

TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

AND

ATLANTIS HOLDING COMPANY, LLC

AND

ATLANTIS MARINE WORLD, LLC

AND AFFILIATED COMPANIES

SUPPLEMENTAL SALES AND COMPENSATING USE TAXES EXEMPTION
AGREEMENT

Dated: January 15, 2019

THIS Agreement of Supplemental Sales and Compensating Use Taxes Exemption Agreement, dated as of January 15, 2019 (this "Agreement"), 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 of New York, having its office at the Town of Riverhead Town Hall, 200 Howell Avenue, Riverhead, New York 11901 (the "Agency") and ATLANTIS HOLDING COMPANY, LLC, a New York limited liability company having an address at 431 East Main Street, Riverhead, New York, 11901 and its affiliated companies, ATLANTIS MARINE WORLD, LLC, a New York limited liability company having an address at 431 East Main Street, Riverhead, New York, 11901 and HP EAST END RIVERHEAD, LLC, a New York limited liability company having an address at 431 East Main Street, Riverhead, New York, 11901 (collectively 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 "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 Agency has received an application for financial assistance from the Company, seeking relief in the form of provision of an exemption from Sales and Compensating Use Taxes and no new additional benefits on certain property, including tangible personal property, with respect to improvements, rehabilitation, and purchase of certain necessary equipment, at the Long Island Aquarium and Exhibition Center and Hyatt Place East End (collectively known as the "Facility") of the Riverhead Downtown Business District all located at 431 East Main Street, Riverhead, New York (S.C.T.M. No. 0600-129.000-0004-021.003) which is an existing Agency project within a duly designated Urban Renewal Area and New York State

Empire Zone. The Company proposes to install a combined heat and power system and other HVAC equipment necessary for energy efficiency at the Facility and to perform attendant roof repairs, as well as rehabilitation of buildings as part of their continued development and improvement of the Facility as a major tourism destination project at an estimated total project cost of \$4,349,486 (the "Project"); and

WHEREAS, upon application of the Company, the Agency has held proceedings and has determined by Agency resolution adopted January 14, 2019 (the "Resolution") to provide the Company with an exemption from Sales and Compensating Use Taxes related to the Project (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 \$3,472,212, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$299,478.31, 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 this 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.

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:

Section 1. The provisions of the AGREEMENT FOR FIRST AMENDMENT TO PILOT, SECOND AMENDMENT TO SALE AGREEMENT, AND AMENDMENT AND AFFIRMATION OF GUARANTEES dated January 15, 2016 are hereby acknowledged and affirmed to remain in full force and effect.

Section 2. Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into this Agreement and the Sales Tax Authorization Letter in order to provide Financial Assistance to the Company for the Project at 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:

(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 has not been placed in service within three (3) years ("Project Completion Date") from the date hereof and the Agency has not received evidence of a valid and subsisting Certificate of Occupancy for the Project or other appropriate evidence of completion; or

(2) there is a material change to the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project, such that the Company would not be 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 set forth herein, including the Investment Commitment and Local Labor Commitment as further defined below, each 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 period ending two (2) years following the Project Completion Date (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 by the Company with respect to the Project at the Project Completion Date equals or exceeds \$3,697,063 (which represents the product of 85% multiplied by \$4,349,486 being the total Project cost as stated in the Company's application for Financial Assistance); and

(b) 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

With respect to Section 2(a)(1), (2), (3), (4) and/or (5) and/or failure to provide the written confirmation as required by Section 2(a)(6) with respect to the thresholds and requirements as

identified in Section 2(a)(6), above, and/or failure to meet the thresholds and requirements as identified in Section 2(a)(6) above, the Agency shall require the recapture of all Agency benefits provided by this Agreement 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 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 \$4,349,486, 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 \$299,478.

(c) The Company acknowledges and understands that a Recapture Event made with respect to this Agreement may, 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.

Section 4. Appointment of Agent of the Agency. The Agency appoints Atlantis Holding, LLC, Atlantis Marine World, LLC, and HP East End Riverhead, LLC as Agents of the Agency and authorizes the Executive Director to execute and file the attached ST-60 form for appointed Agents. The Executive Director is further hereby authorized to execute the attached Sales Tax Agent Authorization Letter for appointed agents.

