



THE
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
AND
LABORERS WAY 1, LLC

FIRST AMENDMENT TRANSACTION

Date of Transaction: January 1, 2024

Property Located at: 310 Ship Canal Parkway, City of Buffalo, Erie
County, New York 14218

SBL No.: 132.15-2-1

Prepared by:

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

LABORERS WAY 1, LLC 2022 PROJECT
Closing Date: January 1, 2024

Erie County Industrial Development Agency	“Agency”
Laborers Way 1, LLC	“Company”

TRANSCRIPT INDEX

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1.	First Amendment to Lease Agreement and to Leaseback Agreement
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3.	First Amendment to Memorandum of Leaseback Agreement with Form TP-584
4.	First Amendment to Payment-in-Lieu-of-Tax Agreement between the Agency and the Company, with <u>Amended</u> RP-412-a, and copy of PILOT Agreement dated December 1, 2022
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**FIRST AMENDMENT TO LEASE AGREEMENT AND
TO LEASEBACK AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AGREEMENT AND TO LEASEBACK AGREEMENT, dated as of January 1, 2024, is by and between **LABORERS WAY 1, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, duly qualified to do business in the State of New York, with offices at 329 S. Highway 101, Suite 150, Solana Beach, California 92075 (the “Company”) and **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”).

W I T N E S S E T H:

WHEREAS, by lease agreement dated as of December 1, 2022 (the “Lease Agreement”), the Company leased to the Agency certain real property and improvements located at 310 Ship Canal Parkway, City of Buffalo, Erie County, New York; and

WHEREAS, a memorandum of said Lease Agreement was recorded in the Office of the Erie County Clerk on December 12, 2022 in Liber 11411 of Deeds at Page 6612; and

WHEREAS, by leaseback agreement dated as of December 1, 2022 (the “Leaseback Agreement”), the Agency leased to the Company certain real property and improvements located at 310 Ship Canal Parkway, City of Buffalo, Erie County, New York; and

WHEREAS, a memorandum of said Leaseback Agreement was recorded in the Office of the Erie County Clerk on December 12, 2022 in Liber 11411 of Deeds at Page 6619; and

WHEREAS, the Company and the Agency desire to amend the Lease Agreement and Leaseback Agreement for the purpose of extending the termination date to December 31, 2041.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

The Lease Agreement and Leaseback Agreements are amended as follows:

1. Section 2.5(b) of the Leaseback Agreement shall be amended and replaced by the following paragraph:

(b) The leasehold estate created hereby shall, without any further action of the parties hereto, terminate at 11:59 P.M. on December 31, 2041, or on such earlier date as be permitted by Section 8.1 hereof.

2. Section 11 of the Lease Agreement and Section 9.1 of the Leaseback Agreement shall be amended to reflect the Company’s new address of:

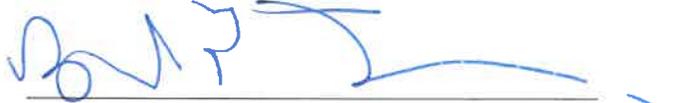
Laborers Way 1, LLC
c/o Zephyr Partners
329 S. Highway 101, Suite 150
Solana Beach, California 92075
Attn: Brad Termini, CEO

3. Unless otherwise amended pursuant to the terms contained herein, the terms of the Leaseback Agreement shall remain unchanged.

[Signature Page to First Amendment to Lease Agreement and to Leaseback Agreement]

IN WITNESS WHEREOF, the Company and the Agency have caused this First Amendment to Lease Agreement to be executed in their respective names, all as of the date first above written.

LABORERS WAY 1, LLC

By: 

Name: Brad Termini

Title: Chief Executive Officer

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Name: Elizabeth A. O'Keefe

Title: Vice President of Operations

[Acknowledgement Page to First Amendment to Lease Agreement and to Leaseback Agreement]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On the ____ day of _____, 2024, before me, _____
(name/title)

personally appeared **BRAD TERMINI**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal/Stamp)

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

On the 5TH day of AUGUST in the year 2024, 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 signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Gerald R. Manhard
Notary Public

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

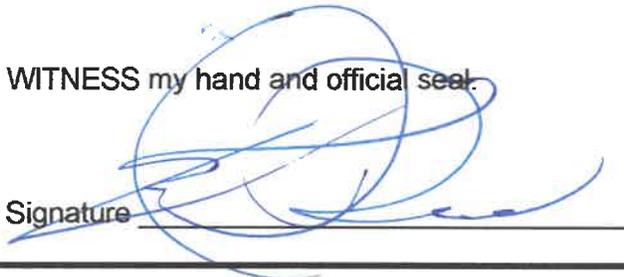
On July 24, 2024 before me, Kerry David Ross, Notary Public
(insert name and title of the officer)

personally appeared Brad Termini,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



Clear Form

Print Form



County Clerk's Recording Page

Return to:

Party 1:
LABORERS WAY 1 LLC

Party 2:
ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

Book Type: D Book: 11434 Page: 3480

Page Count: 5

Doc Type: MODIFY W/TP584

Rec Date: 08/06/2024

Rec Time: 11:47:13 AM

Control #: 2024130054

UserID: ERECORD

Trans #: 24120009

Document Sequence Number
TT2024000335

Recording Fees:

RECORDING	\$45.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
TP584	\$10.00
MARKOFF FEE	\$0.50

Consideration Amount: 1.00

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

Total: \$75.50

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Michael P. Kearns
Erie County Clerk

Record and Return to Box 138:
Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210
Attn: Kathleen A. Drumm, Paralegal

FIRST AMENDMENT TO MEMORANDUM OF LEASE AGREEMENT

Pursuant to § 291-c of the Real Property Law

(Company to Agency)

THIS FIRST AMENDMENT TO MEMORANDUM OF LEASE AGREEMENT, dated as of January 1, 2024 (the “First Amendment to Memorandum of Lease Agreement”), is by and between **LABORERS WAY 1, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, duly qualified to do business in the State of New York, with offices at 329 S. Highway 101, Suite 150, Solana Beach, California 92075 (the “Company”) and the **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”).

WHEREAS, by lease agreement dated as of December 1, 2022 (the “Lease Agreement”), the Agency leased to the Company certain real property and improvements located at 310 Ship Canal Parkway, City of Buffalo, Erie County, New York (the “Leased Premises”); and

WHEREAS, a memorandum of said Lease Agreement was recorded in the Office of the Erie County Clerk on December 12, 2022 in Liber 11411 of Deeds at Page 6612 (the “Memorandum of Lease”); and

WHEREAS, the Agency and the Company desire to amend the Memorandum of Lease for the purpose of extending the expiration date of the Memorandum of Lease Agreement as construction is not completed at the Leased Premises.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

The Memorandum of Lease Agreement is amended as follows:

1. Lease Term. All references to the termination in the Memorandum of Lease Agreement, dated as of December 1, 2022, by and between the Company and the Agency shall mean December 31, 2041.

