

TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

and

CALVERTON ADDICTION AND TREATMENT LLC

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PROJECT AGREEMENT

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Dated as of August 1, 2018

## PROJECT AGREEMENT

THIS PROJECT AGREEMENT, dated as of August 1, 2018, 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 CALVERTON ADDICTION AND TREATMENT LLC, a limited liability company qualified to do business in the State of New York, (referred to herein as 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 "Project 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 demolition of an existing 2,000 square foot building, along with construction, furnishing and equipping and associated site improvements of approximately 134,000 square feet of research and treatment facility consisting of six buildings on an approximate 95.6 acre parcel located at Jan Way, Calverton, New York (S.C.T.M. No. 0600-135.00-01.00-007.56) for use as rehabilitation, treatment, dining, recreational, housekeeping and other services to be provided to its residents in conjunction with scientific research, inquiry, and education regarding opioid, alcohol and other forms of addiction. The Applicant will purchase research equipment and software, kitchen equipment, furniture for the units and throughout the facility, exercise equipment for the residents, recreational equipment, computers, telephone systems and audio/visual equipment at an estimated total project cost of \$59,062,000 (the "Project"); and

WHEREAS, by Resolution, adopted on March 5, 2018 (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 by granting a real property tax abatement. During Project construction estimated to be completed April 2020, the PILOT payment shall equal the land assessment only for Tax Years 2018/2019 and 2019/2020 after which commencing for the 2020/2021 Tax Year PILOT payments shall be paid on the land assessment of \$1,147,200 and 100% abatement of improvements assessment in Year 1 and declining 10% each year for a period of ten years as set forth in Exhibit A of the Payment In Lieu of Tax Agreement of even date herewith (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 \$27,832,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$2,400,510, (ii) that the mortgage recording tax exemption amount not to exceed \$367,500 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 \$5,328,272; 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 August 1, 2018 (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 August 1, 2018 (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 August 1, 2018 (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 August 1, 2018 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;

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement;

WHEREAS, in order to finance a portion of the construction costs of the Project, MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation (together with its successors and assigns, "Lender"), has agreed to make certain construction loans to the company in the maximum aggregate principal amount of up to \$49,000,000.00; and

WHEREAS, in order to secure the obligations of the Company to the Lender, the Company and Agency have executed and delivered, among other things, (i) that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Senior Loan), of even date herewith, given by Company and Agency in favor of Lender, dated as of the date hereof and to be recorded in the Office of the County Clerk of Suffolk County (the "Recording Office") (as the same may be modified, amended, extended, renewed, rearranged or replaced from time to time, the "Senior Loan Mortgage"), (ii) that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Building Loan), given by Company and Agency in favor of Lender, dated as of the date hereof and to be recorded in the Recording Office (as the same may be modified, amended, extended, renewed, rearranged or replaced from time to time, the "Building Loan Mortgage") and (iii) that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Project Loan), given by Company and Agency in favor of Lender, dated as of the date hereof and to be recorded in the Recording Office (as the same may be modified, amended, extended, renewed, rearranged or replaced from time to time, the "Project Loan Mortgage"; and collectively with the Senior Loan Mortgage and the Building Loan Mortgage, the "Mortgages"), each encumbering certain real property more particularly described in the Mortgages.

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 August 1, 2018 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 fail to 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 (i) two (2) years following the construction completion date or (ii) the calendar year of the termination of the PILOT Agreement (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 \$50,202,700 (which represents the product of 85% multiplied by \$59,062,000 being the total Project cost as stated in the Company's application for Financial Assistance); and

(b) Employment Commitment - that there are at least 0 existing full time equivalent ("FTE") employees of the Company 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 for the first year of operation equal to 34 FTE employees (representing the sum of 0 Baseline FTE plus the product of 85% multiplied by 40 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 created FTE employment at the Facility for the second year of operation and thereafter equal to 42.5 FTE employees (representing the sum of 0 Baseline FTE plus the product of 85% multiplied by 50 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) except during the occurrence and pendency of a force majeure event; 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 \$27,832,000, 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 \$2,400,510.

(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:

Calverton Addiction and Treatment LLC  
67 Clinton Road  
Garden City, New York 11530  
Attn: Jan Burman and Steven Krieger

With Copy To:

Farrell Fritz PC  
400 RXR Plaza  
Uniondale, NY 11556  
Attn.: Peter L. Curry, Esq.

With Copy To:

HSRE Lake Grove, LLC  
444 West Lake Street, Suite 2100  
Chicago, IL 60606  
Attn: Stephen Gordon and Michael Gershowitz

With Copy To:

DLA Piper LLP (US)  
444 West Lake Street, Suite 900  
Chicago, IL 60606  
Attn.: Jessie Criz, Esq.

To the Guarantor:

EBDK at Calverton, LLC  
67 Clinton Road  
Garden City, New York 11530

To the Agency:

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

Agency and Company shall, at the Company's expense, also deliver simultaneous copies to Lender of any notice given to Company or Agency by such other party at the address for Lender set forth below:

Manufacturers Traders and Trust Company  
c/o M&T Bank  
350 Park Avenue  
New York, New York 10022  
Attention: Michael W. McCarthy  
Telephone: (631) 501-4108  
Facsimile: (631) 501-9856  
Email: [mmccarthy@mtb.com](mailto:mmccarthy@mtb.com)

With a copy to: Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, New York 10028  
Attention: Christine M. Murphy, Esq.  
Telephone: (212) 940-6521  
Facsimile: (212) 940-8776  
Email: [christine.murphy@kattenlaw.com](mailto:christine.murphy@kattenlaw.com)



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.

