

ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION AGREEMENT

THIS AGREEMENT is entered into as of the ____ day of March, 2021, by and between Indian River County, a political subdivision of the State of Florida (“County”) and Diamond Drinks of Florida, Inc., a Florida corporation (“Business”).

WHEREAS, County has adopted the Indian River County Economic Development Ad Valorem Tax Exemption Ordinance (“Ordinance”), set forth in Title XI of the Indian River County Code (“Code”); and

WHEREAS, County has adopted Ordinance No. 2021-____ (“Exemption Ordinance”) granting an economic development ad valorem tax exemption (“Exemption”) to Business; and

WHEREAS, the Ordinance and the Exemption Ordinance both provide that the Exemption shall not be effective until County and Business enter into this Economic Development Ad Valorem Tax Exemption Agreement (“Agreement”).

NOW, THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree, as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein.
2. **Definitions**. Unless otherwise stated, all capitalized terms herein shall have the meaning set forth in the Ordinance.
3. **Business’ Representations, Covenants and Warranties**. At all times during the term of the Exemption, Business represents, covenants and warrants to County that: **(a)** all information submitted by Business in the Application is, and was at the time of submittal, true and correct, **(b)** all information submitted by Business in any annual report submitted pursuant to section 1100.10(b) of the Code will be, at the time of submittal, true and correct, **(c)** each representation previously made by Business to County’s Board of County Commissioners in a public meeting was, and each representation made by Business to County’s Board of County Commissioners in the future will be, at the time of such representation, true

and correct, **(d)** Business will fully perform and remain in full compliance with all Exemption Requirements and all requirements of this Agreement, **(e)** without limitation, Business will establish and continue to provide all jobs required for Business to qualify as an New Business (“Jobs”), **(f)** without limitation, the average wage paid by Business with respect to the Jobs during each calendar quarter will be equal to or greater than the average wage represented by Business in the Application, and **(g)** Business has not committed and will not commit any Violation of Law (each of subparagraphs (a) through (f), “Commitment”).

4. Annual Status Reports. On or before January 15th of each year, beginning in 2022 and ending in 2029, the Business shall submit a status report to the County Community Development Department. At a minimum, the status report shall include the name, address, and contact information of the current owner and the current operator of the facility to be located at 7355 9th Street, SW, Vero Beach, FL 32968, described as the west ½ of Tract 4, Section 30, Township 33 South, Range 39 East, according to the last general plat of lands of Indian River Farms Company filed in the office of the Clerk of Circuit Court of St. Lucie County, Florida in Plat Book 2, Page 25, Public Records of St. Lucie County, Florida; said land now lying and being in Indian River County, Florida, a description of current facility operations, the current total number of facility employees, the current total and average wages of employees, and a description of any improvements made to the facility during the previous year, and additional information that County may need to evaluate the Business’s performance. The status report shall be signed by the facility owner (or authorized representative) and by the facility operator, and each signature must be notarized.

5. Violation by Business of Commitment. In the event of a violation by Business of any Commitment, County may, in its sole discretion, **(a)** revoke the Exemption, effective immediately, **(b)** revoke the exemption, effective as of the date of violation of the Commitment. In such case County, the Property Appraiser or the Tax Collector shall be entitled to recover all taxes not paid as a result of the Exemption (after the effective date of such revocation), plus interest, costs of collection and attorney’s fees, as set forth in section 1100.11(b) of the Code, **(c)** reduce the Exemption, with respect to either the amount (percentage) or term of the Exemption, or **(d)** pursue any other remedy available in law or in equity. Business shall immediately notify County in writing of any facts or events which constitute or may constitute a violation by Business of any Commitment.

6. **No Limitation of County's Rights.** Nothing in this Agreement shall be construed as a restriction or limitation of County's rights as set forth in general law or the Code, including the Ordinance and the Exemption Ordinance.

7. **County's Right of Inspection.** At any time during the term of the Exemption, County shall have the right to inspect any of Business' books and records to determine Business' compliance with all Exemption Requirements and all requirements of this Agreement; provided, however, that nothing in this paragraph shall be interpreted as relieving Business of its obligation to notify County in writing of any facts or events which constitute or may constitute a violation by Business of any Commitment, as set forth in paragraph 4 above.

8. **Public Records.** Business acknowledges that any records made or received by County in connection with the Exemption are subject to the Public Records Act, Chapter 119, Florida Statutes.

9. **E-Verify System.** Business is registered with and will use the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this Agreement, as required by Section 448.095, F.S. Business is also responsible for obtaining proof of E-Verify registration and utilization for all subcontractors.

10. **Termination in Regards to Section 287.135, Florida Statutes.** Business certifies that it and those related entities of Business as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725 Florida Statutes, and are not engaged in a boycott of Israel. In addition, if this Agreement is for goods and services of one million dollars or more, Business certifies that it and those related entities of Business as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, and are not engaged in business operations in Cuba or Syria. County may terminate this Agreement if Business is found to be in violation of Section 287.135, Florida Statutes.

11. **Transfer of Property Subject to Exemption.** Business shall notify County of any transfer of real or personal property subject to the Exemption, within thirty (30) days of such transfer.

12. **Form of Notice.** Any notice hereunder shall be in writing and delivered by (a) certified mail, return receipt requested, (b) overnight or priority mail, in a form providing proof of receipt, or (c) hand delivery, with written acknowledgement of receipt by the recipient.

13. **Interpretation.** This Agreement has been submitted to the equal review and scrutiny of both parties, and both parties agree that it fairly and accurately sets forth the terms their agreement. In any dispute between the parties, the Agreement shall be given a fair and reasonable interpretation, without consideration or weight being given to the fact that it was initially prepared or drafted by any particular party.

14. **Severability.** Each provision of this Agreement is deemed to be separate and divisible. If any provision shall be held invalid, the remaining provisions shall remain in full force and effect.

15. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.

16. **Jurisdiction and Venue.** Exclusive jurisdiction for any proceedings arising out of or relating to this Agreement shall be in the circuit court of the State of Florida. Venue shall be in Indian River County, Florida.

17. **Attorney's Fees, etc.** In any legal proceedings arising out of or relating in any way to this Agreement, the prevailing party shall recover from the non-prevailing party all fees, costs and expenses, including, without limitation, reasonable attorney's fees at all trial, appellate and collection levels.

18. **Waiver of Jury Trial.** EACH PARTY HEREBY KNOWINGLY AND INTENTIONALLY WAIVES TRIAL BY JURY OF ANY ISSUE ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT. ALL SUCH ISSUES SHALL BE RESOLVED BY NON-JURY TRIAL.

19. **Amendment.** This Agreement may be amended or modified only by subsequent written agreement signed by all parties and, with respect to County, approved by County's Board of County Commissioners.

20. **Successors and Assigns.** This Agreement shall be binding upon the parties and their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

DIAMOND DRINKS OF FLORIDA, INC.
A Florida Corporation

By: _____

Print Name: _____

Position: _____

**BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA**

By: _____
Joseph E. Flescher, Chairman

BCC Approved: _____

Attest: Jeffrey R. Smith, Clerk of Court and
Comptroller

By: _____
Deputy Clerk

Approved as to form and legal sufficiency

Dylan Reingold
County Attorney

Approved:

Jason E. Brown
County Administrator