

TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

and

ADPC RAYNOR LLC and TWIN FORK BEER CO. INC.

PROJECT AGREEMENT

Dated August 15, 2018

PROJECT AGREEMENT

THIS PROJECT AGREEMENT, dated August 15, 2018, is by and between the TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation and an industrial development agency of the State of New York (the "State") duly organized and existing under the laws of the State, having its office at the Town of Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York 11901 (the "Agency"), and ADPC RAYNOR LLC, a limited liability company qualified to do business in the State of New York, and TWIN FORK BEER CO. INC., a corporation qualified to do business in the State of New York, (collectively known as the "Company").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A, as amended, of the General Municipal Law of the State (the "Enabling Act") has been duly enacted into law as Chapter 1030 of the Laws of 1969 of the State; and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, improve, maintain, equip and lease or sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery, equipment and other facilities deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, civic, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to enter into an agreement which includes provisions such as those contained herein (this agreement being hereinafter referred to as the "PILOT Agreement"); and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was created for the benefit of the Town of Riverhead, Suffolk County, New York (the "Town") and the inhabitants thereof by Chapter 624 of the Laws of 1980 (together with the Enabling Act, the "Act"); and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project consisting of: the construction of an approximately 11,480 square foot manufacturing building on a 2.1-acre vacant lot located at 807 Raynor Avenue, Riverhead, New York (S.C.T.M. No. 0600-108-2-12) and associated site improvements for use as a craft brewing, storage and distribution facility, and associated tasting room. The Company will purchase brewery equipment and tasting room furnishings, make necessary site improvements and construct the facility as depicted on the site plan at an estimated total project cost of \$1,492,196, inclusive of the land value addition (the "Project" or "Facility"); and

WHEREAS, by Resolution, adopted on May 7, 2018 (the "Resolution"), the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (i) the provision of an exemption from Sales and Compensating Use Taxes on certain property, including tangible personal property, and (ii) a partial abatement of real property taxes for the Project equal to 100% of the increase of the assessed value of the improvements declining 10% each year for a period of ten years, effective for the 2019/2020 tax billing year. PILOT payments shall be paid on the land assessment of \$20,000 and percentage abatement of improvements assessment over 10 years as set forth in Exhibit A of the Payment In Lieu of Tax Agreement (collectively, the sales and use tax exemption benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company as included within its Application for Financial Assistance that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$392,800, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$33,879 and (ii) that real property tax abatement benefits to be provided to the Company over the ten-year benefit period of the anticipated payment-in-lieu-of tax agreement are estimated to be approximately \$232,730; and

WHEREAS, the Company proposes to lease the Facility to the Agency, and the Agency desires to rent the Facility from the Company pursuant to the terms of a certain Ground Lease Agreement dated August 15, 2018 (the "Ground Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to sublease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in a certain Lease Agreement dated August 15, 2018 (the "Lease Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of taxes for the Facility, the Agency and the Company will enter into a Payment-in-Lieu-of-Tax Agreement, dated August 15, 2018 (the "PILOT Agreement"), by and between the Agency and the Company; and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to acquire, construct, renovate and equip the Facility and to undertake the Project, the Agency and the Company will enter into this Project Agreement, dated August 15, 2018 (the "Project Agreement"), by and between the Agency and the Company; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution and as more particularly described in the PILOT Agreement, Ground Lease, Lease, Guaranty, Sales Tax Authorization Letter and this Project Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of Town of Riverhead and to otherwise accomplish the public purpose of the Act. Therefore, the Agency is entering into the Ground Lease Agreement, Lease Agreement, PILOT Agreement, Guaranty, Sales Tax Agent Authorization Letter and Project Agreement.

2. PILOT Agreement. The parties hereto understand and agree that a certain PILOT Agreement, to be entered into, or entered into, by and between the Company and the Agency dated July 30, 2018 which is or shall be contemporaneously recorded with the Suffolk County Clerk and incorporated herein as if fully set forth.

3. Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Ground Lease Agreement, the Lease Agreement, the PILOT Agreement, the Sales Tax Authorization Letter and the Project Agreement in order to provide Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolutions, the Company covenants and agrees that it may be subject to a Recapture Event (as hereinafter defined) resulting in the potential recapture of any and all Financial Assistance, as described below, if the Company receives, or its Subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

(1) the Project is not in place within three (3) years from the date hereof, and the Project does not have a valid and subsisting Certificate of Occupancy for all structures and uses; or

(2) the Company, or its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(3) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any, provided however that

the foregoing shall constitute a Recapture Event only with respect to such excess amount;
or

(4) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(5) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance; or

(6) the Company fails to meet and maintain the thresholds and requirements, which remain uncured beyond any applicable notice and cure period, representing certain material terms and conditions, said Investment Commitment, Employment Commitment, and Local Labor Commitment, all as further defined below, being additional purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of the later of either two (2) years following the (i) construction completion date or (ii) the calendar year of the termination of the PILOT Agreement or final bond payment whichever is later (said date hereinafter referred to as the "Project Completion Date" and the time period so referenced being hereinafter defined as the "Material Terms and Conditions Monitoring Period") confirming the following:

(a) Investment Commitment - that the total investment actually made with respect to the Project at the Project's construction completion date equals or exceeds \$1,267,516 (which represents the product of 85% multiplied by \$1,491,196 being the total Project cost as stated in the Company's application for Financial Assistance exclusive of the land acquisition cost); and

(b) Employment Commitment - that there are at least 0 existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and that the Company has maintained and created FTE employment at the Facility equal to 6.8 FTE employees (representing the sum of 0 Baseline FTE plus the product of 85% multiplied by 8 being the total number of new FTE employee positions as proposed to be created in the second year by the Company as stated in the Company's application for Financial Assistance); and

(c) Local Labor Commitment - that the Company adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Policy on an annual reporting basis during the construction period; and

(d) Project Assessment Reporting Commitment - that the Company shall provide, annually, to the Agency, certain information to confirm that the

Project is achieving the investment, job retention, job creation, and other objectives of the Project.

In order to accomplish the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created in form as supplied by the Agency and as may be amended from time to time by the Agency.

The findings made by the Agency with respect to Section 3(a)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 3(a)(5) with respect to the thresholds and requirements as identified in Section 3(a)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 3(a)(5) above beyond any applicable notice and cure period, may potentially be determined by the Agency, in accordance with the Sales Tax Authorization Letter and Section 6.15 Recapture of Agency Benefits contained in the Lease Agreement and/or a failure to comply with the Agency's policies and Resolutions (collectively, findings and determinations made as described herein with respect to Section 3(a)(1), (2), (3) and/or (4) and/or the failure under Section 3(a)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 3(a)(5) are hereby defined as a "Recapture Event"). If the Agency declares a Recapture Event, which Recapture Event remains uncured after 30-day written notice the Company may apply for an extension of the cure period upon a showing of good faith and due diligence the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company (the "Recapture Amount") and (ii) promptly pay over any or all such Recapture Amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or part of the Project, or (ii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the party of the Company or any of their respective affiliates so long as the Company or any of their respective affiliates have diligently and in good faith using commercially reasonable efforts pursued to rebuilding, repair, restoration or replacement of the Facility or part thereof.

In exercising its reasonable discretion to require payment of the Recapture Amount, the Agency shall consider a "force majeure" event. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of

America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or other cause or event not reasonably within the control of the party claiming such inability and not due to its fault.

(b) In accordance with the Resolution the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$392,800, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3(a) of this Agent Agreement, cannot exceed \$33,879.

(c) The Company acknowledges and understands that a Recapture Event made with respect to Section 3(a)(4) of this Project Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

4. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

5. Notices. All notices, certificates and other communications under this Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, addressed as follows or to such other address as any party may specify in writing to the other:

To the Company:

ADPC Raynor LLC
807 Raynor Avenue
P.O. Box 492
Riverhead, NY 11901
Attention: Anita Chekijian, Managing Member

Twin Fork Beer Co. Inc.
807 Raynor Avenue
P.O. Box 492
Riverhead, NY 11901
Attn:

With Copy To:

Germano & Cahill, P.C.
4250 Veterans Memorial Highway, Suite 275
Holbrook, NY 11741

To the Guarantor:

Anita Chekijian
807 Raynor Avenue
P.O. Box 492
Riverhead, NY 11901

To the Agency:

Town of Riverhead Industrial Development Agency
Town of Riverhead Town Hall
200 Howell Avenue
Riverhead, NY 11901
Attention: Executive Director

6. Amendments. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York and venue shall be placed in Suffolk County, New York, without regard or reference to its conflict of laws principles.

