

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this “Agreement”) is made as of the 1st day of [____], 2024 by and between WICKED JIMMY LLC, a limited liability company duly organized and existing under the laws of the State of New York, having an address at 12 Towne Square Drive, Lancaster, NY 14086 (the “Company” or the “Obligor”), and the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an address at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the “Agency”).

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the “Enabling Act”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York;

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 71 of the 1972 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the “Act”), the Agency, which has been created and established pursuant thereto for the benefit of the County of Chautauqua, proposes to undertake the Project described below;

WHEREAS, the Agency on behalf of the Company intends to undertake a project consisting of: (A)(1) the acquisition of an interest in an approximately .58 parcel of land located at 115-121 West 3rd Street, City of Jamestown, County of Chautauqua, New York (the “Land”), which Land is more particularly described on Exhibit A attached hereto, (2) the renovation of an existing approximately 33,900 square foot building on the Land, together with the construction of an approximately 700 square foot addition thereto consisting of decks and rooftop space (collectively, the “Building”), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery, equipment and building materials necessary for the completion thereof (the “Equipment” and together with the Land and the Building, collectively, the “Project Facility”), all of the foregoing for use by the Company and/or its affiliates as a brewery facility; (B) the granting of certain “financial assistance” (within the

form of potential exemptions or partial exemptions from mortgage recording taxes, sales and use taxes and real property taxes (collectively, the “Financial Assistance”); (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and (D) the sublease thereof by the Company or such other entity(ies) to Wicked Warren’s, LLC for purposes of the operation thereof;

WHEREAS, the Company will lease the Facility to the Agency pursuant to a Company Lease Agreement dated as of the date hereof entered into between the Company, as lessor, and the Agency, as the lessee (as amended, modified, restated or replaced from time to time, the “Company Lease”);

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act and to sublease the interest of the Agency in the Project Facility to the Company pursuant to an Agency Lease Agreement (Uniform Project Agreement) dated as of the date hereof entered into between the Agency, as sublessor, and the Company, as sublessee (as amended, modified, restated or replaced from time to time, the “Agency Lease”);

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, upon a proper filing, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control;

WHEREAS, the Agency’s grant of real property tax exemptions is guided by its Uniform Tax Exemption Policy and Guidelines (“UTEP”) duly adopted by the members of the Agency and the Company’s request for real property tax exemptions represents a deviation from the typical schedules of the Agency’s UTEP;

WHEREAS, in response to the Project’s proposed deviation from the Agency’s UTEP, (A) the Administrative Director/CEO of the Agency caused notice of a meeting of the Agency (the “IDA Meeting”) with respect to the proposed deviation from the Agency’s UTEP to be mailed on April 3, 2024 to the chief executive officer of each Taxing Entity (as hereinafter defined) and such other persons as are required by applicable law; (B) the members of the Agency held the IDA Meeting on April 23, 2024, (C) the members of the Agency reviewed and responded to any comments or correspondence received from the Taxing Entities at or before the IDA Meeting regarding the proposed deviation from the Agency’s UTEP, and (D) the members of the Agency passed a resolution on April 23, 2024 approving such proposed deviation (the “Deviation Resolution”); and

WHEREAS, by resolution adopted by the members of the Agency on April 23, 2024 (the “Authorizing Resolution”), the Agency determined to proceed with the Project, to grant the Financial Assistance (as defined in the Agency Lease) and to enter into the “straight lease transaction” (as such quoted term is defined in the Act) contemplated by this Agreement and the other Transaction Documents (as defined in the Agency Lease).

NOW, THEREFORE, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, the Obligor and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility

(a) Application. The Company shall complete, and the Agency shall endeavor to submit to be filed, an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law, with respect to the Facility. Such application shall be submitted to the tax assessor of each of the various taxing entities having jurisdiction over the Facility, including without limitation, the County of Chautauqua, the City of Jamestown and the Jamestown School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and individually, as a "Taxing Entity"). The Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the holder of a subleasehold estate in the Facility, the filing by the Agency of the appropriate applications for tax exemption, and the acceptance of such applications by the appropriate tax assessors (such date, the "PILOT Commencement Date").