Section 5. Agreement to Provide Information. The Company agrees, whenever requested by the Agency, within a reasonable period of time, to provide and certify or cause to be provided and certified such information concerning the Company and any tenant, subtenant or occupant of the Project as the Agency from time to time reasonably considers necessary or appropriate in connection with the transactions contemplated by this Supplemental Sales and Compensating Use Taxes Exemption Agreement, including but not limited to, such information as to enable it or the Agency to make any reports required by law or governmental regulation. Without limiting the foregoing, the Company acknowledges and affirms to the Agency that it has read and understands the Agency's annual financial reporting requirements contained in Section 859 and 859-a of the General Municipal Law, the Agency's filing requirement contained in Section 874(9) of the General Municipal Law and Section 875 of the General Municipal Law and acknowledges that the Agency cannot comply with said annual reporting requirements and filing requirements without necessary information being provided by the Company and any tenant, subtenant or occupant of the Project and agrees to provide to the Agency (i) not later than February 1 of each year, the name and address of the then current owner of the Project, the number of jobs at the Project, the estimated value of the financial assistance provided by the Agency to the Company during the preceding calendar year and such other information as the Agency may

reasonably request which may be necessary for the Agency to comply with its annual financial reporting requirement, and (ii) within ten days of the date that the Agency designates the Company to act as agent of the Agency for purposes of extending a sales tax exemption to the Company, the information required by Section 874(9) of the General Municipal Law. The Company each further acknowledges and affirms to the Agency that it has read and understands the Company's annual reporting requirements and filing requirements.

Section 6. 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.

Section 7. 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 Companies:

Atlantis Marine World, LLC
431 East Main Street
Riverhead, NY 11901
Attn.: Joseph Petrocelli

Atlantis Holding Company, LLC
431 East Main Street
Riverhead, NY 11901
Attn: Joseph Petrocelli

To the Agency:

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

Section 8. 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.

Section 9. 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.

Section 10. 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.

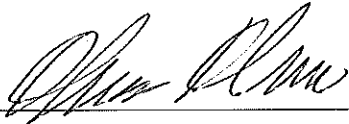
Section 11. Section Headings. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

Section 12. Due Authorizations, Execution and Delivery. The execution and delivery of this Agreement by the Managing Member and the performance by the Managing Member of the transactions contemplated hereby have been duly authorized by all requisite corporate, limited liability company, partnership or trust actions or proceedings. Each Managing Member is duly organized, validly existing and in good standing under the laws of the state of its formation with power to enter into this Agreement and to consummate the transactions contemplated hereby.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Agency, the Company and Guarantor have caused this Agreement to be executed as of the date first set forth above.

**TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Thomas Cruso
Chairperson


ATLANTIS HOLDING COMPANY, LLC

By: J. PETROCELLI ATLANTIS
DEVELOPMENT, LLC, its Managing
Member

By: 
Joseph Petrocelli, Managing Member

ATLANTIS MARINE WORLD, LLC

By: J. PETROCELLI ATLANTIS
DEVELOPMENT, LLC, its Managing
Member

By: 
Joseph Petrocelli, Managing Member

HP EAST END RIVERHEAD, LLC

By: J. PETROCELLI ATLANTIS
DEVELOPMENT, LLC, its Managing
Member

By: 
Joseph Petrocelli, Managing Member

Joseph Petrocelli ("Guarantor"), personally consents to this Agreement and acknowledges that the Guarantee dated February 26, 2010 shall continue in full force and effect and is hereby confirmed by the Guarantor in all respects.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small flourish.

Joseph Petrocelli
Individual Guarantor

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

On the ^{15th} day of January in the year 2019 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 its capacity and that by its 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, 2022

STATE OF NEW YORK

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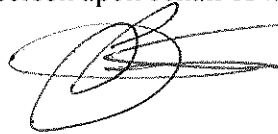
) ss.:

COUNTY OF SUFFOLK

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On the 16th day of January in the year 2019 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 its capacity and that by its signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Karen L. Vilar



Notary Public

Karen L. Vilar Notary Public Suffolk County, NY My Commission Expires 11/07/2020 #01VI6350178

EXHIBIT A
SALES TAX AUTHORIZATION LETTER