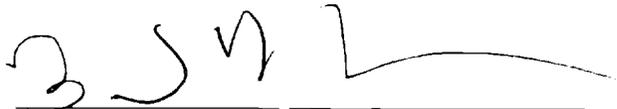
2. Unless otherwise amended pursuant to the terms contained herein, the terms of the Memorandum of Lease Agreement shall remain unchanged.

[The Balance of this Page Intentionally Left Blank]

[Signature Page to Memorandum of First Amendment to Lease Agreement]

IN WITNESS WHEREOF, the Company and the Agency have caused this First Amendment to Memorandum of Lease Agreement to be executed in their respective names, all as of the date first above written.

LABORERS WAY 1, LLC

By: 
Name: Brad Termini
Title: Chief Executive Officer

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Elizabeth A. O'Keefe
Title: Vice President of Operations

[Acknowledgement Page to Memorandum of First Amendment to Lease Agreement]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On the ____ day of _____, 2024, before me, _____
(name/title)

personally appeared **BRAD TERMINI**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal/Stamp)

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

On the 5th day of AUGUST in the year 2024, 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 signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Gerald R. Manhard
Notary Public



ACKNOWLEDGMENT

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State of California
County of San Diego

On July 24, 2024 before me, Kerry David Ross, Notary Public
(insert name and title of the officer)

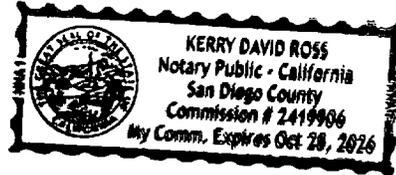
personally appeared Brad Termini
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]

(Seal)



Clear Form

Print Form



Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

First Amendment to Memo of Lease

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

Schedule A - Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, Social Security number, and EIN.

Location and description of property conveyed

Table with 5 columns: Tax map designation, SWIS code, Street address, City, town, or village, and County.

Type of property conveyed (mark an X in applicable box)

Form with checkboxes for property types (One- to three-family house, Residential cooperative, etc.) and date of conveyance (01/01/2024).

Condition of conveyance (mark an X in all that apply)

Form with checkboxes for conditions of conveyance (a. Conveyance of fee interest, b. Acquisition of a controlling interest, etc.).

Table for recording officer's use with columns: Amount received, Date received, and Transaction number.

Schedule B – Real estate transfer tax return (Tax Law Article 31)

Part 1 – Computation of tax due

1	Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3) <input checked="" type="checkbox"/> Exemption claimed	1.	0	00
2	Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)	2.	0	00
3	Taxable consideration (subtract line 2 from line 1)	3.	0	00
4	Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3	4.	0	00
5	Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G)	5.	0	00
6	Total tax due* (subtract line 5 from line 4)	6.	0	00

Part 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more

1	Enter amount of consideration for conveyance (from Part 1, line 1)	1.	0	00
2	Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...	2.	0	00
3	Total additional transfer tax due* (multiply line 2 by 1% (.01))	3.	0	00

Part 3 – Explanation of exemption claimed on Part 1, line 1 (mark an X in all boxes that apply)

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ... conveyance is to a NYS industrial development agency a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F f
- g. Conveyance consists of deed of partition g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor’s personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim) k

* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)

Complete the following only if the interest being transferred is a fee simple interest.

This is to certify that: (mark an X in the appropriate box)

- 1. The real property being sold or transferred is not subject to an outstanding credit line mortgage.
- 2. The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
 - a The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
 - b The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
 - c The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
 - d The maximum principal amount secured by the credit line mortgage is \$3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

Note: for purposes of determining whether the maximum principal amount secured is \$3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- e Other (attach detailed explanation).
- 3. The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
 - a A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
 - b A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
- 4. The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. (Make check payable to county clerk where deed will be recorded.)

Signature (both the grantors and grantees must sign)

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

By:  Laborers Way 1, LLC Grantor signature Brad Termini	CEO Title	 Erie County Industrial Development Agency Grantee signature Elizabeth A. O'Keefe	Vice President Title
Grantor signature	Title	Grantee signature	Title

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part 2, mark an X in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

Part 1 – New York State residents

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller of the real property or cooperative unit is a resident of New York State, each resident transferor/seller must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

Certification of resident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Note: A resident of New York State may still be required to pay estimated tax under Tax Law § 685(c), but not as a condition of recording a deed.

Part 2 – Nonresidents of New York State

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law § 663(c), mark an X in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on Form TP-584-I, page 1.

Exemption for nonresident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law § 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from _____ Date to _____ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date



County Clerk's Recording Page

Return to:

Party 1:
ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

Party 2:
LABORERS WAY 1 LLC

Book Type: D Book: 11434 Page: 3485

Page Count: 5

Doc Type: MODIFY W/TP584

Rec Date: 08/06/2024

Rec Time: 11:47:13 AM

Control #: 2024130055

UserID: ERECORD

Trans #: 24120009

Document Sequence Number
TT2024000336

Recording Fees:

RECORDING	\$45.00
COE CO \$1 RET	\$1.00
COE STATE \$14.25 GEN	\$14.25
COE STATE \$4.75 RM	\$4.75
TP584	\$10.00
MARKOFF FEE	\$0.50

Consideration Amount: 1.00

BASIC MT	\$0.00
SONYMA MT	\$0.00
ADDL MT/NFTA	\$0.00
SP MT/M-RAIL	\$0.00
NY STATE TT	\$0.00
ROAD FUND TT	\$0.00

Total: \$75.50

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING – THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT REQUIRED BY SECTION 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Michael P. Kearns
Erie County Clerk

Record and Return to Box 138:
Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210
Attn: Kathleen A. Drumm, Paralegal

FIRST AMENDMENT TO MEMORANDUM OF LEASEBACK AGREEMENT

Pursuant to § 291-c of the Real Property Law

(Agency to Company)

THIS FIRST AMENDMENT TO MEMORANDUM OF LEASEBACK AGREEMENT, dated as of January 1, 2024 (the “First Amendment to Memorandum of Leaseback Agreement”), is by and between the **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 **LABORERS WAY 1, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, duly qualified to do business in the State of New York, with offices at 329 S. Highway 101, Suite 150, Solana Beach, California 92075 (the “Company”); and

WHEREAS, by leaseback agreement dated as of December 1, 2022 (the “Leaseback Agreement”), the Agency leased to the Company certain real property and improvements located at 310 Ship Canal Parkway, City of Buffalo, Erie County, New York (the “Leased Premises”); and

WHEREAS, a memorandum of said Leaseback Agreement was recorded in the Office of the Erie County Clerk on December 12, 2022 in Liber 11411 of Deeds at Page 6619 (the “Memorandum of Leaseback”); and

WHEREAS, the Agency and the Company desire to amend the Memorandum of Leaseback for the purpose of extending the expiration date of the Memorandum of Leaseback Agreement as construction is not completed at the Leased Premises.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

The Memorandum of Leaseback Agreement is amended as follows:

1. Lease Term. All references to the termination in the Memorandum of Leaseback Agreement, dated as of December 1, 2022, by and between the Company and the Agency shall mean December 31, 2041.

