SALES AND USE TAX EXEMPTION AGREEMENT

This Sales and Use Tax Exemption Agreement is dated June 2nd, 2020. Pursuant to a resolution duly adopted on May 20, 2020, the Broome County Industrial Development Agency (the "Agency") appointed Beer Tree Brew Works, Inc. (the "Company") the true and lawful agent of the Agency to renovate and equip 23,000+/- square feet within the existing "Sears" building located at 501 Reynolds Road in the Village of Johnson City, Town of Union, Broome County, New York (the "Project").

It is the intent of the Agency that this Agency appointment include, from the effective date of such appointment, authority to purchase, lease and otherwise use on behalf of the Agency all materials, equipment, goods, services and supplies to be incorporated into and made an integral part of the Project and also include the following activities as they relate to the renovation and equipping of any buildings or improvements, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings or improvements: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovating and equipping the Project, (ii) all purchases, leases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with renovating and equipping the Project, including all utility services, and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under the Project.

This Agency appointment includes the power to delegate such Agency appointment, in whole or in part, to agents, subagents, contractors and subcontractors of the Company and to such other parties as the Company chooses so long as they are engaged, directly or indirectly, in the activities hereinbefore described.

It has been estimated and confirmed by the Company, as included within its Application for the Small Business Incentive Program, 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 to be in an amount up to $1,200,000.00 and, therefore, **THE VALUE OF THE SALES AND USE TAX EXEMPTION BENEFITS AUTHORIZED AND APPROVED BY THE AGENCY CANNOT EXCEED $96,000.00. SALES AND USE TAX EXEMPTION BENEFITS IN EXCESS OF THE AMOUNTS AUTHORIZED OR OUTSIDE THE TERMS DEFINED BY THE AGENCY AS PART OF THE PROJECT ARE SUBJECT TO TERMINATION, MODIFICATION OR RECAPTURE BY THE AGENCY.**

In exercising this Agency appointment, the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The Company, its agents, subagents, contractors and subcontractors should identify the Project as the "Beer Tree Brew Works, Inc. Project" on each bill or invoice and indicate thereon that the Company, its agents, subagents, contractors and subcontractors acted as agent for the Broome County Industrial Development Agency in making the purchase.

You and each of your agents, subagents, contractors and/or subcontractors claiming a sales tax exemption in connection with the Project must execute a copy of the Exempt

Purchase Certificate ST-123, and must complete a New York State Department of Taxation and Finance Form ST-60. Original copies of each completed Form ST-60 must be delivered to the Agency within thirty (30) days of the appointment of each of your agents, subagents, contractors or subcontractors. Any agent, subagent, contractor or subcontractor of the Company which delivers a completed Form ST-60 to the Agency will be deemed to be the agent, subagent, contractor or subcontractor of the Agency for purposes of renovating and equipping the Project. Original copies of each ST-123 must be completed by the agent, subagent, contractor or subcontractor acting as purchaser. Failure to comply with these requirements may result in loss of sales tax exemptions for the Project.

You should be aware that the New York State General Municipal Law requires you to file an Annual Statement, Form ST-340, with the New York State Department of Taxation and Finance and the Agency regarding the value of sales tax exemptions you, your agents, subagents, contractors and subcontractors have claimed pursuant to the authority we have conferred on you with respect to this Project. The penalty for failure to file such statement is the removal of your authority to act as our agent.

The aforesaid appointment of the Company as agent of the Agency to renovate and equip the Project shall expire at the earlier of (a) the completion of such activities and improvements, (b) 12/1/2020, ~~2021~~, provided, however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment, or (c) upon the expiration or termination of the Lease Term.

The Company acknowledges receipt of a copy of Section 875 of the New York State General Municipal Law, a copy of which is attached hereto as Exhibit "A," and agrees to the terms thereof as a condition precedent to receiving or benefiting from a New York State sales and use tax exemption.

Please sign and return a copy of this letter for our files.

Very truly yours,

ACCEPTED AND AGREED TO:

BEER TREE BREW WORKS, INC.

By: _____
Brendan Harder, President

BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Stacey M. Duncan, Executive Director

EXHIBIT A

SECTION 875 OF THE
NEW YORK STATE GENERAL MUNICIPAL LAW

(See Attached)

Effective: March 28, 2013

McKinney's Consolidated Laws of New York Annotated Currentness
General Municipal Law (Refs & Annos)
Chapter 24. Of the Consolidated Laws
Article 18-A. Industrial Development
Title 1. Agencies, Organization and Powers (Refs & Annos)

➡➡ § 875. Special provisions applicable to state sales and compensating use taxes and certain types of facilities

1. For purposes of this section: "state sales and use taxes" means sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight. "IDA" means an industrial development agency established by this article or an industrial development authority created by the public authorities law. "Commissioner" means the commissioner of taxation and finance.

