for the development of the Project in the Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, Company has submitted a proposed application to the Housing Officer of City for this Agreement (which is attached hereto as Exhibit C, hereinafter referred to as the "Application"); and

WHEREAS, Company has remitted to the City the required state application fee of $750.00 made payable to the Ohio Development Service Agency which the City will forward to the Ohio Development Services Agency together with this Agreement; and

WHEREAS, the Housing Officer of the City has reviewed the proposed construction of the Project and the facts asserted in the Application and has determined that the proposed construction of the Project meets the requirements for an exemption under Section 3735.67 of the Code; and

WHEREAS, the Project Site is located in the Monroe Local School District (the "School District") School District and the Butler Technology and Career Center Joint Vocational School District (the "JVSD"), and the respective Boards of Education of the School

District and the JVSD have been notified in accordance with Section 5709.83 and been given a copy of this Agreement; and

WHEREAS, pursuant to Section 3735.67(A) of the Code and in conformance with the format required under Section 3735.671(B) of the Code, the parties hereto desire to set forth their Agreement with respect to matters hereinafter contained;

NOW, THERFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Company or company's designee shall construct the Project as described in recitals to this Agreement. The Project will be located on the Project Site. Developer will invest in the Project and the Project Site an amount estimated to exceed two million ($2,000,000) for the costs of site development and construction of a new building (exclusive of any amounts for acquisition of machinery and equipment, furniture and fixtures, and inventory). There are no existing buildings at the Project Site. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement. The parties recognize that the costs associated with the Project may increase or decrease significantly. The parties also recognize that costs do not necessarily equal otherwise taxable value.

2. The value for Ohio personal property tax purposes of the non-inventory personal property of Company that is located at another location in Ohio prior to the execution of this Agreement and that is to be relocated from that location to the Project Site is $0.00. The value for Ohio personal property tax purposes of the non-inventory personal property of Company located at the Project Site prior to the execution of this Agreement is $0.00. The average value for Ohio personal property tax purposes of the inventory of Company held at another location in Ohio prior to the execution of this Agreement and to be relocated from that location to the Project Site is $0.00.

3. Company intends to commence construction of the building on or about April 1, 2016 and the scheduled estimated completion date for the building shell portion of the Project is no later than approximately October 1, 2016. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement.

4. Company estimates that there will be created at the Project Site, cumulatively, approximately 55 full-time permanent equivalent employee positions, 0 full time temporary equivalent employee positions, 10 part time permanent equivalent employee positions and 0 part time temporary employee positions, with an aggregate annual payroll of approximately $1,900,000, including $_____ for full-time positions and $_____ for part time positions. Company estimates that hiring will

commence on about the day of expected completion of the Project (October 1, 2016) and will continue incrementally during the following years as set forth in the following table:

Year following completion	Full Time	Part Time	Full Time Payroll	Part Time Payroll
1				
2				
3				
4				
5				

Company has no employee positions in Ohio. The estimates provided in this Section 4 are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement. The parties recognize that the employment and payroll estimates associated with the Project may increase or decrease.

5. The City hereby grants Company a tax exemption for real property improvements made to the Project Site pursuant to Section 3735.67 of the Code which shall be in the following amounts:

45% for 5 years.

The exemption commences the first year for which the real property improvements would first be taxable were that property not exempted from taxation. No exemption shall commence after the tax year ending December 31, 2017 nor extend beyond the tax year ending December 31, 2031. Company acknowledges that the tax exemption with respect to Project is subject to the filing of a real property tax exemption application with the Housing Officer following the completion of construction of the Project. The City agrees that upon receipt of the real property tax exemption application, the Housing Officer shall certify the tax exemption to the County Auditor.

6. Company shall provide to the Tax Incentive Review Council of the City any information reasonably required by the council to evaluate the property owner's compliance with the Agreement, including returns filed pursuant to Section 5711.02 of the Code if requested by the council.

7. Consistent with previous practice in the City, the Council has waived the annual fee provided for in Section 3735.671 of the Code.

8. The Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Project and the Project Site and shall file all tax reports and returns as required by law. If Company fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement will be

rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter, and the City may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this Agreement.

9. The City shall perform such acts as are reasonably necessary to appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

10. If for any reason the City revokes the designation of the Community Reinvestment Area, all entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation granted under this Agreement.

11. If Company materially fails to fulfill its obligations under this Agreement, or if City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this Agreement. At the request of the City, the Company shall execute and deliver to the City, in form and substance reasonably satisfactory the City, a mortgage securing such obligation.