(b) Reserved.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Obligor is required and agree to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility, and the Obligor is required and agrees to pay the same as they become due on the Facility.

(d) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Agency or the Obligor on the rents under the Agency Lease or the Company Lease or the occupancy of or any interest of the Agency or the Obligor in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any tax, assessment or charges shall be paid by the Obligor. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by the Obligor and shall not be credited against nor affect in any manner any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

(a) Tax Payments. Prior to the PILOT Commencement Date, the applicable real estate tax levies on the Facility shall be payable in full by the Obligor to the applicable Taxing Entity(ies).

(b) Pilot Payments. From the PILOT Commencement Date through and including the last day of the tenth (10th) fiscal tax year thereafter (such date, the “Abatement Expiration Date” and such period, the “PILOT Term”), the Obligor shall make payments in lieu of general real estate taxes to the Agency for the account and benefit of each Taxing Entity with respect to the Facility as follows (collectively, the “PILOT Payments”):

<u>PILOT Year</u>	<u>Annual PILOT Payment</u>
1	\$44,682
2	\$44,682
3	\$44,682
4	\$44,682
5	\$44,682
6	\$44,682
7	\$44,682
8	\$44,682
9	\$44,682
10	\$44,682

(c) Maximum Payment. Notwithstanding anything to the contrary herein, each PILOT Payment shall not exceed the amount the Obligor would pay under normal calculations for any tax year with respect to the Facility. Hence, if the general real estate tax (calculated as if the Obligor was the record owner of the Facility and the Agency held no interest therein, and the Facility was assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or otherwise below the PILOT Payments specified in Section 2(b) above, then the PILOT Payments due that Taxing Entity shall be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(b) above. Except as set forth in this paragraph, such PILOT Payments shall not be reduced during the PILOT Term, regardless of any reduction in the underlying assessment for the Facility.

(d) Payments to Agency. All PILOT Payments shall be made by the Obligor directly to the Agency promptly upon receipt of billings from the Agency at the address set forth in such billings, or at such other address as the Agency may specify in writing to the Obligor. It is understood that the Agency shall receive the PILOT Payments in trust for each of the Taxing Entities, and the Agency shall forward such payments to each such Taxing Entity within thirty (30) days after receipt thereof. All PILOT Payments hereunder shall be allocated among the Taxing Entities in proportion to the amount of real property and other taxes and assessments that would have been received by each Taxing Entity had the Facility not been tax exempt due to the status of the Agency as of the Closing Date. This provision constitutes the formula for the calculation of the amounts of the PILOT Payments for each Taxing Entity as required by Section 859-a(6) of the General Municipal Law.

(e) Due Dates; Interest; and Penalties. The Agency will bill the Obligor for the respective PILOT Payments as if the Facility was on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any PILOT Payment is not made on or before the due date, such payment shall be delinquent and the unpaid amount(s) shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Entities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for a late charge equal to five (5%) percent of the unpaid amount for the first month, and for each month, or part thereof, that the payment is delinquent beyond the first month, interest shall accrue to and be paid to the Taxing Entities on the total amount due plus an additional late charge equal to one (1%) percent per month of the total amount payable. The Obligor agrees to pay all such late charges, interest and penalties when due.

As of the date of this Agreement, the due dates for the PILOT Payment are as follows:

County and City Taxes:	January 30th
School Taxes:	September 30th

(f) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that the Agency's interest in any portion of the Facility is sold or disposed of by the Agency, the transferees thereof will thereafter pay the real property taxes on the portion of the Land (including the existing improvements thereon) and the Building as may be located on the portion of the Land sold as may be required by applicable law.

(g) Sale; the Obligor's Obligation. In the event that the Agency terminates its interest in the Facility in accordance with the provisions of the Agency Lease, the Obligor's obligation for PILOT Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of the Obligor for PILOT Payments shall cease, but the Agency shall take such steps with the purchaser other than the Obligor to assure that each of the Taxing Entities shall suffer no loss of revenue until the Facility can be placed back on the tax rolls and taxes levied and billed therefor.