2. An IDA shall keep records of the amount of state and local sales and use tax exemption benefits provided to each project and each agent or project operator and shall make such records available to the commissioner upon request. Such IDA shall also, within thirty days of providing financial assistance to a project that includes any amount of state sales and use tax exemption benefits, report to the commissioner the amount of such benefits for such project, the project to which they are being provided, together with such other information and such specificity and detail as the commissioner may prescribe. This report may be made in conjunction with the statement required by subdivision nine of section eight hundred seventy-four of this title or it may be made as a separate report, at the discretion of the commissioner. An IDA that fails to make such records available to the commissioner or to file such reports shall be prohibited from providing state sales and use tax exemption benefits for any project unless and until such IDA comes into compliance with all such requirements.

3. (a) An IDA shall include within its resolutions and project documents establishing any project or appointing an agent or project operator for any project the terms and conditions in this subdivision, and every agent, project operator or other person or entity that shall enjoy state sales and use tax exemption benefits provided by an IDA shall agree to such terms as a condition precedent to receiving or benefiting from such state sales and use exemptions benefits.

(b) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity state sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized

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or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person's agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such state sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such amounts to the IDA shall be grounds for the commissioner to assess and determine state sales and use taxes due from the person under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.

(c) If an IDA recovers, recaptures, receives, or otherwise obtains, any amount of state sales and use tax exemption benefits from an agent, project operator or other person or entity, the IDA shall, within thirty days of coming into possession of such amount, remit it to the commissioner, together with such information and report that the commissioner deems necessary to administer payment over of such amount. An IDA shall join the commissioner as a party in any action or proceeding that the IDA commences to recover, recapture, obtain, or otherwise seek the return of, state sales and use tax exemption benefits from an agent, project operator or other person or entity.

(d) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (a) of this subdivision and its activities and efforts to recover, recapture, receive, or otherwise obtain state sales and use exemptions benefits described in paragraph (b) of this subdivision, together with such other information as the commissioner and the commissioner of economic development may require. The report required by this subdivision shall be filed with the commissioner, the director of the division of the budget, the commissioner of economic development, the state comptroller, the governing body of the municipality for whose benefit the agency was created, and may be included with the annual financial statement required by paragraph (b) of subdivision one of section eight hundred fifty-nine of this title. Such report required by this subdivision shall be filed regardless of whether the IDA is required to file such financial statement described by such paragraph (b) of subdivision one of section eight hundred fifty-nine. The failure to file or substantially complete the report required by this subdivision shall be deemed to be the failure to file or substantially complete the statement required by such paragraph (b) of subdivision one of such section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (e) of subdivision one of such section eight hundred fifty-nine.

(e) This subdivision shall apply to any amounts of state sales and use tax exemption benefits that an IDA recovers, recaptures, receives, or otherwise obtains, regardless of whether the IDA or the agent, project operator or other person or entity characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The provisions of this subdivision shall also apply to any interest or penalty that the IDA imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that an IDA recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be state sales and use taxes and the IDA shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the state.

4. The commissioner shall deposit and dispose of any amount of any payments or moneys received from or paid over by an IDA or from or by any person or entity, or received pursuant to an action or proceeding commenced by an IDA, together with any interest or penalties thereon, pursuant to subdivision three of this section, as state sales

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and use taxes in accord with the provisions of article twenty-eight of the tax law. The amount of any such payments or moneys, together with any interest or penalties thereon, shall be attributed to the taxes imposed by sections eleven hundred five and eleven hundred ten, on the one hand, and section eleven hundred nine of the tax law, on the other hand, or to any like taxes or fees imposed by such article, based on the proportion that the rates of such taxes or fees bear to each other, unless there is evidence to show that only one or the other of such taxes or fees was imposed or received or paid over.