2. Unless otherwise amended pursuant to the terms contained herein, the terms of the Memorandum of Leaseback Agreement shall remain unchanged.

[Signature Page to Memorandum of First Amendment to Leaseback Agreement]

IN WITNESS WHEREOF, the Company and the Agency have caused this First Amendment to Memorandum of Leaseback Agreement to be executed in their respective names, all as of the date first above written.

LABORERS WAY 1, LLC

By: 
Name: Brad Termini
Title: Chief Executive Officer

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Elizabeth A. O'Keefe
Title: Vice President of Operations

~~[Acknowledgement Page to Memorandum of First Amendment to Leaseback Agreement]~~

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STATE OF CALIFORNIA)
COUNTY OF _____)

On the ____ day of _____, 2024, before me, _____
(name/title)

personally appeared **BRAD TERMINI**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

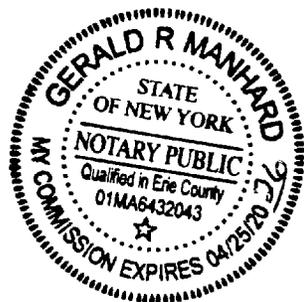
WITNESS my hand and official seal.

Signature _____

(Seal/Stamp)

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

On the 5th day of August in the year 2024, 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 signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Gerald R. Manhard
Notary Public

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

On July 24, 2024 before me, Kerry David Ross, Notary Public
(insert name and title of the officer)

personally appeared Brad Termini
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]

(Seal)



Clear Form

Print Form



Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

First Amendment to Memo of Leaseback

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

Schedule A - Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, and Social Security number (SSN).

Location and description of property conveyed

Table with 5 columns: Tax map designation, SWIS code, Street address, City, town, or village, and County. Row 1: 132.15-2-1, 140200, 310 Ship Canal Parkway, C-Buffalo, Erie.

Type of property conveyed (mark an X in applicable box)

Form with checkboxes for property types (1-9) and a date of conveyance field (01/01/2024). Includes percentage of residential real property conveyed (0.00%).

Condition of conveyance (mark an X in all that apply)

Form with checkboxes for various conditions of conveyance (a-s), including fee interest, controlling interest, cooperative housing, syndication, and leasehold grant.

Table for recording officer's use with columns: Amount received (Schedule B, Part 1 and 2), Date received, and Transaction number.

Schedule B – Real estate transfer tax return (Tax Law Article 31)

Part 1 – Computation of tax due

1	Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3) <input checked="" type="checkbox"/> Exemption claimed	1.	0	00
2	Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)	2.	0	00
3	Taxable consideration (subtract line 2 from line 1)	3.	0	00
4	Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3	4.	0	00
5	Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G)	5.	0	00
6	Total tax due* (subtract line 5 from line 4)	6.	0	00

Part 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more

1	Enter amount of consideration for conveyance (from Part 1, line 1)	1.	0	00
2	Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...	2.	0	00
3	Total additional transfer tax due* (multiply line 2 by 1% (.01))	3.	0	00

Part 3 – Explanation of exemption claimed on Part 1, line 1 (mark an X in all boxes that apply)

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim) k

* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)

Complete the following only if the interest being transferred is a fee simple interest.

This is to certify that: (mark an X in the appropriate box)

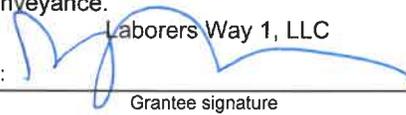
1. The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
 - a The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
 - b The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
 - c The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
 - d The maximum principal amount secured by the credit line mortgage is \$3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

Note: for purposes of determining whether the maximum principal amount secured is \$3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- e Other (attach detailed explanation).
3. The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
 - a A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
 - b A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4. The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. (Make check payable to county clerk where deed will be recorded.)

Signature (both the grantors and grantees must sign)

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

Erie County Industrial Development Agency  _____ Grantor signature Elizabeth A. O'Keefe	Vice President _____ Title	BY:  _____ Grantee signature Brad Termini	Laborers Way 1, LLC _____ CEO Title
Grantor signature	Title	Grantee signature	Title

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part 2, mark an X in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

Part 1 – New York State residents

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller of the real property or cooperative unit is a resident of New York State, each resident transferor/seller must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

Certification of resident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Note: A resident of New York State may still be required to pay estimated tax under Tax Law § 685(c), but not as a condition of recording a deed.

Part 2 – Nonresidents of New York State

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law § 663(c), mark an X in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on Form TP-584-I, page 1.

Exemption for nonresident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law § 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from _____ Date to _____ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

LABORERS WAY 1, LLC

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

The Project consisting of: (i) a fifteen year term PILOT Agreement with respect to the Facility, and (ii) a PILOT Agreement payment structure whereby the Company will make payment, for each tax fiscal year, in an amount equal to the amount of real property taxes that would be paid as if the Company owned the Facility and the Agency had no interest in the Facility, multiplied by the applicable percentage of 20% for PILOT Agreement years 1 and 2, 30% for PILOT Agreement years 3 and 4, 40% for PILOT Agreement years 5, 6, 7, 8, and 9, and 50% for PILOT Agreement years 10, 11, 12, 13, 14 and 15 (collectively, (i) and (ii), being the "PILOT Deviation")

First Amendment Dated as of: January 1, 2024

Termination Date: December 31, 2041

SBL No.: 132.15-2-1

Affected Tax Jurisdictions: Erie County
City of Buffalo

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 the 1st day of January, 2024, 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 **LABORERS WAY 1, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, duly qualified to do business in the State of New York, with offices at 329 S. Highway 101, Suite 150, Solana Beach, California 92075 (the “Company”).