12. Company hereby certifies that at the time this Agreement is executed, that Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Revised Code, or, if such delinquent taxes are owed, Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against Company. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

13. Company and the City acknowledge that this Agreement must be approved by formal action of the legislative authority of City as a condition for the Agreement to take effect. This Agreement takes effect upon such approval.

14. Exemptions from taxation granted under this Agreement shall be revoked if it is determined that Company, any successor property owner, or any related member (as those terms are defined in Section 3735.671 of the Code) has violated the prohibition against entering into this Agreement under Division (E) of Section 3735.671 or Section

5709.62 or 5709.63 of the Code prior to the time prescribed by that division or either of those sections.

15. Company affirmatively covenants that it has not knowingly made any material false statements to the State or local political subdivisions in the process of obtaining approval of the Community Reinvestment Area Incentives. If any representative of Company has knowingly made a material false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, Company shall be required to immediately return all benefits received under the Community Reinvestment Area Agreement pursuant to ORC Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66 (C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC Section 2921.12(D)(1), which is punishable by a fine of not more than $1,000 and/or a term of imprisonment of not more than six months.

16. Except as provided below, this Agreement and the benefits and obligations thereof are not transferable or assignable without the express, written approval of the City, not to be unreasonably withheld. The City Manager may, in his or her discretion, approve the transfer or assignment of this Agreement and the benefits and obligations hereof from Company to Transferee, subject to compliance with the procedure stated below in this Section. If Transferee is a Permitted Transferee, the City Manager hereby does approve, and Company shall not need further consent by the City with respect to, the transfer or assignment of this Agreement and the benefits and obligations hereof to Permitted Transferee.

"Transferee," as used herein, is defined as each person or entity, except Company, which is a legal successor in interest to all or any part of the Project or the Project Site (the "Transferred Property") whether by sale, grant, or other means of transfer of interest, including but not limited to the formation of subsidiaries, affiliates, joint ventures, successor entities or other arrangements used to carry out the terms of this Agreement (each a "Successor").

"Permitted Transferee," as used herein, is defined as (a) any entity in which Company directly or indirectly holds an ownership interest; (b) successor entities to Company where Company had ownership as described in (a) and where there remains at least one other party with an ownership interest ; and (c) entities resulting from a consolidation, conversion, acquisition or merger of Company.

Provided, however, that as a condition to this right to receive tax exemption as set forth in this Agreement, each Transferee shall execute and deliver to the City an Assignment and Assumption Agreement in form and content reasonably satisfactory to the City, wherein such Transferee:

(a) assumes all obligations of Company under this Agreement with respect to the Transferred Property, whether the Transferee received the Transferred Property directly from Company or a Successor, and

(b) certifies to the validity, as to the Transferee and the Transferred Property, of the representations, warranties and covenants contained herein and in the Assignment and Assumption Agreement

It is acknowledged and agreed by the City that the form of Assignment and Assumption Agreement attached hereto as Exhibit D shall be deemed satisfactory to, and approved by, the City.

Upon approval by the City of such Assignment and Assumption Agreement, as to the Transferred Property, the approved Transferee shall have all entitlements and rights to tax exemption, and obligations, as an "Owner" under this Agreement, in the same manner and with like effect as if the Transferee had been the original Company and a signatory to this Agreement. The City agrees to execute each such Assignment and Assumption Agreement and to deliver an original thereof to the Transferee (but execution of such agreement by the City will not be a condition to the effectiveness thereof, with respect to an assignment to a Permitted Assignee).

(Balance of Page Intentionally Omitted)

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IN WITNESS WHEREOF, the City of Monroe, Ohio, pursuant to Emergency Resolution __-___ of the Council of City of Monroe, Ohio, and Rivertown Brewery and Barrel House, LLC, have caused this instrument to be executed on this ____day of _____, 2015.

CITY OF MONROE, OHIO

By _____
William J. Brock, P.E., CM
City Manager

STATE OF OHIO)
)SS:

Sworn to and subscribed in my presence by

presence by

William J. Brock, City Manager of Monroe,

this _____day of _____, 2015.

this

_____

_____

Notary Public

RIVERTOWN BREWERY AND BARREL HOUSE, LLC,
An Ohio limited liability company

By _____

Sworn and subscribed in my

_____,

_____,

_____ day of _____, 2015.

Notary Public

This Agreement was prepared by Kristopher Wahlers, Ice Miller LLP, 250 West Street, Columbus, Ohio 43215.

Approved as to form:

_____
K. Philip Callahan, Law Director

Exhibit A – Site Plan
Exhibit B – Project Site
Exhibit C – Application

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Exhibit B

Project Site Description

See attached

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Exhibit C

<u>CRA Application</u>

See attached

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Exhibit D

<u>Assignment and Assumption</u>

See attached

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