

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**ISKALO 6700 TRANSIT LLC**

---

**FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT**

---

*Regarding 9+/- acres located at 6700 Transit Road, Town of Cheektowaga, Erie County, New York and the construction of a 105,315+/- SF destination brewery comprised of 60,097+/- SF of brewery production and office space and 45,218+/- SF for an expansive tap room, event space and related support areas to be utilized by Big Ditch Brewing Company LLC*

First Amendment Dated as of: February 1, 2022

Termination Date: December 31, 2034

SBL No.: 82.03-4-1.1

Affected Tax Jurisdictions: Erie County  
Town of Cheektowaga  
Lancaster Central School District

Prepared by:  
Harris Beach PLLC  
726 Exchange Street, Suite 1000  
Buffalo, New York 14210  
(716) 200-5050

## **FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT**

THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT (the "First Amendment to PILOT"), dated as of February 1, 2022, by and between **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **ISKALO 6700 TRANSIT LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 5166 Main Street, Williamsville, New York 14221 (the "Company").

### **WITNESSETH:**

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Agency and the Company previously entered into that certain Payment In Lieu Of Tax Agreement (the "PILOT Agreement"), dated as of September 1, 2020, with respect the Company's property located at 6700 Transit Road, Town of Cheektowaga, Erie County, New York (the "Facility"); and

WHEREAS, due to construction delays associated with the COVID-19 global pandemic, at the written request of the Company, and pursuant to Section 1 of the PILOT Agreement, the Agency and the Company have agreed to delay the implementation of the PILOT Agreement by two years, amend the expiration date in the PILOT Agreement by two years, and to revise Schedule A of the PILOT Agreement in accordance with this First Amendment to PILOT; and

WHEREAS, the Agency and the Company desire to amend the PILOT Agreement in accordance with the terms of this First Amendment to PILOT Agreement.

NOW, THEREFORE, in consideration of the covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Section 1 of the PILOT Agreement, entitled Agency Tax Exemption, is amended and restated as follows:

Section 1. Agency Tax Exemption. Subject to the completion and filing of a Form RP-412-a, Application for Real Property Tax Exemption (the "RP-412-a"), by the Taxable Status Date of March 1, 2022 (the "Taxable Status Date"), and the approval of the RP-412-a by the Assessor, the Project shall make payments pursuant to Section 3 of this Agreement commencing with the:

- (a) 2025 tax fiscal year of the County,
- (b) 2025 tax fiscal year of the Town, and

(c) 2024-2025 tax fiscal year of the School District.

Prior to the 2025 County and Town and 2024-2025 School District tax fiscal years, the Company shall make payments in lieu of taxes as if the Company owned the Facility and the Agency had no interest in the Facility. This PILOT Agreement shall expire on December 31, 2034; *provided, however*, the Company shall pay the 2035 County and Town tax bills, and the 2034-2035 School District tax bill, on the dates and in the amounts as if the Agency did not have an interest in the Project on the tax status date with respect to said tax years. The Company shall provide the Agency with all information required to complete the RP-412-a and shall provide such additional information and take such actions as are required by the Assessor in order to process and approve the RP-412-a Application. In the event the exemption from real estate taxes is denied for any reason, the Company agrees to pay all real estate taxes levied upon the Project as they become due. To the extent permitted by law, the Company shall have the right to protest such denial subject, however, to the conditions set forth in Section 8.1 of the Leaseback Agreement. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company arising from the denial of an exemption from real estate taxes except to the extent that such denial results solely from the failure of the Agency to file the RP-412-a with the Assessor by the Taxable Status Date.

2. Section 3 of the PILOT Agreement, entitled Taxing Authorities and Amounts, is amended and restated as follows:

Section 3. Taxing Authorities and Amounts.

(1) Until the commencement of the tax fiscal years set forth in subparagraph (2) below, the Company shall continue to pay all appropriate taxing authorities all taxes due as if the Agency did not have an interest in the Project. As set forth below, the total payments in lieu of taxes required under this PILOT Agreement are allocated among the affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the Project not been tax exempt due to the status of the Agency. Thereafter, the Company shall make payments in lieu of taxes to all appropriate taxing authorities in accordance with this section. For each taxing authority, such payments in lieu of taxes shall have a land component, a retail improvements component, and a variable component.

(a) The land component ("Land Component") shall be equal to the product of:

(i) The then current tax rate for the then current tax fiscal year

x

(ii) The then current assessed valuation that is to be determined by the Assessor of the Town of the non-depreciable portion of all tax parcels comprising the Project (assessed as land).