(h) PILOT Payments after PILOT Term. From and after the Abatement Expiration Date, and until the Agency's interest in the Facility is conveyed to the Company pursuant to the terms of the Agency Lease and the Facility has been returned to the tax rolls as fully taxable property, the Obligor shall make PILOT Payments equal to one hundred percent (100%) of the amount of real property taxes and assessments that would have been levied and/or assessed against or with respect to the Facility as if the Facility was owned by the Obligor and the Agency was not otherwise involved in the Project.

Section 3. Reserved.

Section 4. Effective Date; Duration of Agreement. This Agreement shall become effective upon the delivery of the Agency Lease and the Company Lease by the Overlandlord

and the Agency and shall continue in effect until the earlier of (i) last day prior to the taxable status date following the final tax fiscal year of a Taxing Entity in which a PILOT Payment is payable pursuant to Section 2(b) above, or (ii) the date on which the Agency's interest in the Facility is terminated pursuant to the Agency Lease or this Agreement.

Section 5. Events of Default. The following shall constitute "Events of Default" under this Agreement:

(a) failure by the Obligors to make any payment specified herein and the continuance of such failure for a period of ten (10) days following written notice from the Agency or any Taxing Entity;

(b) failure by the Obligors to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice thereof by the Agency to the Obligors; and/or

(c) default in the terms of any agreement entered into between the Agency and any Obligor (beyond any applicable grace period).

Upon the occurrence and continuance of an Event of Default hereunder, the Obligors shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility (or those portions of the Facility then exempt) as if it were owned by the Obligors and the Agency held no interest therein, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the jurisdiction(s) in which the Facility is (or those portions of the Facility then exempt are) located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from the Obligors, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and reasonable attorney's fees and expenses) and interest at the rate specified in Section 2(e) above. In addition, the Agency shall have the right to terminate the Agency Lease and the Company Lease at any time.

The Agency, in enforcing payment by the Obligors of said amounts, may take whatever lawful action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. The Obligors irrevocably agree that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York located in Chautauqua County, or the courts of the United States District Court for the Western District of New York, consents to the jurisdiction of each such court in any such suit, action, or proceeding,

and waives any objection which it may have to the laying of the venue of any such suit, action, or proceeding in any of such courts.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the Agency. Further, no payment by any Obligor or receipt by the Agency or a Taxing Entity of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency and/or any Taxing Entity may accept any check or payment as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not the Obligors make such payments. The Obligors hereby agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 6. Covenants by the Agency. The Agency covenants that, unless otherwise required by law, the Agency will not enact or adopt any laws, ordinances, rules, or regulations imposing any taxes, assessments, or other charges or payments on the Project or the Company's sub-subleasehold interest or personal property therein, or its use or occupancy thereof or its gross receipts or income therefore, except as the Company and the Agency have herein agreed, or may agree from time to time in the future.

Section 7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency: County of Chautauqua Industrial Development Agency
201 West Third Street, Suite 115
Jamestown, NY 14701
Attention: Administrative Director

With a Copy to: Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, NY 14701
Attention: Milan K. Tyler, Esq.

To the Company: Wicked Jimmy LLC
12 Towne Square Drive
Lancaster, NY 14086
Attn: Robert Roth

With a copy to: Mark Aquino, Esq.
32 Central Avenue #A
Lancaster, NY 14086

The Agency or the Obligors may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 8. Assignment of Agreement. This Agreement shall be binding upon the respective successors and assigns of the Obligors, but no assignment shall be effective to relieve the Obligors of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency. The rights and obligations of the Obligors hereunder may not be assigned except in connection with a permitted assignment of the Company's interest in and to the Agency Lease. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto, their permitted assigns and the Taxing Entities.

Section 9. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Agency Lease and Company Lease executed between the parties hereto shall be separate and independent documents from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Agency Lease and the Company Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Agency Lease and the Company Lease are the only considerations and terms for which the parties hereto have executed this Agreement.

Section 10. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency, the Obligors and any Taxing Entity which is affected by the amendment.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Prior Agreements; Counterparts. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 13. Delivery of Agreement. The Agency agrees to use its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

Section 14. Applicable Law. This Agreement shall be governed and construed under the internal laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of law.

