

THIRD AMENDMENT TO PROJECT AGREEMENT

THIS THIRD AMENDMENT TO PROJECT AGREEMENT ("this Amendment") dated as of July 30, 2012 by and between the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at Theodore Roosevelt County Executive & Legislative Building, 1550 Franklin Avenue, Suite 235, Mineola, New York (the "Agency"), and HORNEILL BREWING CO., INC., a corporation organized and existing under the laws of the State of New York, having office 60 Crossways Park Drive, Woodbury, Town of Oyster Bay, County of Nassau, New York (the "Company").

WHEREAS, the Company presented an application (the "Application") to the Agency, which application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 3 acre parcel of land located at 60 Crossways Park Drive, Woodbury, Town of Oyster Bay, County of Nassau, New York (collectively, the "Land"), (2) the construction of an approximately 100,000 square foot office building on the Land (collectively, the "Building"), together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Company as its corporate headquarters (collectively, the "Project Facility"); (B) the financing of all or a portion of the costs of the foregoing by the issuance of taxable revenue bonds of the Agency in one or more series (the "Bonds"); (C) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (together with the Bonds, collectively, the "Financial Assistance"); and (D) the lease (with an obligation to purchase) license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency has appointed the Company as agent of the Agency to undertake the acquisition, renovation, construction and installation of the Project Facility, all pursuant to the terms and conditions set forth in the Project Agreement dated as of January 1, 2007 between the Company and the Agency (as amended, modified, supplemented or restated to date, the "Project Agreement") and the other Transaction Documents (as defined in the Project Agreement); and

WHEREAS, subsequently, in connection with the Project the Agency, the Company and 60 Crossways L.L.C., a limited liability company organized and existing under the laws of the State of New York ("60 Crossways" and collectively with the Company, "Applicants"), entered into a "straight lease" (as such quoted term is defined in the Act) and the Agency provided certain "financial assistance" to the Applicants.

WHEREAS, on or about September 23, 2010, the Applicants presented an application to the Agency (the "2010 Application"), which 2010 Application requested that the Agency consider undertaking an internal expansion of the Project (the "Expansion Project") consisting of the following: (A) the internal expansion and partial renovation of a not to exceed 35,000 square

foot portion of the Building, including the acquisition and installation therein of certain furniture, fixtures, machinery and equipment, to serve as an executive and sales conference center, within the Company's corporate headquarters, (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes and real property taxes (but not including special assessments and ad valorem levies) in the form of an amendment to the existing Payment in Lieu of Taxes Agreement, dated July 1, 2007 by and among the Agency, the Company and 60 Crossways (the "PILOT Agreement") (collectively, the "Additional Financial Assistance"); and

WHEREAS, by resolution adopted by the members of the Agency on December 3, 2010 (the "Inducement Resolution"), the Agency made a determination to proceed with the Expansion Project and to grant additional Financial Assistance in connection therewith; and

WHEREAS, the Company has requested that the Agency consent to a six-month extension of the expiration date of the Sales Tax Exemption Letter and the Agency is prepared to consent to such extension, subject to the terms of this Amendment; and

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company and the Agency mutually covenant, warrant and agree as follows:

SECTION 1. DEFINITIONS

SECTION 1.1. Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Transaction Documents.

SECTION 2. AMENDMENTS

SECTION 2.1. Section 8.12(B)(1) of the Project Agreement is amended and restated in its entirety to read as follows:

"(1) The Sales Tax Exemption Letter shall be dated the Closing Date and shall be effective for a term commencing on its date and expiring upon the earliest to occur of: (a) the termination of this Agreement, (b) December 31, 2012, or (c) the termination of the Sales Tax Exemption Letter pursuant to the terms hereof and thereof;"

SECTION 2.2. Exhibit E to the Project Agreement is hereby deleted in its entirety and Exhibit E attached hereto is inserted in place thereof.:

SECTION 3. CONDITIONS

SECTION 3.1. Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof, of the following conditions precedent:

(A) the execution and delivery by the Company and the Agency of an original or counterpart originals of this Amendment;

(B) the Company shall deliver such other documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment; and

(C) the Company shall pay all fees and expenses (including attorneys' fees and expenses) incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the arrangements contemplated herein.