(b) The retail component ("Retail Improvements Component") shall be equal to the product of:

- (i) The then current tax rate for the then current tax fiscal year
  - x
  - (ii) The product of (1) 43%, being the percentage of square footage of the Improvements associated with the Retail Component of the Project and (2) the then current assessed valuation that is to be determined by the Assessor of the Town of all buildings and improvements comprising the Project
- (c) The variable component ("Variable Component") shall be equal to the product of:
  - (i) The then current tax rate for the then current tax fiscal year
  - x
  - (iii) The product of (1) 57%, being the percentage of square footage of the Improvements associated with the Manufacturing and Warehousing Component of the Project and (2) the then current assessed valuation that is to be determined by the Assessor of the Town of all buildings and improvements comprising the Project
  - x
  - (ii) A Payment Factor applicable to such tax fiscal year as shown on Schedule A attached hereto.

(2) For the periods of time indicated below, the Company shall make the indicated payments in lieu of taxes to the indicated taxing authorities:

(a) County PILOT Payments. Payments in lieu of general levy real estate taxes to the County for each of the tax fiscal years 2025 through 2034, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the County Land PILOT Payment plus the County Retail Improvements Component PILOT Payment plus the County Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The County Land PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The County Retail Improvements Component PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate then in effect for such tax fiscal year, applied to the product of (1) 43%, being the percentage of square footage of the Improvements associated with the Retail Component of the Project and (2) the then current assessed valuation that is to be determined by the Assessor of the Town of all buildings and improvements comprising the Project. The County Variable PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate in effect for such tax fiscal year, applied to the product of product of (1) 57%, being the percentage of square footage of the Improvements associated with the Manufacturing and Warehousing Component of the Project and (2) the then current assessed valuation that is to be determined by the Assessor of the Town of all buildings and improvements comprising the Project and (3) the payment factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to County of Erie, Room 100, 95 Franklin Street, Buffalo, New York 14202, or such other place as

may be designated from time to time by the County. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(b) Town PILOT Payments. Payments in lieu of general levy real estate taxes for the Town for each of the tax fiscal years 2025 through 2034, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the Town Land PILOT Payment plus the Town Retail Improvements Component PILOT Payment plus the Town Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The Town Land PILOT Payment for each tax fiscal year shall be an amount equal to the Town tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The Town Retail Improvements Component PILOT Payment for each tax fiscal year shall be an amount equal to the Town tax rate then in effect for such tax fiscal year, applied to the product of (1) 43%, being the percentage of square footage of the Improvements associated with the Retail Component of the Project and (2) the then current assessed valuation that is to be determined by the Assessor of the Town of all buildings and improvements comprising the Project. The Town Variable PILOT Payment for each tax fiscal year shall be an amount equal to the Town tax rate in effect for such tax fiscal year, applied to the product of (1) 57%, being the percentage of square footage of the Improvements associated with the Manufacturing and Warehousing Component of the Project and (2) the then current assessed valuation that is to be determined by the Assessor of the Town of all buildings and improvements comprising the Project and (3) the payment factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to the Town of Cheektowaga, 3301 Broadway Street, Cheektowaga, New York 14227, Attn: Town Assessor, or such other place as may be designated from time to time by the Town. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(c) School District PILOT Payments. Payments in lieu of general levy real estate taxes for the School District for each of the tax fiscal years 2024-2025 through 2033-2034, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the School District Land PILOT Payment plus the School District Retail Improvements Component PILOT Payment plus the School District Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The School District Land PILOT Payment for each tax fiscal year shall be an amount equal to the School District tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The School District Retail Improvements Component PILOT Payment for each tax fiscal year shall be an amount equal to the School District tax rate then in effect for such tax fiscal year, applied to the product of (1) 43%, being the percentage of square footage of the Improvements associated with the Retail Component of the Project and (2) the then current assessed valuation that is to be determined by the Assessor of the Town of all buildings and improvements comprising the Project. The School District Variable PILOT Payment for each tax fiscal year shall be an amount equal to the School District tax rate in effect for such tax fiscal year, applied to the product of (1) 57%, being the percentage of square footage of the Improvements associated with the Manufacturing and Warehousing Component of the Project and (2) the then current assessed valuation that is to be determined by the Assessor of the Town of all buildings and improvements comprising the Project and (3) the payment factor applicable to such tax fiscal year as shown on

Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to the School District Assessor, or such other place as may be designated from time to time by the School District. Payments for each tax fiscal year must be made one half by July 31 of that year and one half by December 31 (unless otherwise required by the School District), or such payments shall be considered delinquent.