W I T N E S S E T H:

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 December 1, 2022, with respect the Company's property located at 310 Ship Canal Parkway, City of Buffalo, Erie County, New York (the “Facility”); and

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

Section 1. Agency Tax Exemption. The Company, in recognition of the benefits provided under this Agreement, and for so long as the underlying Lease Agreement is in effect, hereby expressly waives any rights it may have for any exemption under Section 485-b of the New York Real Property Tax Law with respect to the Facility. 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 **December 1, 2025** (the “Taxable Status Date”), and the approval of

the RP-412-a by the Assessor, the Project shall be exempt from real estate taxes commencing with the:

- (a) 2027 tax fiscal year of the County,
- (b) 2026-2027 tax fiscal year of the City.

Prior to the 2027 County and 2026-2027 City tax fiscal years, the Company shall continue to timely pay all real estate taxes due as if the Agency were not in leasehold title and had no ownership or control of the Facility such that no exemption from real estate taxes was available to the Facility due to the status of the Agency. This PILOT Agreement shall expire on December 31, 2041; provided, however, the Company shall pay the 2042 County and 2041-2042 City taxes, including real estate taxes levied by the City for the Buffalo City School District, on the dates and in the amounts as if the Agency were not in leasehold 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. 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.

Section 2. Obligation of the Company to Make Payments in Lieu of Taxes. Subject to the approval of the RP-412-a, the Agency shall require, and the Company agrees to make, payments in lieu of real estate taxes to the appropriate taxing authorities pursuant to the terms of this PILOT Agreement.

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 Facility. The total PILOT payments required upon commencement of this PILOT Agreement are not allocated among the Affected Tax Jurisdictions in proportion to the amount of real estate taxes and other taxes which would have been received by each Affected Tax Jurisdiction had the Facility not been tax exempt due to the status of the Agency and the Agency's leasehold interest in the Facility, however, the County and the City have agreed, pursuant to the terms of the BLCP Agreement, to receive amounts different from their proportionate share, as so provided for herein, and have consented to this PILOT Agreement in accordance with Section 858(15) of the New York General Municipal Law. For each taxing authority, such payments in lieu of taxes shall have a land component and a variable component as follows:

- (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 City of Buffalo of the non-depreciable portion of all tax parcels comprising the Project (assessed as land).

- (b) 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
 - (ii) The then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of all buildings and improvements comprising the Project
 - x
 - (iii) 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 as follows:

(a) County PILOT Payments. Payments in lieu of general levy real estate taxes to the County for each of the tax fiscal years 2027 through 2041, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the sum of the County Land Component Payment and the County Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The County Land Component Payment for each tax fiscal year shall be in an amount equal to the County tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The County Variable Component 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 (i) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the depreciable portion of all tax parcels constituting the Project (assessed as buildings or other improvements) and (ii) the Payment Factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each County PILOT Payment made pursuant to this paragraph Section 3(2)(a) shall be made to the Erie County Industrial Development Agency, 95 Perry Street, Suite 403, Buffalo, New York, 14203, or to such other address as may be designated in writing to the Company from time to time by the Agency. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent. The County, the City, and the Agency have entered into that certain BLCP Agreement, pursuant to which the County has irrevocably divested itself of the right to receive certain PILOT Payments under this paragraph Section 3(2)(a), and the County has acknowledged that receipt of such payments by the Agency

shall be deemed to be receipt by the County. The County PILOT Payment shall thereafter be distributed by the Agency in accordance with the terms of the BLCP Agreement.

(b) City PILOT Payments. Payments in lieu of general levy real estate taxes for the City for the tax fiscal years 2026-2027 through 2040-2041 or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the sum of the City Land Component Payment and the City Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The City Land Component Payment for each tax fiscal year shall be in an amount equal to the City tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The City Variable Component Payment for each tax fiscal year shall be an amount equal to the City Tax rate then in effect for such tax fiscal year, applied to the product of (i) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the depreciable portion of all tax parcels constituting the Project (assessed as buildings or other improvements) and (ii) the Payment Factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each City PILOT Payment made pursuant to this paragraph Section 3(2)(b) shall be made to the Erie County Industrial Development Agency, 95 Perry Street, Suite 403, Buffalo, New York, 14203, or to such other address as may be designated in writing to the Company from time to time by the Agency. Fifty-percent (50%) of each required annual payment for each City tax fiscal year must be made by July 31 of that year, with the balance to be made by December 31 of such year (unless otherwise required by the City), or such payment shall be considered delinquent. The County, the City, and the Agency have entered into that certain BLCP Agreement, pursuant to which the City has irrevocably divested itself of the right to receive certain PILOT Payments under this paragraph Section 3(2)(b), and the City has acknowledged that receipt of such payments by the Agency shall be deemed to be receipt by the City. The City PILOT Payment shall thereafter be distributed by the Agency in accordance with the terms of the BLCP Agreement.

(c) In addition to the foregoing, the Company shall pay 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 are to be paid in full 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 determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation 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 shall be refunded to the Company or, in the Agency's sole discretion, such excess payment 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.

2. Section 10.2 Notices shall be amended to reflect the Company's new address of:

Laborers Way 1, LLC
c/o Zephyr Partners
329 S. Highway 101, Suite 150
Solana Beach, California 92075
Attn: Brad Termini, CEO

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.

[Remainder of this page left intentionally blank]

[Signature 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 of Operations

LABORERS WAY 1, LLC

By: 
Name: Brad Termini
Title: Chief Executive Officer

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

On the 5th day of AUGUST, 2024, 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 signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Gerald R. Manhard
Notary Public

~~A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.~~

~~STATE OF CALIFORNIA)
COUNTY OF _____)~~

~~On the ____ day of _____, 2024, before me, _____
(name/title)~~

~~personally appeared **BRAD TERMINI**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.~~

~~I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.~~

~~WITNESS my hand and official seal.~~

~~Signature _____~~

~~(Seal/Stamp)~~

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On July 24, 2024 before me, Kerry David Ross, Notary Public
(insert name and title of the officer)

personally appeared Brad Termini,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal

Signature  (Seal)

Clear Form

Print Form

PILOT Agreement dated as of December 1, 2022,
as amended by the First Amendment to PILOT Agreement dated as of January 1, 2024,
by and between Erie County Industrial Development Agency,
and Laborers Way 1, LLC
SBL No. 132.15-2-1
Expiration of Leaseback: December 31, 2041

