

TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

and

J. KING REALTY, INC.

PROJECT AGREEMENT

Dated as of October 11, 2016

PROJECT AGREEMENT

THIS PROJECT AGREEMENT, dated as of October 11, 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 J. KING REALTY, INC., a corporation authorized to do business in the State of New York, having an office at 700 Furrows Road, Holtsville, NY 11742 (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 and equipping of a cider manufacturing, bottling and tourism facility initially estimated to occupy 25,000 sf of total 108,178 sf of building located at 2711 Sound Avenue, Calverton, New York, SCTM #0600-041.000-0002-003.001 with anticipated expansion (the "Facility"). The project will include renovation of existing space and equipping of space to provide for a cider manufacturing plant, cider center, regional tourism center, and regional bottling facility including expenses in connection therewith, at an aggregate cost, including costs associated with the financing thereof, estimated to be \$6,115,000 (the "Project"); and

WHEREAS, by Resolution, adopted on May 2, 2016 (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 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. 0600-041.000-0002-003.001 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 \$1,550,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$133,687, (ii) that the mortgage recording tax exemption amount not to exceed \$30,082 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 \$98,744; 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 October 11, 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 October 11, 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 October 11, 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 October 11, 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 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 October 11, 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 \$2,754,000 (which represents the product of 85% multiplied by \$3,240,000 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 of City Cider House LLC 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 5 FTE employees (representing the sum of 0 Baseline FTE plus the product of 85% multiplied by 6 (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), (4) and/or (5) and/or failure to provide the written confirmation as required by Section 3(a)(6) with respect to the thresholds and requirements as identified in Section 3(a)(6), above, and/or failure to meet the thresholds and requirements as identified in Section 3(a)(6) 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), (4) and/or (5) and/or the failure under Section 3(a)(6) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 3(a)(6) 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 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 \$1,550,000, 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 \$133,687.

(c) The Company acknowledges and understands that a Recapture Event made with respect to Section 3(a)(5) 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:

J. King Realty, Inc.
700 Furrows Road
Holtsville, NY 11742
Attention: John J. King, Chief Executive Officer

With Copy To:

Ellen N. Savino, Esq.
Lewis Johns Avallone Aviles, LLP
One CA Plaza, Suite 225
Islandia, NY 11749

To the Guarantor:

John J. King, Chief Executive Officer
J. King Realty, Inc.
700 Furrows Road
Holtsville, NY 11742

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, 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.

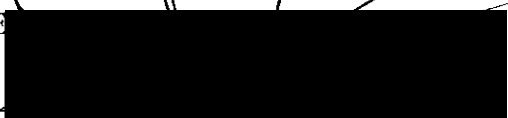
TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

Dated: 10/10/16

By: 
Thomas Cruso,
Chairman

J. KING RE

Dated: 10/11/2016

By: 
John J. King
Chief Executive Officer

ELLEN N. SAVINO
Notary Public, State of New York
No. 4952045
Qualified in Nassau County
Commission Expires June 12, 2017

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

John J. King, being first duly sworn, deposes and says:

1. That I am the Chief Executive Officer of J. King Realty, 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.

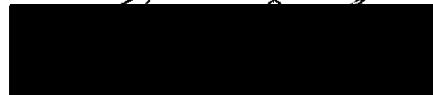
Subscribed and affirmed to me under penalties of perjury
this 11 day of October, 2016

(Notary Public)

CHUCK M. SAWYER
Notary Public, State of New York
No. 00079036
Qualified in Suffolk County
Comm. Exp. 12/31/2017

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

On the 10th day of October in the year 2016 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, 2018

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

On the day of October in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared John J. King 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

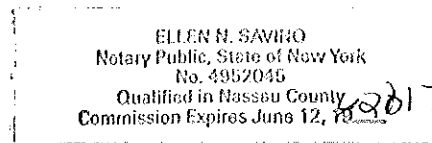


EXHIBIT A

Property Description

SCHEDULE "A"

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

BEGINNING at the corner formed by the intersection of the Westerly side of Osborn Avenue with the southerly side of Sound Avenue (North Road);

RUNNING THENCE along the westerly side of Osborn Avenue, South 23 degrees 29 minutes 10 seconds East, 293.41 feet;

THENCE South 70 degrees 09 minutes 10 seconds West, a distance of 343.52-actual (346.04 feet-deed);

THENCE South 82 degrees 05 minutes 00 seconds West, a distance of 351.60-actual (348.85 feet-deed);

THENCE North 23 degrees 58 minutes 17 seconds West, 15.61 feet;

THENCE North 19 degrees 31 minutes 50 seconds West, 515.92 feet, to a point on the southerly side of Sound Avenue;

THENCE along the Southerly side of Sound Avenue the following four (4) courses and distances:

1. North 88 degrees 29 minutes 10 seconds East, 82.73 feet;
2. North 88 degrees 09 minutes 00 seconds East, 347.11 feet;
3. South 79 degrees 19 minutes 00 seconds East, 198.77 feet;
4. South 68 degrees 33 minutes 10 seconds East, 115.95, to the point or place of **BEGINNING**.

FOR INFORMATION PURPOSES ONLY:

2711 SOUND AVENUE, CALVERTON, NEW YORK 11933
DISTRICT: 0600 SECTION: 041.00 BLOCK: 02.00 LOT: 003.001