(d) In addition to the following, the Company shall pay in full all special district charges, special assessments and special ad valorem levies (specifically including but not limited to any fire district charges or "curb charges"), and pure water charges and sewer charges that are levied against the Project in accordance with normal billing practices as if the Agency did not have an interest in the Project.

(3) Valuation of Future Additions to the Facility - If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the total payments in lieu of taxes payable under this PILOT Agreement ("Total PILOT Payment"). The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the proposed increase in the Total PILOT Payment for any Future Additions, then, and in that event, that valuation representing the basis for the proposed increase in the Total PILOT Payment shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment so made shall be applied as a credit against the next succeeding PILOT payment(s).

(4) The payments required under Paragraph (2) of this section shall in no event be more than would be otherwise payable as taxes if the Agency did not have an interest in the Project.

(5) Upon the termination of the periods shown in Paragraph (2) of this section, for the respective taxing authorities, the Company shall make full payment in lieu of all taxes on the Project as if the Agency did not have an interest in the Project.

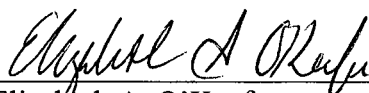
3. Schedule A attached to the PILOT Agreement is hereby replaced with Schedule A attached hereto.

4. Unless otherwise amended and modified by this First Amendment to PILOT, the terms of the PILOT Agreement shall remain unchanged and in full force and effect. This First Amendment to PILOT shall in no way be construed as a waiver of any of the rights or remedies of the Agency or a release or waiver by the Agency of any Event of Default under the PILOT Agreement. The Agency hereby reserves all such rights and remedies.


*[Signature/Acknowledgment Page to First Amendment to PILOT]*

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to PILOT as of the day and year first written above.

**ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

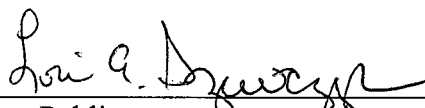
BY:   
Name: Elizabeth A. O'Keefe  
Title: Vice President

**ISKALO 6700 TRANSIT LLC**  
By: Iskal Development Corp., its Manager

By:   
Name: Paul B. Iskalo  
Title: President

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

On the 7<sup>th</sup> day of February, 2022, before me, the undersigned, personally appeared **ELIZABETH A. O'KEEFE**, 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 she executed the same in her capacity, and that by her signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

LORI A. SZEWCZYK  
Notary Public, State of New York  
No. 01SZ5030580  
Qualified in Erie County  
Commission Expires 07/18/2022

On the \_\_\_\_\_ day of February, 2022, before me, the undersigned, personally appeared **PAUL B. ISKALO**, 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

*[Signature/Acknowledgment Page to First Amendment to PILOT]*

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to PILOT as of the day and year first written above.

**ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

BY: \_\_\_\_\_

Name: Elizabeth A. O'Keefe

Title: Vice President

**ISKALO 6700 TRANSIT LLC**

**By: Iskalo Development Corp., its Manager**

By: \_\_\_\_\_

Name: Paul B. Iskalo

Title: President & CEO

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

On the \_\_\_\_\_ day of February, 2022, before me, the undersigned, personally appeared **ELIZABETH A. O'KEEFE**, 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 she executed the same in her capacity, and that by her signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

On the 4<sup>th</sup> day of February, 2022, before me, the undersigned, personally appeared **PAUL B. ISKALO**, 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

**CARLA MANGONE**  
No. 01MA6149032  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires July 3, 2022



PILOT Agreement dated as of September 1, 2020,  
as amended by the First Amendment to PILOT Agreement,  
dated as of February 1, 2022,  
by and between Erie County Industrial Development Agency  
and Iskalo 6700 Transit LLC

Address: 6700 Transit Road in the Town of Cheektowaga, Erie County, New York  
SBL No.: 82.03-4-1.1

Expiration of Leaseback: December 31, 2034

#### SCHEDULE A

Project/PILOT Tax Year	TAX FISCAL YEAR			PAYMENT FACTOR
	County	Town	School District	
PILOT Year 1	2025	2025	2024/25	10%
PILOT Year 2	2026	2026	2025/26	10%
PILOT Year 3	2027	2027	2026/27	10%
PILOT Year 4	2028	2028	2027/28	20%
PILOT Year 5	2029	2029	2028/29	20%
PILOT Year 6	2030	2030	2029/30	20%
PILOT Year 7	2031	2031	2030/31	30%
PILOT Year 8	2032	2032	2031/32	30%
PILOT Year 9	2033	2033	2032-2033	30%
PILOT Year 10	2034	2034	2033-2034	30%