SECTION 4. MISCELLANEOUS.

SECTION 4.1. Representations and Warranties. (A) All terms, conditions, covenants, representations and warranties of the Company contained in the Transaction Documents, except as expressly modified hereby, are ratified, confirmed and reaffirmed by the Company as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Amendment.

(B) The Company represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(C) No Event of Default has occurred under the Project Agreement or any other Transaction Document and no event which, with the giving of notice or the lapse of time or both, would become such an Event of Default has occurred and is continuing.

SECTION 4.2. Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the Project Agreement as amended by this Amendment shall be satisfactory in form and substance to the Agency.

SECTION 4.3. Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other documents furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 4.4. Reference to Project Agreement. The Project Agreement, the Transaction Documents and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Project Agreement, as amended hereby, are hereby amended so that any references in the Project Agreement, the Transaction Documents or such other agreements, documents or

instruments executed in connection with the Project Agreement shall mean a reference to the Project Agreement, as amended hereby.

SECTION 4.5. Governing Law. This Amendment, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the laws of the State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

SECTION 4.6. Successors and Assigns. The Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties.

SECTION 4.7. Counterparts. This Amendment may be executed in any number of counterparts and by the Company and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Amendment.

SECTION 4.8. Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

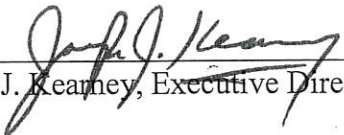
SECTION 4.9. Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the Project Agreement, the terms and provisions of this Amendment shall govern.

SECTION 4.10. Entire Agreement. This Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings and agreements between such parties with respect to such transaction.

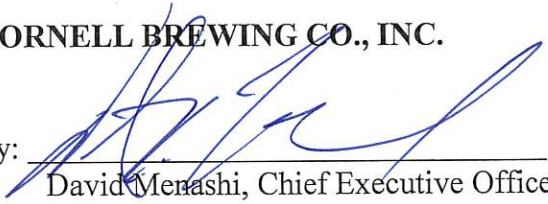
[Signature Page to Third Amendment to Project Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this Amendment to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Joseph J. Kearney, Executive Director

HORNELL BREWING CO., INC.

By: 
David Menashi, Chief Executive Officer

[Acknowledgment Page to Third Amendment to Project Agreement]

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

On the 30th day of ^{July}~~May~~, in the year 2012, before me, the undersigned, a notary public in and for said state, personally appeared Joseph J. Kearney, 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.

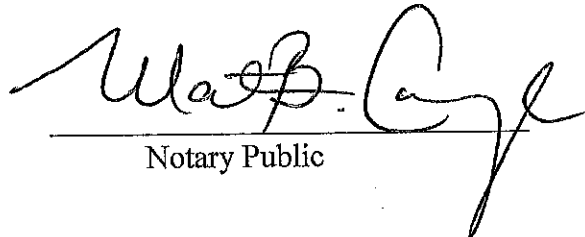


Notary Public

Paul V O'Brien
Notary Public State of New York
No. 02OB6235944
Qualified in Nassau County
Commission Expires February 14, 2015

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

On the 26th day of ^{July}~~May~~, in the year 2012, before me, the undersigned, a notary public in and for said state, personally appeared David Menashi, 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

MARTIN B. CUNNINGHAM
Notary Public, State of New York
No. 02CU4966917
Qualified in Nassau County
Commission Expires May 21, 2014

EXHIBIT E

**Form of Amended and
Restated Sales Tax Exemption Letter**

See Attached

SALES TAX LETTER

As of December 30, 2010

TO WHOM IT MAY CONCERN:

**RE: NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY,
(2010 Arizona Beverages Expansion Project)**

Gentlemen/Ladies:

The Nassau County Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any sales or use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency, nor is one required.

