

TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

and

PRESTON HOUSE LLC

PROJECT AGREEMENT

Dated as of July 12, 2016

PROJECT AGREEMENT

THIS PROJECT AGREEMENT, dated as of July 12, 2016, 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 PRESTON HOUSE LLC, a limited liability company authorized to do business in the State of New York, having an office at 100 Comac Street, Ronkonkoma, New York 11792 (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 historic restoration, rehabilitation and reuse of the Preston House, an existing vacant 2,600 square foot dilapidated structure located at 428 East Main Street within the Riverhead Urban Renewal Area, EMSURA, (Suffolk County Tax Map No. 0600-129-3-13.000) (Land Description provided in Exhibit A attached hereto) and to permit the construction of a restaurant and five-story boutique hotel as Phase III of the previously approved Atlantis Holding Company LLC Aquarium Project at a cost of \$10,691,500 (the "Project"); and

WHEREAS, by Resolutions, adopted on January 12, 2016 and May 2, 2016 (the "Resolutions"), 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 Mortgage Recording Taxes, (ii) the provision of an exemption from Sales and Compensating Use Taxes on certain property, including tangible personal property, and (iii) a partial abatement of real property taxes for the improvement over the current assessed value of parcel identified as S.C.T.M. No. 0600-129-3-13.00 for a ten year period (collectively, the sales and use tax exemption benefit, the mortgage recording tax 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 \$4,409,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$380,276, (ii) that the mortgage recording tax exemption amount shall be approximately \$84,000, and (iii) that real property tax abatement benefits to be provided to the Company over the 10-year benefit period of the anticipated payment-in-lieu-of tax agreement are estimated to be approximately \$1,017,648; 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 as of July 12, 2016 (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 as of July 12, 2016 (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 as of July 12, 2016 (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 as of July 12, 2016 (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 Resolutions 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 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 12, 2016 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 shall be placed in service no later than five (5) years from the date hereof and shall have received 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; 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 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 \$9,087,350 (which represents the product of 85% multiplied by \$10,691,000 being the total project cost as stated in the Company's application for Financial Assistance); 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

- the number of current FTE employees in the then current year at the Facility; and

that the Company has maintained and created FTE employment at the Facility equal to 22 FTE employees (representing the sum of 0 Baseline FTE plus the product of 85% multiplied by 26 (being the total number of new FTE employee positions as proposed to be created 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, 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, 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 and (ii) promptly pay over any or all such 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.

(b) In accordance with the Resolutions 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 \$4,409,000, 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 \$380,276.

(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:

PRESTON HOUSE LLC
100 Comac Street
Ronkonkoma, NY 11779
Attention: JOSEPH PETROCELLI, Managing Member

With Copy To:

Eric J. Russo, Esq.
VanBrunt, Juzwiak & Russo, P.C.
140 Main Street
Sayville, NY 11782

To the Guarantor:

JOSEPH PETROCELLI, Managing Member
PRESTON HOUSE LLC
100 Comac Street
Ronkonkoma, NY 11779

To the Agency:

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

To the Lender:

Suffolk County National Bank
Commercial Loan Department
3880 Veterans Memorial Highway
Bohemia, NY 11716

With Copy To:

Kevin E. Balfe, Esq.
135 Pinelawn Road
Suite 125 North
Melville, NY 11747

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, 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.

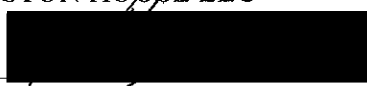
TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

Dated: 7/12/2012

By: 
Elias Kalogeras
Vice Chairman

PRESTON HOUSE LLC

Dated: 7/18/2016

By: 
Joseph Petrocelli
Managing Member

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

Joseph Petrocelli, being first duly sworn, deposes and says:

1. That I am the Managing Member of Preston House 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.


Joseph Petrocelli

Subscribed and affirmed to me under penalties of perjury
this 18 day of July, 2016.


(Notary Public)

RICHARD A. EHLERS
Notary Public, State of New York
Suffolk County No. 02EH4738288
Commission Expires February 28, 2018

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

On the 12th day of July in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared Elias Kalogeras 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 / 8
Commission Expires February 28, 20__

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

On the 18 day of July in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared JOSEPH PETROCELLI 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, 2017

EXHIBIT A

Property Description

Fidelity National Title Insurance Company

TITLE NO. F16-7404-101243-SUFF

SCHEDULE A-1 (*Description*)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village and Town of Riverhead, County of Suffolk and State of New York, known as Lot No. 3 on a map known as "Map of Ostrander Property" dated April 5, 1905 and filed in the Suffolk County Clerk's Office on April 17, 1905 as Map No. 484, said lot being bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Ostrander Avenue with the northerly side of East Main Street;

RUNNING THENCE South 72 degrees 32 minutes 40 seconds West along the northerly side of East Main Street, a distance of 73 feet to land now or formerly of Kotlarchuk;

THENCE North 19 degrees 10 minutes 50 seconds West along said last mentioned land a distance of 175.61 feet to land now or formerly of James Richard;

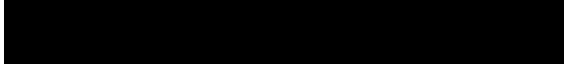
THENCE North 70 degrees 49 minutes 40 seconds East along said last mentioned land a distance of 73 feet to the westerly side of Ostrander Avenue;

THENCE South 19 degrees 10 minutes 20 seconds East along the westerly side of Ostrander Avenue, a distance of 177.80 feet to the corner, the point or place of BEGINNING.

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

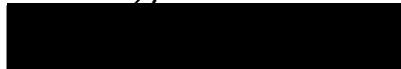
Dated: 7/12/2016

TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Elias Kalogeris
Vice Chairman

Dated: 7/18/2016

PRESTON HOUSE LLC

By: 
Joseph Petrocelli
Managing Member

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

On the 12th day of July in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared Elias Kalogeras 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, 2018