

COPY

**FIRST AMENDMENT TO AMENDED AND RESTATED
AGENT AND FINANCIAL ASSISTANCE AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED AGENT AND FINANCIAL ASSISTANCE AGREEMENT, dated as of the 30th day of September, 2015, is by and between **ISKALO 337 ELLICOTT LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York with offices at 5166 Main Street, Williamsville, New York 14221 (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").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 of the State of New York pursuant to Title 1 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 submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") located at a portion of 337 Ellicott Street, City of Buffalo, Erie County, New York consisting of: (i) the renovation and facility upgrades of 14,600+/- SF for a new tenant to be utilized as a production brewery to be comprised of bottling, distribution functions, support space, a tasting room and storage (the "Improvements"); and (ii) the acquisition of and installation in and around the Improvements of certain machinery, equipment and items of personal property thereon (the "Equipment" and, collectively with the Improvements, the "Facility"); and

WHEREAS, by Resolution adopted on January 29, 2014 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into an agent agreement, and pursuant to the Resolution and the agent agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached thereto (collectively, the "Subagent"). The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency; and

WHEREAS, by its Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of (a) an exemption from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the renovation or equipping of the Facility specifically for those components of the Project related to brewery operations/production and excluding personal property included in or incorporated into the Facility or used in the renovation or equipping of the Facility related to "tasting room" purposes and operations, (b) a seven year term real property tax abatement benefit through the PILOT Agreement for the benefit of each municipality and

school district having taxing jurisdiction over the Project only with respect to that portion of the Facility utilized by the Company for brewery production and operation purposes (including the “tasting room”) and excluding that portion of the Facility otherwise used for parking purposes, and (c) a mortgage recording tax exemption benefit for the financing related to the Project (collectively, the sales and use tax exemption benefit, the real property tax exemption benefit, and the mortgage recording tax exemption benefit all as described herein are hereinafter collectively referred to as the “Financial Assistance”); and

WHEREAS, the Agency requires, as a condition and as an inducement for it to provide said Financial Assistance, that the Company provides assurances with respect to the recapture of said Financial Assistance on the terms therein set forth; and

WHEREAS, the Company and the Agency executed an Agent and Financial Assistance Agreement dated March 20, 2014 (the “Original Agent Agreement”); and

WHEREAS, effective on June 1, 2014, the New York State Department of Taxation and Finance (the “Department”) requires that agents of an Industrial Development Agency use new FORM ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate*, to make purchases exempt from New York State and local sales and use tax; and

WHEREAS, the Company notified the Agency that the project had not been completed and requested an extension of the New York State and local sales and use tax exemption benefit provided by the Agency, which the Agency agreed to provide to the Company; and

WHEREAS, the Agency required an Amended and Restated Agent and Financial Assistance Agreement be executed; and

WHEREAS, the Agency and the Company executed the Amended and Restated Agent and Financial Assistance Agreement (the “Amended Agent Agreement”) on February 26, 2014 to reflect the aforementioned requirement from the Department; and

WHEREAS, the Company has subsequently notified the Agency that the project has not been completed and has requested an additional extension of the New York State and local sales and use tax exemption benefit provided by the Agency, which the Agency has agreed to provide to the Company; and

WHEREAS, the Agency requires a First Amendment to the Amended Agent Agreement be executed, and the Company and the Agency have agreed to execute the First Amendment to the Amended Agent Agreement to reflect the additional extension of the New York State and local sales and use tax exemption benefit provided by the Agency and any additional amendments thereto.

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

The Amended Agent Agreement is amended as follows:

1. Any references to the sales tax exemption expiration in the Amended Agent Agreement shall be changed from September 30, 2015 to March 31, 2016.

2. Section 2(k) of the Amended Agent Agreement shall be amended and replaced by the following paragraph:

(k) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as Exhibits B-1 and B-2), and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, "I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the ISKALO 337 ELLICOTT LLC Project located at 337 Ellicott Street, Buffalo, New York 14203, IDA Project Number "1404-14-04A". For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as Exhibit B-3) can be utilized for record keeping purposes.

3. Section 2(m) and Section 2(n) of the Amended Agent Agreement shall be amended and replaced by the following paragraphs:

(m) The Company further covenants and agrees to submit to the Agency a Local Labor Utilization Report, which is attached hereto as Exhibit D, on a quarterly basis within ten (10) business days of each quarter end during the construction period. This report represents verification that the Company and its Subagents, if any, adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Certification Policy and Local Labor Reporting Requirements.

(n) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

4. Section 2(o) and Section 2(p) shall be added to the Amended Agent Agreement:

(o) The Company covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period, it will (i) maintain its existence and not dissolve, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets except this

Agreement may be assigned to a Related Person of the Company (as that term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person") without the receipt of the Agency's prior written consent and provided such assignee/successor entity shall reaffirm the Company's obligation's hereunder, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it except upon receipt of the Agency's prior written consent and unless such merged or combined entity shall reaffirm the Company's obligation's hereunder. Granting or withholding of the Agency's consent shall be in the sole discretion of the Agency. A transfer in excess of 50% of the equity voting interests of the Company, other than to a Related Person of the Company, shall be deemed an assignment and require the prior written consent of the Agency.

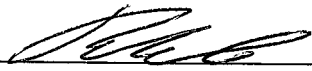
(p) The Company agrees that it will, throughout the term of this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2(p). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

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

[The Balance of this Page Intentionally Left Blank]

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

ISKALO 337 ELLICOTT LLC

By: 
Name:
Title:

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

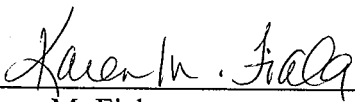
By: 
Name: Karen M. Fiala
Title: Assistant Treasurer

EXHIBIT B-3

INVOICE RIDER FORM

[Attached Next Page]

INVOICE RIDER
(Complete and Attach to Invoice)

I, _____, the
_____ of _____

certify that I am a duly appointed agent of the Erie County Industrial Development Agency ("Agency") and that I am purchasing the tangible personal property or services for use in the following Agency Project and that such purchases qualify as exempt from sales and use taxes under the Amended and Restated Agent and Financial Assistance Agreement, dated as of February 26, 2015 (as amended from time to time), by and between the Agency and Iskalo 337 Ellicott LLC.

Name of the Project: Iskalo 337 Ellicott LLC Project

Street address of the Project Site: 337 Ellicott Street
City of Buffalo,
Erie County, New York

IDA OSC project number: 1404-14-04A