SCHEDULE A

Project/PILOT Tax Year	TAX FISCAL YEAR		PAYMENT FACTOR
	County	City	
Project Year 1	2023	2022-2023	N/A
Project Year 2	2024	2023-2024	N/A
Project Year 3	2025	2024-2025	N/A
Project Year 4	2026	2025-2026	N/A
PILOT Year 1	2027	2026-2027	20%
PILOT Year 2	2028	2027-2028	20%
PILOT Year 3	2029	2028-2029	30%
PILOT Year 4	2030	2029-2030	30%
PILOT Year 5	2031	2030-2031	40%
PILOT Year 6	2032	2031-2032	40%
PILOT Year 7	2033	2032-2033	40%
PILOT Year 8	2034	2033-2034	40%
PILOT Year 9	2035	2034-2035	40%
PILOT Year 10	2036	2035-2036	50%
PILOT Year 11	2037	2036-2037	50%
PILOT Year 12	2038	2037-2038	50%
PILOT Year 13	2039	2038-2039	50%
PILOT Year 14	2040	2039-2040	50%
PILOT Year 15	2041	2040-2041	50%



AMENDMENT

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION

(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name Erie County Industrial Development Agency
Street 95 Perry Street, Suite 403
City Buffalo, NY 14203
Telephone no. Day (716) 856-6525
Evening ()
Contact Elizabeth A. O'Keefe
Title Vice President of Operations

Name Laborers Way 1, LLC
Street c/o Zephyr Partners, 329 S. Highway 101, Suite 150
City Solana Beach, California 92075
Telephone no. Day (858) 558-3650
Evening ()
Contact Brad Termini
Title Chief Executive Officer

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 132.15-2-1
b. Street address 310 Ship Canal Parkway
c. City, Town or Village Buffalo
d. School District Buffalo City Schools
e. County Erie
f. Current assessment
g. Deed to IDA (date recorded; liber and page)

Memo of Lease recorded on 12/12/2022 in Liber 11411 of Deeds at page 6612; First Amendment to Memo of Lease recorded on or about July , 2024

Memo of Leaseback recorded on 12/12/2022 in Liber 11411 of Deeds at page 6619; First Amendment to Memo of Leaseback recorded on or about July , 2024

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

- a. Brief description (include property use) Construction of an approximately 75,000+/- SF cannabis cultivation facility.
b. Type of construction New.
c. Square footage Est. 75,000+/-
d. Total cost Est. \$27,800,000.00
e. Date construction commenced Est. August 30, 2022
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) December 31, 2041

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment Please see attached First Amendment to PILOT Agreement dated January 1, 2024 and original PILOT Agreement dated December 1, 2022

- b. Projected expiration date of agreement December 31, 2041

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Erie</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Buffalo</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input type="checkbox"/>
School District <u>Buffalo City</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name Brad Termini
 Title Chief Executive Officer
Laborers Way 1, LLC
 Address c/o Zephyr Partners
329 S. Highway 101, Suite 150
Solana Beach, California 92075

e. Is the IDA the owner of the property? ~~Yes~~ No

If "No" identify owner and explain IDA rights or interest in an attached statement. No. Occupant owns property and leases to IDA.

Telephone (858) 558-3650

6. Is the property receiving or has the property ever received any other exemption from real property taxation?

(check one) Y N

If yes, list the statutory exemption reference and assessment roll year on which granted: exemption _____

7. A copy of this application, including all attachments, has been mailed or delivered on 8/6/2024 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Elizabeth A. O'Keefe, Vice President of Operations of
 Name Title
Erie County Industrial Development Agency hereby certify that the information
 Organization

on this application and accompanying papers constitutes a true statement of facts.

8/15/2024
Date


Signature

FOR USE BY ASSESSOR

1. Date application filed _____

2. Applicable taxable status date _____

3a. Agreement (or extract) date _____

3b. Projected exemption expiration (year) _____

4. Assessed valuation of parcel in first year of exemption \$ _____

5. Special assessments and special as valorem levies for which the parcel is liable:

Date

Assessor's signature

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

LABORERS WAY 1, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Regarding the leasehold interest in land, the construction and equipping of an approximately 75,000+/- SF cannabis cultivation facility located at 310 Ship Canal Parkway, City of Buffalo, Erie County, New York

Dated as of: **December 1, 2022**

Termination Date: **December 31, 2039**

SBL No.: **132.15-2-1**

Affected Tax Jurisdictions: **Erie County**
City of Buffalo

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

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of December 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 located at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency"), and **LABORERS WAY 1, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, duly qualified to do business in the State of New York, with offices at 700 Second Street, Encinitas, California 92024 (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 Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition by the Agency of a leasehold interest in certain property located on 310 Ship Canal Parkway, City of Buffalo, Erie County, New York (the "Land"), (ii) the construction on the Land of an approximately 75,000+/- sq. ft. cannabis cultivation facility to be utilized for the production, packaging and distribution of cannabis (the "Improvements"), and (iii) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and, together with the Land and the Improvements, the "Facility"); and

WHEREAS, the Company is the owner of, or is acquiring title to or other interest in, certain real property located at 310 Ship Canal Parkway, Buffalo, New York 14218, known as SBL No. 132.15-2-1 (the "Property"); and

WHEREAS, pursuant to that certain Buffalo Lakeside Commerce Park Development and PILOT Redistribution Agreement, dated as of July 1, 2005, (the "BLCP Agreement") by and between the City of Buffalo (the "City"), the County of Erie (the "County"), the Buffalo Urban Development Corporation ("BUDC"), and the Agency (and collectively with the City, the County, and BUDC, the "Parties"), the Parties have agreed to establish a payment in lieu of real estate tax program with respect to the Property whereby the City and the County have consented to the terms of this Agreement pursuant to which PILOT Agreement payments are to be made by the Company to the Agency, and then (i) 50% of the PILOT Agreement payment will be submitted to the Buffalo Brownfield Redevelopment Fund as so described within the BLCP Agreement, and (ii) 50% of the PILOT Agreement payment will be remitted to the City and the County, all of the forging, along with the Payment Factor percentages as identified herein, and benefit period term of this PILOT Agreement, collectively, being a deviation (the "Deviation") from the Agency's Uniform Tax Exemption Policy (the "UTEP"), and

WHEREAS, after complying with its UTEP deviation processes, the Agency, by resolution adopted on August 24, 2022, (the "Resolution") authorized and approved of the Deviation, and the terms of this Agreement, as herein described; and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to take a leasehold interest in the land, the improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement to be dated on or about the date hereof (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of the County and the City, inclusive of the Buffalo City School District (collectively, the "Affected Tax Jurisdictions").