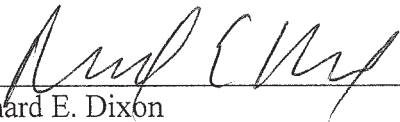
Section 15. WAIVER OF JURY TRIAL. THE AGENCY AND THE OBLIGORS HEREBY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING IN CONNECTION WITH THIS AGREEMENT.

Section 16. Nature of Obligations. The obligations of the Obligors under this PILOT Agreement shall be joint and several.

[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Agency and the Obligors have executed this Agreement as of the date first above written.

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Richard E. Dixon
Chief Financial Officer

WICKED JIMMY LLC


By: _____
Robert A. Roth
President

[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the Agency and the Obligors have executed this Agreement as of the date first above written.

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

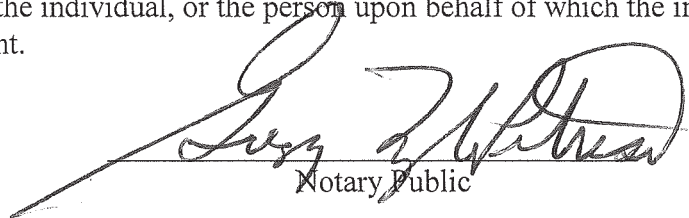
By: _____
Richard E. Dixon
Chief Financial Officer

WICKED JIMMY LLC
By:  _____
Robert A. Roth
President

[Signature Page to PILOT Agreement]

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

On the 9th day of July, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

STATE OF)
) ss.:
COUNTY OF)

GREGORY LYLE PETERSON, #02PE4645823
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires June 30, 2027

On the ____ day of _____, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Robert A. Roth, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[Acknowledgment Page to PILOT Agreement]

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

On the ____ day of _____, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF New York)
) ss.:
COUNTY OF Chautauqua)

On the 3rd day of July, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Robert A. Roth, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Carol A. Rasmussen, #01RA4901681
Notary Public State Of New York
Qualified In Chautauqua County
My Commission Expires July 20, 2025

[Acknowledgment Page to PILOT Agreement]

EXHIBIT A

LAND

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this “Agreement”) is made as of the 1st day of July, 2024 by and between WICKED JIMMY LLC, a limited liability company duly organized and existing under the laws of the State of New York, having an address at 12 Towne Square Drive, Lancaster, NY 14086 (the “Company” or the “Obligor”), and the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an address at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the “Agency”).

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the “Enabling Act”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York;

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 71 of the 1972 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the “Act”), the Agency, which has been created and established pursuant thereto for the benefit of the County of Chautauqua, proposes to undertake the Project described below;

WHEREAS, the Agency on behalf of the Company intends to undertake a project consisting of: (A)(1) the acquisition of an interest in an approximately .58 parcel of land located at 115-121 West 3rd Street, City of Jamestown, County of Chautauqua, New York (the “Land”), which Land is more particularly described on Exhibit A attached hereto, (2) the renovation of an existing approximately 33,900 square foot building on the Land, together with the construction of an approximately 700 square foot addition thereto consisting of decks and rooftop space (collectively, the “Building”), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery, equipment and building materials necessary for the completion thereof (the “Equipment” and together with the Land and the Building, collectively, the “Project Facility”), all of the foregoing for use by the Company and/or its affiliates as a brewery facility; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the

meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from mortgage recording taxes, sales and use taxes and real property taxes (collectively, the “Financial Assistance”); (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and (D) the sublease thereof by the Company or such other entity(ies) to Wicked Warren’s, LLC for purposes of the operation thereof;

WHEREAS, the Company will lease the Facility to the Agency pursuant to a Company Lease Agreement dated as of the date hereof entered into between the Company, as lessor, and the Agency, as the lessee (as amended, modified, restated or replaced from time to time, the “Company Lease”);

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act and to sublease the interest of the Agency in the Project Facility to the Company pursuant to an Agency Lease Agreement (Uniform Project Agreement) dated as of the date hereof entered into between the Agency, as sublessor, and the Company, as sublessee (as amended, modified, restated or replaced from time to time, the “Agency Lease”);

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, upon a proper filing, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control;