5. The statement that an IDA is required by subdivision nine of section eight hundred seventy-four of this article to file with the commissioner shall not be considered an exemption or other certificate or document under article twenty-eight or twenty-nine of the tax law. The IDA shall not represent to any agent, project operator, or other person or entity that a copy of such statement may serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of such statement to any person required to collect sales or use taxes as the basis to make any purchase exempt from tax. No such person required to collect sales or use taxes may accept such a statement in lieu of collecting any tax required to be collected. The civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax shall be as provided in the tax law. In addition, the use by an IDA or agent, project operator, or other person or entity of such statement, or the IDA's recommendation of the use or tendering of such statement, as such an exemption certificate or document shall be deemed to be, under articles twenty-eight and thirty-seven of the tax law, the issuance of a false or fraudulent exemption certificate or document with intent to evade tax.

6. The commissioner is hereby authorized to audit the records, actions, and proceedings of an IDA and of its agents and project operators to ensure that the IDA and its agents and project operators comply with all the requirements of this section. Any information the commissioner finds in the course of such audit may be used by the commissioner to assess and determine state and local taxes of the IDA's agent or project operator.

7. In addition to any other reporting or filing requirements an IDA has under this article or other law, an IDA shall also report and make available on the internet, without charge, copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. It shall also provide, without charge, copies of all such reports and information to a person who asks for it in writing or in person. The IDA may, at the request of its agent or project operator delete from any such copies posted on the internet or provided to a person described in the prior sentence portions of its records that are specifically exempted from disclosure under article six of the public officers law.

8. In consultation with the commissioner of economic development, the commissioner of taxation and finance is hereby authorized to adopt rules and regulations and to issue publications and other guidance implementing the provisions of this section and of the other sections of this article relating to any state or local tax or fee, or exemption or exclusion therefrom, that the commissioner administers and that may be affected by any provision of this article, and any such rules and regulations of the commissioner shall have the same force and effect with respect to such taxes and fees, or amounts measured in respect of them, as if they had been adopted by the commissioner pursuant to the authority of the tax law.

9. To the extent that a provision of this section conflicts with a provision of any other section of this article, the pro-

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visions of this section shall control.

CREDIT(S)

(Added L.2013, c. 59, pt. J, § 2, eff. March 28, 2013.)

Current through L.2014, chapters 1 to 552.

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END OF DOCUMENT

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TO: All Agents, Subagents,
Contractors and Subcontractors,
of Beer Tree Brew Works, Inc.

Attached please find a "Contract in Lieu of Exemption Certificate" (the "Contract") which will serve as documentation for not charging Beer Tree Brew Works, Inc. (the "Company") for sales or use tax in connection with any purchase, lease, rental and other use of materials, equipment, goods, services or supplies at the project and described in Addendum A to the aforesaid Contract (the "Project").

The Broome County Industrial Development Agency (the "Agency") appoints the Company as its agent for the purpose of renovating and equipping the Project. This letter authorizes the Company to delegate its authority as agent of the Agency to its agents, subagents, contractors, and subcontractors and such other parties as the Company authorizes.

THE PURCHASE OF GOODS AND SERVICES RELATING TO THE PROJECT AND SUBJECT TO NEW YORK STATE AND LOCAL SALES AND USE TAXES ARE ESTIMATED TO BE IN AN AMOUNT UP TO $1,200,000.00 AND, THEREFORE, THE VALUE OF THE SALES AND USE TAX EXEMPTION BENEFITS AUTHORIZED AND APPROVED BY THE AGENCY CANNOT EXCEED $96,000.00. SALES AND USE TAX EXEMPTION BENEFITS IN EXCESS OF THE AMOUNTS AUTHORIZED OR OUTSIDE THE TERMS DEFINED BY THE AGENCY AS PART OF THE PROJECT ARE SUBJECT TO TERMINATION, MODIFICATION OR RECAPTURE BY THE AGENCY.

In accordance with the authority granted to the Company by the Agency, you are hereby appointed as agent of the Agency for the purpose of making purchases or leases of materials, equipment, goods, services and supplies to the Project. **Your appointment as agent of the Agency is contingent upon your executing Form ST-60 and returning it to us and Form ST-60 then being filed by the Agency with the New York State Department of Taxation and Finance.**

The blanks in the Exempt Purchase Certificate ST-123 are provided so you can duplicate the Exempt Purchase Certificate ST-123 and Addendum A and forward same to your agents, subagents, contractors and subcontractors, as appropriate.