NOW, THEREFORE, this Agreement is for making by the Company of certain payments in lieu of real estate taxes, as required by the Leaseback Agreement, by which the Agency has leased certain premises to the Company. The Agency and the Company each accept and agree to the following statements or terms:

Section 1. Agency Tax Exemption. The Company, in recognition of the benefits provided under this Agreement, and for so long as the underlying Lease Agreement is in effect, hereby expressly waives any rights it may have for any exemption under Section 485-b of the New York Real Property Tax Law with respect to the Facility. 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 **December 1, 2023** (the "Taxable Status Date"), and the approval of the RP-412-a by the Assessor, the Project shall be exempt from real estate taxes commencing with the:

- (a) 2025 tax fiscal year of the County,
- (b) 2024-2025 tax fiscal year of the City.

Prior to the 2025 County and 2024-2025 City tax fiscal years, the Company shall continue to timely pay all real estate taxes due as if the Agency were not in leasehold title and had no ownership or control of the Facility such that no exemption from real estate taxes was available to the Facility due to the status of the Agency. This PILOT Agreement shall expire on December 31, 2039; provided, however, the Company shall pay the 2040 County and 2039-2040 City taxes, including real estate taxes levied by the City for the Buffalo City School District, on the dates and in the amounts as if the Agency were not in leasehold 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. 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.

Section 2. Obligation of the Company to Make Payments in Lieu of Taxes. Subject to the approval of the RP-412-a, the Agency shall require, and the Company agrees to make, payments in lieu of real estate taxes to the appropriate taxing authorities pursuant to the terms of this PILOT Agreement.

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 Facility. The total PILOT payments required upon commencement of this PILOT Agreement are not allocated among the Affected Tax Jurisdictions in proportion to the amount of real estate taxes and other taxes which would have been received by each Affected Tax Jurisdiction had the Facility not been tax exempt due to the status of the Agency and the Agency's leasehold interest in the Facility, however, the County and the City have agreed, pursuant to the terms of the BLCP Agreement, to receive amounts different from their proportionate share, as so provided for herein, and have consented to this PILOT Agreement in accordance with Section 858(15) of the New York General Municipal Law. For each taxing authority, such payments in lieu of taxes shall have a land component and a variable component as follows:

- (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 City of Buffalo of the non-depreciable portion of all tax parcels comprising the Project (assessed as land).
- (b) 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
- (ii) The then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of all buildings and improvements comprising the Project
x
- (iii) 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 as follows:

(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 2039, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the sum of the County Land Component Payment and the County Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The County Land Component Payment for each tax fiscal year shall be in an amount equal to the County tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The County Variable Component 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 (i) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the depreciable portion of all tax parcels constituting the Project (assessed as buildings or other improvements) and (ii) the Payment Factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each County PILOT Payment made pursuant to this paragraph Section 3(2)(a) shall be made to the Erie County Industrial Development Agency, 95 Perry Street, Suite 403, Buffalo, New York, 14203, or to such other address as may be designated in writing to the Company from time to time by the Agency. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent. The County, the City, and the Agency have entered into that certain BLCP Agreement, pursuant to which the County has irrevocably divested itself of the right to receive certain PILOT Payments under this paragraph Section 3(2)(a), and the County has acknowledged that receipt of such payments by the Agency shall be deemed to be receipt by the County. The County PILOT Payment shall thereafter be distributed by the Agency in accordance with the terms of the BLCP Agreement.

(b) **City PILOT Payments.** Payments in lieu of general levy real estate taxes for the City for the tax fiscal years 2024-2025 through 2038-2039 or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the sum of the City Land Component Payment and the City Variable Component Payment (as such terms are depicted above and defined below) for each such tax fiscal year. The City Land Component Payment for each tax fiscal year shall be in an amount equal to the City tax rate then in effect for such tax fiscal year, applied against the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The City Variable Component Payment for each tax

fiscal year shall be an amount equal to the City Tax rate then in effect for such tax fiscal year, applied to the product of (i) the then current assessed valuation that is to be determined by the Assessor of the City of Buffalo of the depreciable portion of all tax parcels constituting the Project (assessed as buildings or other improvements) and (ii) the Payment Factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each City PILOT Payment made pursuant to this paragraph Section 3(2)(b) shall be made to the Erie County Industrial Development Agency, 95 Perry Street, Suite 403, Buffalo, New York, 14203, or to such other address as may be designated in writing to the Company from time to time by the Agency. Fifty-percent (50%) of each required annual payment for each City tax fiscal year must be made by July 31 of that year, with the balance to be made by December 31 of such year (unless otherwise required by the City), or such payment shall be considered delinquent. The County, the City, and the Agency have entered into that certain BLCP Agreement, pursuant to which the City has irrevocably divested itself of the right to receive certain PILOT Payments under this paragraph Section 3(2)(b), and the City has acknowledged that receipt of such payments by the Agency shall be deemed to be receipt by the City. The City PILOT Payment shall thereafter be distributed by the Agency in accordance with the terms of the BLCP Agreement.

(c) In addition to the foregoing, the Company shall pay 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 are to be paid in full 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 determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation 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 shall be refunded to the Company or, in the Agency’s sole discretion, such excess payment 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.

Section 4. Proration and Transfer of Facility.

(1) During the last year of the term of the Leaseback Agreement the Company may prorate any of its payments in lieu of taxes on the basis of the actual period during which the Agency has an interest in the Project so that there shall exist no period of time for which the Company is obliged to make payments in lieu of taxes in addition to the actual tax payments to which the Project is subject, under current law, at the time the Agency's interest in the Project is terminated.

(2) In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section 3 herein, or this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section 5. Obligations and Rights of the Company in Relation to Tax Assessments and Levies.

(1) Subject to the provisions of the Leaseback Agreement, the Company in cooperation with the Agency shall:

(a) cause the appropriate real estate tax assessment office and tax levy officers to assess the Project and apply tax rates to the respective assessments as if the Agency did not have an interest in the Project;

(b) cause the appropriate real estate tax assessment office and tax levy officers to submit to the Company, when the respective types of taxes are levied on privately owned property, statements specifying the respective amounts and due dates of taxes involved in this PILOT Agreement which the appropriate taxing authorities would receive if the Agency did not have an interest in such property; and

(c) file any accounts or tax returns required with the appropriate real estate tax assessment office and tax levy officers.

(2) The payments the Company is required to make under this PILOT Agreement are subject to the Company's rights, hereby granted, (a) to have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Project, with respect to any proposed assessment or change in assessment with respect to the Project by any of the Affected Tax Jurisdictions, (b) to seek to obtain refunds of any such payments made

including payments made pursuant to this PILOT Agreement, (c) likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein, and (d) the Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Company were the owner of the Project. The Agency shall join in any procedure for obtaining relief under this paragraph to the extent that the Agency's consent is required for the Company to undertake such procedure; provided, however, that the Company shall continue to make the payments in lieu of taxes required by this PILOT Agreement adjusted for any reduction as provided above so long as the Leaseback Agreement shall remain in effect.