WHEREAS, the Agency’s grant of real property tax exemptions is guided by its Uniform Tax Exemption Policy and Guidelines (“UTEP”) duly adopted by the members of the Agency and the Company’s request for real property tax exemptions represents a deviation from the typical schedules of the Agency’s UTEP;

WHEREAS, in response to the Project’s proposed deviation from the Agency’s UTEP, (A) the Administrative Director/CEO of the Agency caused notice of a meeting of the Agency (the “IDA Meeting”) with respect to the proposed deviation from the Agency’s UTEP to be mailed on April 3, 2024 to the chief executive officer of each Taxing Entity (as hereinafter defined) and such other persons as are required by applicable law; (B) the members of the Agency held the IDA Meeting on April 23, 2024, (C) the members of the Agency reviewed and responded to any comments or correspondence received from the Taxing Entities at or before the IDA Meeting regarding the proposed deviation from the Agency’s UTEP, and (D) the members of the Agency passed a resolution on April 23, 2024 approving such proposed deviation (the “Deviation Resolution”); and

WHEREAS, by resolution adopted by the members of the Agency on April 23, 2024 (the “Authorizing Resolution”), the Agency determined to proceed with the Project, to grant the Financial Assistance (as defined in the Agency Lease) and to enter into the “straight lease transaction” (as such quoted term is defined in the Act) contemplated by this Agreement and the other Transaction Documents (as defined in the Agency Lease).

NOW, THEREFORE, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, the Obligor and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility

(a) Application. The Company shall complete, and the Agency shall endeavor to submit to be filed, an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law, with respect to the Facility. Such application shall be submitted to the tax assessor of each of the various taxing entities having jurisdiction over the Facility, including without limitation, the County of Chautauqua, the City of Jamestown and the Jamestown School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and individually, as a "Taxing Entity"). The Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the holder of a subleasehold estate in the Facility, the filing by the Agency of the appropriate applications for tax exemption, and the acceptance of such applications by the appropriate tax assessors (such date, the "PILOT Commencement Date").

(b) Reserved.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Obligor is required and agree to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility, and the Obligor is required and agrees to pay the same as they become due on the Facility.

(d) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Agency or the Obligor on the rents under the Agency Lease or the Company Lease or the occupancy of or any interest of the Agency or the Obligor in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any tax, assessment or charges shall be paid by the Obligor. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by the Obligor and shall not be credited against nor affect in any manner any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

(a) Tax Payments. Prior to the PILOT Commencement Date, the applicable real estate tax levies on the Facility shall be payable in full by the Obligor to the applicable Taxing Entity(ies).

(b) Pilot Payments. From the PILOT Commencement Date through and including the last day of the tenth (10th) fiscal tax year thereafter (such date, the “Abatement Expiration Date” and such period, the “PILOT Term”), the Obligor shall make payments in lieu of general real estate taxes to the Agency for the account and benefit of each Taxing Entity with respect to the Facility as follows (collectively, the “PILOT Payments”):

<u>PILOT Year</u>	<u>Annual PILOT Payment</u>
1	\$44,682
2	\$44,682
3	\$44,682
4	\$44,682
5	\$44,682
6	\$44,682
7	\$44,682
8	\$44,682
9	\$44,682
10	\$44,682

(c) Maximum Payment. Notwithstanding anything to the contrary herein, each PILOT Payment shall not exceed the amount the Obligor would pay under normal calculations for any tax year with respect to the Facility. Hence, if the general real estate tax (calculated as if the Obligor was the record owner of the Facility and the Agency held no interest therein, and the Facility was assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or otherwise below the PILOT Payments specified in Section 2(b) above, then the PILOT Payments due that Taxing Entity shall be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(b) above. Except as set forth in this paragraph, such PILOT Payments shall not be reduced during the PILOT Term, regardless of any reduction in the underlying assessment for the Facility.