9. Section Headings. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

Dated: 8/15/18

By: [Redacted Signature]
Thomas Cruso,
Chairman

ADPC RAYNOR LLC

Dated: 8-15-18

By: [Redacted Signature]
Anita Chekijian
Managing Member

TWIN FORK BEER CO. INC.

Dated: 8/15/18

By: [Redacted Signature]
Peter Chekijian
Title:


Dated: 8-15-18

By: [Redacted Signature]
Daniel Chekijian
Title:

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Anita Chekijian, being first duly sworn, deposes and says:

1. That I am the Managing Member of ADPC Raynor LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.



Anita Chekijian

Subscribed and affirmed to me under penalties of perjury
this 15th day of August 2018.



(Notary Public)

Lora Grillo
Notary Public State of New York
Qualified in Suffolk County
No. 01GR4982888
Commission Expires 06/10/2019

[illegible]

Peter Chekijian, being first duly sworn, deposes and says:

1. That I am the President of Twin Fork Beer Co. Inc. and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

Peter Chekijian

Subscribed and affirmed to me under penalties of perjury
this 15th day of August 2018.

(Notary Public)

Lora Grillo
Notary Public State of New York
Qualified in Suffolk County
No. 01GR4982888
Commission Expires 06/10/2019


STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Daniel Chekijian, being first duly sworn, deposes and says:

1. That I am the Vice President of Twin Fork Beer Co. Inc. and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.


Daniel Chekijian

Subscribed and affirmed to me under penalties of perjury
this 13th day of August 2018.


(Notary Public)
Lora Grillo
Notary Public State of New York
Qualified in Suffolk County
No. 01GR4982888
Commission Expires 06/10/2019

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the day of August in the year 2018 before me, the undersigned, a notary public in and for said State, personally appeared Thomas Cruso personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

RICHARD A. EHLERS
Notary Public, State of New York
Suffolk County No. 02EH4738288
Commission Expires February 28, 20__²²

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the 5th day of August in the year 2018 before me, the undersigned, a notary public in and for said State, personally appeared Anita Chekijian personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Lora Grillo
Notary Public State of New York
Qualified in Suffolk County
No. 01GR4982888
Commission Expires 06/10/2019

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the 15th day of August in the year 2018 before me, the undersigned, a notary public in and for said State, personally appeared Peter Chekijian personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Lora Grillo
Notary Public State of New York
Qualified in Suffolk County
No. 01GR4982888
Commission Expires 06/10/2019

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the 15th day of August in the year 2018 before me, the undersigned, a notary public in and for said State, personally appeared Daniel Chekijian personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Lora Grillo
Notary Public State of New York
Qualified in Suffolk County
No. 01GR4982888
Commission Expires 06/10/2019

EXHIBIT A

Property Description

Schedule A Description

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate lying and being at Riverhead, in the Town of Riverhead, County of Suffolk and State of New York being bounded and described as follows:

Beginning at a point on the westerly side of Raynor Avenue distant 400.00 feet as measured from the corner formed by the intersection of the southwesterly side of Osborne Avenue with the westerly side of Raynor Avenue;

Running thence along the southwesterly side of Raynor Avenue South 18 degrees 55 minutes 30 seconds East 200.00 feet to the northeasterly corner of land now or formerly of William Dunkirk;

Thence along the last mentioned land South 71 degrees 04 minutes 30 seconds West 457.68 feet to land now or formerly of W.F. Howell Co., Inc.;

Thence along last mentioned land North 18 degrees 26 minutes 00 seconds West 200.00 feet to the southwesterly corner of land now or formerly of Morrison Development Corp.;

Thence along last mentioned land North 71 degrees 04 minutes 30 seconds East 455.93 feet to the point or place of beginning.