

INDIRECT AGENT APPOINTMENT AGREEMENT

This INDIRECT AGENT APPOINTMENT AGREEMENT (this “Agreement”) dated as of May 10, 2021 is by and between 395 BIG BAY ROAD LLC, having an address of 395 Big Bay Road, Queensbury, New York 12804 and ADIRONDACK WINERY LLC, having an address of 395 Big Bay Road, Queensbury, New York 12804 (“Third Party Agent”).

Background

The Company and Third Party Agent entered into a lease agreement effective January 1, 2014 for the lease of the real property known as 395 Big Bay Road in the Town of Queensbury, County of Warren, New York and are undertaking a certain construction project in connection with the Counties of Warren and Washington Industrial Development Agency (the “Agency”) project known as the Adirondack Winery Project.

The Agency and the Company have entered into a certain Agent Agreement (the “Agent Agreement”) dated as of May 10, 2021, pursuant to which the Agency appointed the Company as its true and lawful agent to, among other things, acquire, construct, reconstruct and install the Project Facility, as defined in the Agent Agreement (hereinafter, the “Facility”).

The Company and Third Party Agent desire to enter into this Agreement to provide for the appointment by the Company of Third Party Agent as its agent for the purpose of performing the Third Party Agent’s work scope under the Contractor Agreement with respect to the acquisition, construction, reconstruction or installation of the Facility, so as to request the Agency to execute and deliver to Third Party Agent a New York Department of Taxation and Finance Form ST-60 (“Form ST-60”), the current version of which is attached hereto as Schedule A, relating to Third Party Agent.

Agreement

NOW THEREFORE, in consideration of the sum of Ten Dollars in hand paid and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and Third Party Agent hereby agree as follows:

1. Appointment. The Company hereby appoints Third Party Agent as its true and lawful agent, effective as of May 10, 2021 for the purpose of (a) performing the Third Party Agent’s work scope under the Contractor Agreement, and (b) purchasing, renting or hiring goods, materials, machinery, equipment, or services, with respect to the acquisition, construction, reconstruction or installation of the Facility. Notwithstanding the foregoing and anything to the contrary contained herein:

(a) the appointment of Third Party Agent as an agent of the Company solely relates to the Facility;

(b) the appointment of Third Party Agent as an agent of the Company is only for the period that the Company is acting as agent of the Agency pursuant to Section 2.4 of

the Agent Agreement;

(c) the Agency's liability for the obligations of the Company and, by virtue of the appointment set forth in Section 1 of this Agreement, and the Agency is not otherwise liable in any way to the Company, Third Party Agent or their respective laborers, contractors, subcontractors or materialmen;

(d) the Company's liability for the obligations of the Third Party Agent and its subcontractors, materialmen and suppliers is limited as provided in the Contractor Agreement and related subcontracts, and the Company is not otherwise liable in any way to the Third Party Agent or its employees, subcontractors, materialmen or suppliers. No other principal-agent relationship between the Company and Third Party Agent beyond that created by this Agreement is intended or may be implied or inferred by this Agreement; and

(e) THIS AGREEMENT IS ENTERED INTO FOR THE SOLE PURPOSE OF PROVIDING EXEMPTION FROM NEW YORK STATE SALES AND USE TAXES FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION AND INSTALLATION OF THE FACILITY ONLY.

2. Third Party Agent Reporting. Third Party Agent must provide the Company annually with such information as is necessary to allow the Company to timely file an Annual Sales Tax Report (ST-340) with the New York State Department of Taxation and Finance.

3. Insurance. The appointment of Third Party Agent as an agent of the Company under Section 1 of this Agreement shall not be effective unless Third Party Agent has delivered to the Company and the Agency a certificate of insurance, complying with the requirements as required by the Agency, and indicating that:

(a) Third Party Agent maintains insurance with respect to the Facility providing the coverage against the risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, and mandated by the Agency, including, but not necessarily limited to the following:

(i) Insurance protecting the interests of Third Party Agent, the Company and the Agency against loss or damage to the Project Facility by fire, lightning and other casualties normally insured against with a uniform standard extended coverage endorsement, such insurance at all times to be in an amount not less than the total cash replacement value of the Project Facility, as determined by a recognized appraiser or insurer selected by the Company; provided, however, that Third Party Agent may, insure all or a portion of the Project Facility under a blanket insurance policy or policies covering not only the Project Facility or portions thereof but other property. The parties agree that for purposes of this Project the Company will be responsible for providing builders risk insurance.

(ii) Workers' compensation insurance, disability benefits insurance, and

each other form of insurance which Third Party Agent is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of Third Party Agent who are located at or assigned to the Project Facility and for all contractors and subcontracts.

(iii) Insurance protecting Third Party Agent, the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the Property of others caused by any accident or occurrence, with a single combined limit of not less than \$1,000,000.00 per accident or occurrence on account of personal injury, including death resulting therefrom, and damage to the Property of others, excluding liability imposed upon Third Party Agent by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$2,000,000.00 protecting Third Party Agent, the Company and the Agency against any loss or liability or damage for personal injury, death or Property damage.

(iv) If applicable and if it is determined that the Project Facility is located within an area identified by the Secretary of Housing and Urban Development as having special flood hazards, insurance against loss by floods in an amount not less than \$1,000,000.00 or to the maximum limit of coverage made available, whichever is less.

(v) Other insurance coverage required by any Governmental Authority in connection with any Requirement.

(b) all policies evidencing such insurance,

(i) name Third Party Agent, the Company and the Agency as insureds, as their interests may appear, and

(ii) provide for at least thirty (30) days' written notice to Third Party Agent, the Company, and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof.

The Company and Third Party Agent acknowledge that receipt of the certificate of insurance is an express condition precedent to the delivery by the Agency of the Form ST-60.


4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

5. Assignment. Third Party Agent may not assign or delegate its rights or obligations hereunder without the prior written consent of the Agency. The preceding sentence does not prohibit Third Party Agent from entering into subcontracts and appointing its subcontractors and/or sub-subcontractors as agents under section 2 above. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the successors and permitted assigns of the parties hereto.

IN WITNESS WHEREOF, the Company and Third Party Agent have caused this Agreement to be executed as of the day and year first above written.

395 Big Bay Road LLC

By:


Sasha Pardy, Authorized Member

Adirondack Winery LLC

By:


Michael Pardy, Authorized Member