(d) Payments to Agency. All PILOT Payments shall be made by the Obligor directly to the Agency promptly upon receipt of billings from the Agency at the address set forth in such billings, or at such other address as the Agency may specify in writing to the Obligor. It is understood that the Agency shall receive the PILOT Payments in trust for each of the Taxing Entities, and the Agency shall forward such payments to each such Taxing Entity within thirty (30) days after receipt thereof. All PILOT Payments hereunder shall be allocated among the Taxing Entities in proportion to the amount of real property and other taxes and assessments that would have been received by each Taxing Entity had the Facility not been tax exempt due to the status of the Agency as of the Closing Date. This provision constitutes the formula for the calculation of the amounts of the PILOT Payments for each Taxing Entity as required by Section 859-a(6) of the General Municipal Law.

(e) Due Dates; Interest; and Penalties. The Agency will bill the Obligor for the respective PILOT Payments as if the Facility was on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any PILOT Payment is not made on or before the due date, such payment shall be delinquent and the unpaid amount(s) shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Entities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for a late charge equal to five (5%) percent of the unpaid amount for the first month, and for each month, or part thereof, that the payment is delinquent beyond the first month, interest shall accrue to and be paid to the Taxing Entities on the total amount due plus an additional late charge equal to one (1%) percent per month of the total amount payable. The Obligor agrees to pay all such late charges, interest and penalties when due.

As of the date of this Agreement, the due dates for the PILOT Payment are as follows:

[County and City Taxes:	January 30th]
School Taxes:	September 30th

(f) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that the Agency's interest in any portion of the Facility is sold or disposed of by the Agency, the transferees thereof will thereafter pay the real property taxes on the portion of the Land (including the existing improvements thereon) and the Building as may be located on the portion of the Land sold as may be required by applicable law.

(g) Sale; the Obligor's Obligation. In the event that the Agency terminates its interest in the Facility in accordance with the provisions of the Agency Lease, the Obligor's obligation for PILOT Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of the Obligor for PILOT Payments shall cease, but the Agency shall take such steps with the purchaser other than the Obligor to assure that each of the Taxing Entities shall suffer no loss of revenue until the Facility can be placed back on the tax rolls and taxes levied and billed therefor.

(h) PILOT Payments after PILOT Term. From and after the Abatement Expiration Date, and until the Agency's interest in the Facility is conveyed to the Company pursuant to the terms of the Agency Lease and the Facility has been returned to the tax rolls as fully taxable property, the Obligor shall make PILOT Payments equal to one hundred percent (100%) of the amount of real property taxes and assessments that would have been levied and/or assessed against or with respect to the Facility as if the Facility was owned by the Obligor and the Agency was not otherwise involved in the Project.

Section 3. Reserved.

Section 4. Effective Date; Duration of Agreement. This Agreement shall become effective upon the delivery of the Agency Lease and the Company Lease by the Company and

the Agency and shall continue in effect until the earlier of (i) last day prior to the taxable status date following the final tax fiscal year of a Taxing Entity in which a PILOT Payment is payable pursuant to Section 2(b) above, or (ii) the date on which the Agency's interest in the Facility is terminated pursuant to the Agency Lease or this Agreement.

Section 5. Events of Default. The following shall constitute "Events of Default" under this Agreement:

(a) failure by the Obligor to make any payment specified herein and the continuance of such failure for a period of ten (10) days following written notice from the Agency or any Taxing Entity;

(b) failure by the Obligor to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice thereof by the Agency to the Obligor; and/or

(c) default in the terms of any agreement entered into between the Agency and the Obligor (beyond any applicable grace period).

Upon the occurrence and continuance of an Event of Default hereunder, the Obligor shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility (or those portions of the Facility then exempt) as if it were owned by the Obligor and the Agency held no interest therein, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the jurisdiction(s) in which the Facility is (or those portions of the Facility then exempt are) located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from the Obligor, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and reasonable attorney's fees and expenses) and interest at the rate specified in Section 2(e) above. In addition, the Agency shall have the right to terminate the Agency Lease and the Company Lease at any time.