10. 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.

11. Special Lender Provisions. Prior to the Agency exercising any remedy hereunder, Lender shall be afforded notice and the cure rights set forth in Section 10.10 of the Lease Agreement, as if such section were set forth in full herein.

12. Lender Liability. Except after the Lender has succeeded to the interest of the Company in the Project, no liability for any payments to be made pursuant to this Project Agreement or the performance of any other of the Company's covenants and agreements under this Project Agreement shall attach to or be imposed upon the Lender, and if the Lender or its nominee or designee succeeds to the interest of the Company in the Project, the liability of Lender or its nominee or designee shall be limited to its interest in the Project, and all of the obligations and liabilities of the Lender or its nominee or designee shall and terminate upon assignment of the Lease Agreement.

*(Remainder of page intentionally left blank)*

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

Steven Krieger, being first duly sworn, deposes and says:

1. That I am the Authorized Representative of Calverton Addiction and Treatment LLC, 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 7<sup>th</sup> day of August, 2018.

Diane L. Fiechter  
(Notary Public)

DIANE L. FIECHTER  
Notary Public, State of New York  
No. 30-4623613  
Qualified in Nassau County  
Commission Expires March 30, 2022

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

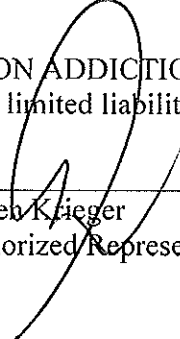
TOWN OF RIVERHEAD INDUSTRIAL  
DEVELOPMENT AGENCY

Dated: 8/7/18

By:   
Thomas Cruso,  
Chairman

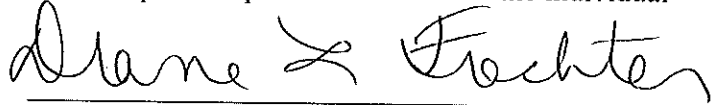
CALVERTON ADDICTION AND TREATMENT LLC  
a New York limited liability company

Dated: 8/2/18

By:   
Name: Steven Krieger  
Title: Authorized Representative

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

On the 7th day of August in the year 2018 before me, the undersigned, a notary public in and for said State, personally appeared Steven Krieger 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

DIANE L. FIECHTER  
Notary Public, State of New York  
No. 30-4623613  
Qualified in Nassau County  
Commission Expires March 30, 2022

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

On the 7th day of August in the year 2018 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, 2022

**EXHIBIT A**

Property Description

JWJ-002003 LEGAL DESCRIPTION

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

BEGINNING at a point on the northeasterly line of Lot 17 as it appears on the Map of Final Plat of Calverton Camelot II (Filed: March 9, 2007 File No.: 11500), said point of beginning being more particularly described thus:

COMMENCING at the easterly terminus of a circular curve connecting the easterly line of Burman Boulevard with the southerly side of Jan Way;

RUNNING THENCE along the northerly, northwesterly and northeasterly lines of Jan Way the following five (5) courses:

1. North 85 degrees 36 minutes 20 seconds East, 418.04 feet;
2. Easterly and northeasterly 223.38 feet along the arc of a tangent circular curve to the left that has a radius of 330.00 feet;
3. North 46 degrees 49 minutes 17 seconds East, tangent to the previous circular curve, 1,444.95 feet;
4. Easterly and northeasterly 64.36 feet along the arc of a tangent circular curve to the right that has a radius of 50.00 feet;
5. Easterly and northeasterly 95.33 feet along the arc of a tangent circular drive to the left that has a radius of 75.00 feet, to the point of beginning;

RUNNING THENCE from said point or place of beginning along the arc of a curve to the left with a length of 127.37 feet and a radius of 75.00 feet and a chord bearing North 00 degrees 54 minutes 10 seconds West, 112.61 feet to the division line between Lot 13 and Lot/Block 17 as shown on the aforementioned filed map;

THENCE along Lot 13, North 40 degrees 26 minutes 54 seconds East, 187.56 feet to land now or formerly of the Town of Riverhead Community Development Agency;

THENCE along said land now or formerly of the Town of Riverhead Community Development Agency the following three (3) courses and distances:

1. South 49 degrees 39 minutes 50 seconds East, 5,248.85 feet;
2. South 69 degrees 37 minutes 16 seconds West, 318.93 feet;
3. North 89 degrees 01 minute 31 seconds West, 1,480.82 feet to land now or formerly of the United States of America;

THENCE along said land now or formerly of the United States of America, North 53 degrees 05 minutes 17 seconds West, 2,062.87 feet to the southeasterly corner of Lot 16 as shown on the above mentioned filed map;

THENCE along Lot 16 the following eight (8) courses and distances:

1. North 01 degree 19 minutes 24 seconds East, 252.74 feet;
2. North 74 degrees 19 minutes 01 second East, 161.80 feet;
3. North 37 degrees 38 minutes 38 seconds East, 237.40 feet;
4. North 16 degrees 41 minutes 17 seconds East, 445.93 feet;
5. North 14 degrees 35 minutes 25 seconds West, 136.03 feet;
6. North 46 degrees 21 minutes 24 seconds West, 372.76 feet;
7. North 49 degrees 59 minutes 04 seconds West, 599.24 feet;
8. North 50 degrees 10 minutes 13 seconds West, 473.52 feet, the southerly line of Jan Way and the point or place of BEGINNING.