Section 6. Effect of Fulfillment of the Requirement and Clawback. Once having paid the amounts required by this PILOT Agreement, the Company shall not be required to pay any real estate taxes for which payments in lieu of taxes have been made. Notwithstanding the foregoing, in the event that the Agency shall determine (i) that the Company has submitted an application, or documentation in support of an application, which contained a false or intentionally misleading statement as to any fact which is material to the Company's application for benefits or which omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, and (ii) that such false or misleading statement or omission was made knowingly and intentionally for the purpose of obtaining financial assistance, then the Company shall forfeit any future tax exemptions or abatements and shall be required to pay to the appropriate taxing authority the amount of any real property, mortgage or sales tax abatements or exemptions received. The amount of benefits recaptured shall be: (i) for real property taxes, the difference between the amount of payment in lieu of taxes paid and the amount that would have been paid in real estate taxes if the Agency did not have an interest in the project; (ii) for sales taxes, the value of the sales tax exemption received and (iii) for the mortgage tax, the value of any mortgage recording tax for which an exemption was granted. Further, and again, notwithstanding anything contained herein to the contrary, the Agency and the Company have entered into that certain Agent and Financial Assistance Project Agreement, dated as of September 1, 2022 (the "Agent Agreement"), pursuant to which the Agency has the right to terminate, recapture, and/or modify financial assistance, including sales tax exemption benefits, mortgage recording tax exemption benefits, and real property tax abatement benefits (collectively, "Financial Assistance"), upon the terms and conditions set forth in the Agent Agreement. The Company recognizes and agrees that, if at any time, it fails to maintain its covenants and/or the terms and conditions as set forth in the Agent Agreement so as to effect a Recapture Event Determination as described within the Agent Agreement, then the Company may be subject to immediate termination or modification of Financial Assistance and/or be required to pay to the Agency an amount equal to any or all of the Financial Assistance as prescribed by the terms and conditions of the Agent Agreement.

Section 7. Events of Default.

- (1) The following shall constitute "Event(s) of Default" hereunder:

(a) The failure by the Company to (i) make any such payments in lieu of taxes when due, whether for a full tax fiscal year or years or for a portion of a tax fiscal year pursuant to Sections 2 or 3 hereof within thirty (30) days of the payment due date (the “Delinquency Date”), whereupon the amount or amounts so in default shall continue as an obligation of the Company until fully paid; ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable cure periods.

(2) Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default.

(3) In addition, if payments pursuant to this PILOT Agreement are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as set forth herein. With respect to payments to be made pursuant to Section 3 herein, if said payment is not received by the Delinquency Date defined above, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to General Municipal Law § 874(6). The Company shall promptly notify the Agency of any action brought, or other measure taken, by taxing authority to recover such amounts. It is understood that the right of any taxing authority herein acknowledged is in addition to, and shall not impair, the Agency’s own rights arising from a breach of this PILOT Agreement. Should the Agency or the City or the County commence any action to recover directly from the Company any amounts so in default, such parties shall be entitled to recover from the Company the amount due, the late payment penalty, interest, expenses, costs and disbursements, together with the reasonable attorneys’ fees necessary to prosecute such action or proceeding.

(4) If the Project is not being used in accordance with the Act or the Leaseback Agreement, or if an Event of Default occurs, the Company shall make payments in lieu of taxes on the Project in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project. The applicable tax assessment and tax levy rates shall be those in effect in the records of the appropriate taxing authorities.

(5) The period for the payments required by Paragraph (4) of this section shall commence on the date the Agency determines (a) that the use of the Project under the Act or the Leaseback Agreement is not being complied with, or (b) that an Event of Default has occurred and is continuing.

Section 8. Survival of the Company's Obligations. The obligations of the Company under this PILOT Agreement shall survive the termination or expiration of the Leaseback Agreement, for whatever reason terminated or expired.

Section 9. Assignment. No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed, except as may be permitted pursuant to the terms of Section 6.3 of the Leaseback Agreement.

Section 10. Miscellaneous.

Section 10.1 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall constitute a single instrument.

Section 10.2 Notices. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by nationally-recognized overnight courier, as follows:

To the Agency: Erie County Industrial Development Agency
95 Perry Street, Suite 403
Buffalo, New York 14203
Attn: Chief Executive Officer

With a copy to: Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210
Attn: Robert G. Murray, Esq.

To the Company: Laborers Way 1, LLC
c/o Zephyr Partners
700 Second Street
Encinitas, California 92024
Attn: Brad Termini, CEO

With a copy to: Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, New York 14202
Attn: Amy Fitch, Esq.

To the Bank: Five Star Bank
6215 Sheridan Drive
Williamsville, NY 14221
Attn: Patrick C. Keating
Western NY Regional President
Senior Vice President - Commercial Banking

With a copy to: Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, NY 14203-2887
Attn: Jeffrey M. Monaco, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 10.3 Applicable Law. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Erie County, New York.

Section 10.4 Amendment to the Act. To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section 10.5 Nonrecourse. Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency or the Affected Taxing Jurisdictions, as the case may be, by the Company. No member of the Agency nor any person executing this Agreement on the Agency's behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officers, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

Section 10.6 Severability. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent, and the

remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

Section 10.7 Section Headings Not Controlling. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Agreement.

Section 10.8 No Waiver. In the event any agreement herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.9 Amendment. This Agreement may not be amended, changed, modified or altered except in writing executed by the parties hereto.

Section 10.10 Complete Agreement. Unless supplemented or otherwise amended in writing by the Company and the Agency in accordance with the laws of the State of New York, this Agreement constitutes the parties' entire agreement with respect to the subject set forth herein, and no other agreements or policies, written or unwritten, implied or express, will be deemed effective.

Section 10.11 Change in Tax Parcel or Tax Account Identification Numbers. Any change, amendment, increase, or decrease of the tax identification or parcel numbers currently used by the City to identify or classify all or any part of the Facility shall not modify this Agreement.

Section 10.12 Termination. In the event the Leaseback Agreement and the Lease Agreement are terminated for any reason, this Agreement shall be terminated as of the effective date of the termination of such agreements.