The Agency, in enforcing payment by the Obligor of said amounts, may take whatever lawful action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. The Obligor irrevocably agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York located in Chautauqua County, or the courts of the United States District Court for the Western District of New York, consents to the jurisdiction of each such court in any such suit, action, or proceeding,

and waives any objection which it may have to the laying of the venue of any such suit, action, or proceeding in any of such courts.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the Agency. Further, no payment by the Obligor or receipt by the Agency or a Taxing Entity of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency and/or any Taxing Entity may accept any check or payment as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not the Obligor makes such payments. The Obligor hereby agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 6. Covenants by the Agency. The Agency covenants that, unless otherwise required by law, the Agency will not enact or adopt any laws, ordinances, rules, or regulations imposing any taxes, assessments, or other charges or payments on the Project or the Company's subleasehold interest or personal property therein, or its use or occupancy thereof or its gross receipts or income therefore, except as the Company and the Agency have herein agreed, or may agree from time to time in the future.

Section 7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency: County of Chautauqua Industrial Development Agency
201 West Third Street, Suite 115
Jamestown, NY 14701
Attention: Administrative Director

With a Copy to: Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, NY 14701
Attention: Milan K. Tyler, Esq.

To the Company: Wicked Jimmy LLC
12 Towne Square Drive
Lancaster, NY 14086
Attn: Robert A. Roth

With a copy to: Mark Aquino, Esq.
32 Central Avenue #A
Lancaster, NY 14086

The Agency or the Obligor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 8. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of the Obligor, but no assignment shall be effective to relieve the Obligor of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency. The rights and obligations of the Obligor hereunder may not be assigned except in connection with a permitted assignment of the Company's interest in and to the Agency Lease. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto, their permitted assigns and the Taxing Entities.

Section 9. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Agency Lease and Company Lease executed between the parties hereto shall be separate and independent documents from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Agency Lease and the Company Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Agency Lease and the Company Lease are the only considerations and terms for which the parties hereto have executed this Agreement.

Section 10. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency, the Obligor and any Taxing Entity which is affected by the amendment.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Prior Agreements; Counterparts. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 13. Delivery of Agreement. The Agency agrees to use its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

Section 14. Applicable Law. This Agreement shall be governed and construed under the internal laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of law.

Section 15. WAIVER OF JURY TRIAL. THE AGENCY AND THE OBLIGOR HEREBY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING IN CONNECTION WITH THIS AGREEMENT.

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EXHIBIT A

LAND

IN WITNESS WHEREOF, the Agency and the Obligors have executed this Agreement as of the date first above written.

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Richard E. Dixon
Chief Financial Officer

WICKED JIMMY LLC

By: _____
Robert A. Roth
President

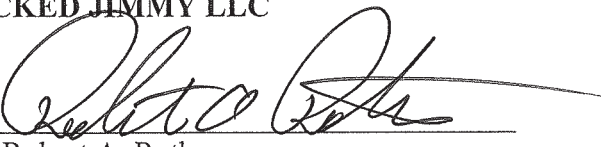
[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the Agency and the Obligors have executed this Agreement as of the date first above written.

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Richard E. Dixon
Chief Financial Officer

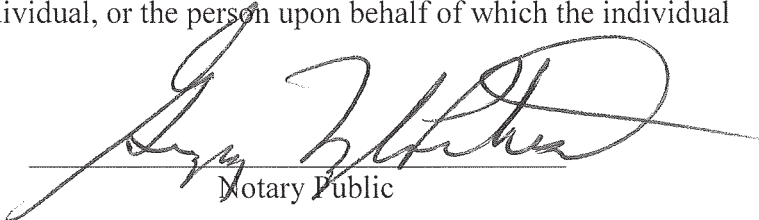
WICKED JIMMY LLC

By:  _____
Robert A. Roth
President

[Signature Page to PILOT Agreement]

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

On the 9th day of July, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

GREGORY LYLE PETERSON, #02PE4645823
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires June 30, 2027

STATE OF)
) ss.:
COUNTY OF)

On the ____ day of July, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Robert A. Roth, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[Acknowledgment Page to PILOT Agreement]

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

On the ____ day of July, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF)
) ss.:
COUNTY OF)

On the 3rd day of July, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Robert A. Roth, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Carol A. Rasmussen, #01RA4901681
Notary Public State Of New York
Qualified In Chautauqua County
My Commission Expires July 20, 2025

[Acknowledgment Page to PILOT Agreement]