Very truly yours,

Beer Tree Brew Works Inc.
~~GJS PROPERTY GROUP LLC~~

By: _____
Brendan Harder, President

cc: Broome County Industrial Development Agency

CONTRACT IN LIEU OF EXEMPTION CERTIFICATE

This Contract is entered into by and between Beer Tree Brew Works, Inc. (the "Company") as agent for and on behalf of the Broome County Industrial Development Agency, a public benefit corporation and a governmental agency of the State of New York, (hereinafter referred to as the "Agency" or the "Owner") of the project described in Addendum A hereto (the "Project") and the agent, subagent, contractor or subcontractor more particularly described on page 2 hereof (hereinafter, collectively, the "Contractor").

This Contract in Lieu of Exemption Certificate is dated June 3rd, 2020. **THE PURCHASE OF GOODS AND SERVICES RELATING TO THE PROJECT AND SUBJECT TO NEW YORK STATE AND LOCAL SALES AND USE TAXES ARE ESTIMATED TO BE IN AN AMOUNT UP TO $1,200,000.00 AND, THEREFORE, THE VALUE OF THE SALES AND USE TAX EXEMPTION BENEFITS AUTHORIZED AND APPROVED BY THE AGENCY CANNOT EXCEED $96,000.00. SALES AND USE TAX EXEMPTION BENEFITS IN EXCESS OF THE AMOUNTS AUTHORIZED OR OUTSIDE THE TERMS DEFINED BY THE AGENCY AS PART OF THE PROJECT ARE SUBJECT TO TERMINATION, MODIFICATION OR RECAPTURE BY THE AGENCY.**

Pursuant to the authority granted to the Company, as agent of the Agency, the Contractor is hereby appointed agent of said Agency for purposes of completing, executing or otherwise carrying out the obligations imposed under this Contract.

The Contractor acknowledges that the Agency will hold a leasehold interest in the Project and that said Agency is a public benefit corporation and governmental entity of the State of New York. By reason of such status, Owner and its agents acting on its behalf are exempt from payment of all New York State and local sales and use taxes on the purchase or lease of all materials, equipment, goods, services and supplies incorporated into and made an integral component part of any structure, building or real property which becomes the property of Owner, and all equipment, machinery and other tangible personal property (including installation costs with respect thereto) which becomes the property of Owner. In addition, the Owner and its Contractor acting on its behalf, are exempt from all sales and use taxes arising out of or connected with the following, as they relate to performance under this Contract: (i) purchases, leases, rentals and other uses of tools, machinery and equipment, and (ii) purchases, leases, rentals, uses or consumption of supplies, goods, materials and services of every kind and description; provided, however, that exemption from sales and use tax with respect to clauses (i) and (ii) above shall apply only if the Contractor is then acting as agent for Owner under the terms of this Contract.

Pursuant to these exemptions from sales and use taxes, the Contractor shall not include such taxes in its contract price, bid, or reimbursable costs, as the case may be. If the Contractor does not comply with the requirements for sales and use tax exemptions, as described above, then it shall be responsible for and pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Owner or to the Company directly or indirectly, the intent of this Contract being that neither the Owner nor the Company shall be

liable for any of the sales or use taxes described above. This Contract may be accepted by the Contractor in lieu of an exemption certificate and the Contractor shall retain a copy thereof to substantiate the sales and use tax exemption.

The aforesaid appointment of the Company as agent of the Agency to renovate and equip the Project shall expire at the earlier of (a) the completion of such activities and improvements, or (b) 12/1, 2020, provided, however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company, if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

The Owner shall have the right to assign this Contract to the Company by written notice to the Contractor and without written consent of the Contractor, in which case Owner shall be relieved of all obligations hereunder. In the event of such assignment, all applicable sales and use taxes shall be added to the purchase price and paid to the Contractor pursuant to a change order. All of the above provisions with respect to exemptions for New York State sales and use taxes shall apply to all agents, subagents, contractors, subcontractors and other parties in privity of contract with the Company, Owner or the Contractor pursuant to the terms of this Contract.

OWNER:

BEER TREE BREW WORKS, INC.
as agent for and on behalf of the
Broome County Industrial Development Agency

By: _____
Brendan Harder, President

DATE: June 3, 2020

_____
Insert name of Contractor
Subcontractor

By: _____

Name: _____

Title: _____

DATE: _____

Address of Contractor or Subcontractor

_____

_____

_____

_____

cc: Broome County Industrial Development Agency

ADDENDUM A
DESCRIPTION OF THE PROJECT

The "Project" consists of the renovation and equipping of 23,000+/- square feet of the existing "Sears" building located at 501 Reynolds Road in the Village of Johnson City, Town of Union, Broome County, New York and the acquisition and installation therein and thereon of certain machinery and equipment.