(Remainder of page intentionally left blank)

[Signature page to PILOT Agreement]

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

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

LABORERS WAY 1, LLC

By: _____
Name: Brad Termini
Title: Chief Executive Officer

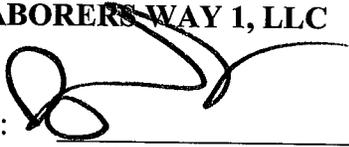
[Signature page to PILOT Agreement]

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Elizabeth A. O'Keefe
Title: Vice President

LABORERS WAY 1, LLC

By:  _____
Name: Brad Termini
Title: Chief Executive Officer

[Acknowledgment Page to the PILOT Agreement]

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

On the 6th day of December, 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 signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

LORI A. SZEWCZYK
Notary Public, State of New York
No. 01SZ5030580
Qualified in Erie County
Commission Expires 07/18/2026

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On the ____ day of December, 2022, before me, _____
(insert name of notary)

personally appeared Brad Termini, Chief Executive Officer, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of San Diego }
On December 6, 2020 before me, Kerry David Ross, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Brad Termini
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

PILOT Agreement dated as of December 1, 2022,
 by and between Erie County Industrial Development Agency,
 and Laborers Way 1, LLC
 SBL No. 132.15-2-1
 Expiration of Leaseback: December 31, 2039

SCHEDULE A

Project/PILOT Tax Year	TAX FISCAL YEAR		PAYMENT FACTOR
	County	City	
Project Year 1	2023	2022-2023	N/A
Project Year 2	2024	2023-2024	N/A
PILOT Year 1	2025	2024-2025	20%
PILOT Year 2	2026	2025-2026	20%
PILOT Year 3	2027	2026-2027	30%
PILOT Year 4	2028	2027-2028	30%
PILOT Year 5	2029	2028-2029	40%
PILOT Year 6	2030	2029-2030	40%
PILOT Year 7	2031	2030-2031	40%
PILOT Year 8	2032	2031-2032	40%
PILOT Year 9	2033	2032-2033	40%
PILOT Year 10	2034	2033-2034	50%
PILOT Year 11	2035	2034-2035	50%
PILOT Year 12	2036	2035-2036	50%
PILOT Year 13	2037	2036-2037	50%
PILOT Year 14	2038	2037-2038	50%
PILOT Year 15	2039	2038-2039	50%

Affected Taxing Jurisdictions
Erie County Industrial Development Agency
Laborers Way 1, LLC (the “Company”)
Project Address: 310 Ship Canal Parkway, Buffalo, New York

Amendment to PILOT Agreement

Certified No.: 9489 0090 0027 6558 0836 21

Scott A. Bylewski, Esq., Director
Erie County Real Property Tax Services
Edward A. Rath County Office Building
95 Franklin Street, Room 100
Buffalo, NY 14202

(See Attached)

Tracking Number:

[Remove X](#)

9489009000276558083621

[Copy](#)

[Add to Informed Delivery \(https://informedelivery.usps.com/\)](https://informedelivery.usps.com/)

Latest Update

Your item was delivered to an individual at the address at 10:00 am on August 8, 2024 in BUFFALO, NY 14202.

Get More Out of USPS Tracking:

USPS Tracking Plus[®]

Delivered

Delivered, Left with Individual

BUFFALO, NY 14202

August 8, 2024, 10:00 am

[See All Tracking History](#)

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)

Text & Email Updates



Return Receipt Electronic



USPS Tracking Plus[®]



Product Information



Feedback

[See Less ^](#)

Affected Taxing Jurisdictions
Erie County Industrial Development Agency
Laborers Way 1, LLC (the “Company”)
Project Address: 310 Ship Canal Parkway, Buffalo, New York

Amendment to PILOT Agreement

Certified No.: 9489 0090 0027 6556 9210 17

Jason C. Shell, MPA, Commissioner
City of Buffalo
Assessment & Taxation Department
65 Niagara Square, Room 101
Buffalo, NY 14202

(See Attached)

Tracking Number:

[Remove](#) X

9489009000276556921017

[Copy](#)

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Latest Update

Your package will arrive later than expected, but is still on its way. It is currently in transit to the next facility.

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[USPS Tracking Plus[®]](#)

Moving Through Network

In Transit to Next Facility, Arriving Late

August 11, 2024

Arrived at USPS Regional Facility

BUFFALO NY DISTRIBUTION CENTER

August 6, 2024, 9:40 pm

[See All Tracking History](#)

Feedback

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[Text & Email Updates](#)



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[Product Information](#)



Affected Taxing Jurisdictions
Erie County Industrial Development Agency
Laborers Way 1, LLC (the “Company”)
Project Address: 310 Ship Canal Parkway, Buffalo, New York

Amendment to PILOT Agreement

Certified No.: 9489 0090 0027 6558 0836 38

Dr. Tonja M. Williams, Superintendent
Buffalo City School District
City Hall, Room 712
65 Niagara Square
Buffalo, NY 14202

(See Attached)

Tracking Number:

Remove **X**

9489009000276558083638

[Copy](#)

[Add to Informed Delivery \(https://informedelivery.usps.com/\)](https://informedelivery.usps.com/)

Latest Update

Your item was delivered to the front desk, reception area, or mail room at 11:12 am on August 8, 2024 in BUFFALO, NY 14202.

Get More Out of USPS Tracking:

USPS Tracking Plus[®]

Delivered

Delivered, Front Desk/Reception/Mail Room

BUFFALO, NY 14202

August 8, 2024, 11:12 am

[See All Tracking History](#)

Feedback

[What Do USPS Tracking Statuses Mean? \(https://faq.usps.com/s/article/Where-is-my-package\)](https://faq.usps.com/s/article/Where-is-my-package)

Text & Email Updates



Return Receipt Electronic



USPS Tracking Plus[®]



Product Information



See Less

Kathleen A. Drumm

From: noreply@cscglobal.com
Sent: Tuesday, August 6, 2024 12:03 PM
To: Kathleen A. Drumm
Subject: CSC ePrepare Notification - Package Laborer's Way-Amendment (418579) has recorded in Erie County, NY

Hello,

Package: **Laborer's Way-Amendment (418579)** has returned with the following document(s).

Recorded Date: 8/6/2024 11:47:13 AM
Jurisdiction: Erie County, NY

Document Name: *Memorandum of First Amendment to Lease Agreement w-TP584*

Status: *Recorded*

Recordation Fee: *\$75.50*

Entry Number: *2024130054*

Book: *11434*

Page: *3480*

Document Name: *First Amendment to Memroandum of Leaseback Agreement with TP584*

Status: *Recorded*

Recordation Fee: *\$75.50*

Entry Number: *2024130055*

Book: *11434*

Page: *3485*

Thank you!

CSC®
[eRecording.com](https://www.eRecording.com)
[cscglobal.com](https://www.cscglobal.com)



We are the business behind business