2. Pursuant to resolutions adopted by the Agency on December 18, 2006 and December 3, 2010 (the "Authorizing Resolutions"), and in accordance with that certain Project Agreement, dated as of January 1, 2007, as amended, including as amended by the Third Amendment to Project Agreement, dated as of July __, 2012 (the "Project Agreement"), between the Agency and Hornell Brewing Co., Inc. (the "Agent"), the Agency has authorized the Agent to act as its agent to, among other things: acquire certain materials, machinery, equipment, fixtures and furnishings (the "Building Materials"), all for incorporation and installation in certain premises located at 60 Crossways Park Drive, Woodbury, Town of Oyster Bay, Nassau County, New York (collectively, the "Project Facility"). Building Materials shall include: (i) materials and fixtures purchased and installed in, and improvements and additions made to, the Project Facility; and (ii) machinery, equipment, furniture, furnishings and other items of tangible and intangible personal property (including computer hardware and software, but excluding ordinary office supplies such as pencils, paper clips and paper) which have a useful life of one year or more and which are purchased and/or leased and/or maintained by or on behalf of the Agent all for use solely by the Agent in the Project Facility. Building Materials shall not include: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, or (v) fine art or other similar decorative items.

3. In connection with the Authorizing Resolution and the Project Agreement and pursuant to the authority granted by both, the Agency authorizes the Agent to act as its agent in connection with the acquisition and installation of the Building Materials.

4. As agent for the Agency, the Agent agrees that each contract, invoice, bill or purchase order entered into by the Agent as agent for the Agency shall include language in substantially the following form:

"This [contract] is being entered into by Hornell Brewing Co., Inc. (the "Agent"), as agent for and on behalf of the Nassau County Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent consisting in part of the acquisition and installation of certain materials, machinery, equipment, fixtures and furnishings, all for incorporation and installation in certain premises located at 60 Crossways Park Drive, Woodbury, Town of Oyster Bay, Nassau County, New York (the "Premises"). The materials, machinery, equipment, fixtures and furnishings to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Agency; and the Agent hereby represents that this [contract] is in compliance with the terms of the sales tax exemption letter. This [contract] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract], the [vendor/contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

5. The acquisition of Building Materials for incorporation in the Project Facility shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau on the condition that each item of the Building Materials to be incorporated into the Project Facility shall have a useful life of one year or more, shall solely be for the use of the Agent at the Premises and for no other entity and at no other location, and shall be effected by and at the sole cost of the Agent.

6. The Agency shall have no liability or performance obligations under any contract, invoice, bill or purchase order entered into by the Agent as agent for the Agency hereunder, and in the event liability should arise under any such contract, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Agent shall be the sole party liable thereunder.

7. By execution of their acceptance of this Letter, the Agent agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Letter by the Agent is and will be strictly for the purposes stated above.

8. Accordingly, until the earlier of (i) September 1, 2012, or (ii) the termination of the Project Agreement, or (iii) receipt by the Agent of notice from the Agency of the termination of this Letter or (iv) upon the occurrence of an event of default

under Section 10.1 of the Project Agreement (the "Termination Date"), all vendors, lessors, licensors and contractors are hereby authorized to rely upon this Letter (or a photocopy or fax of this Letter) as evidence that purchases of the Building Materials to be incorporated in the Project Facility, are exempt from State of New York and County of Nassau sales and use taxes.

9. Any vendor, lessor, licensor or contractor that does not collect otherwise applicable sales or use tax in reliance upon this letter, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 4 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, invoice, bill or purchase order entered into with the Company.

10. This letter is provided solely for the purpose of securing exemptions from New York State and Nassau County sales and use taxes for the referenced project only. No other principal/agent relationship is intended or may be implied or inferred from this letter.

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[Signature Page to Sales Tax Exemption Letter]

11. The Agent agrees and covenants that upon the occurrence of the Termination Date, it will immediately deliver this Letter back to the Agency.

The signature of a representative of the Agent, where indicated below, will indicate that it has accepted the terms hereof.

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By. _____
Name: Joseph J. Kearney
Title: Executive Director

AGREED AND ACCEPTED:

HORNELL BREWING CO., INC.

By: _____
David Menashi
Chief Executive Officer