

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAXATION AGREEMENT

THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAXATION AGREEMENT ("First Amendment"), effective the 13th day of December, 2021, amends that certain Payment in Lieu of Taxation Agreement, dated May 24, 2021 ("PILOT Agreement") by and between the COUNTY OF SULLIVAN 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 its principal offices at 548 Broadway, Monticello, New York 12701 ("Agency") and SVG 26 LLC, a New York limited liability company, with an address of 1301 47th Street, Brooklyn, New York 11219 ("Company").

RECITALS

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York ("Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York ("State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve its standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, Chapter 560 of the Laws of 1970 of the State (collectively referred to as the "Act") created the Agency which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, on or about August 12, 2009, Catskill Distilling Company, Ltd ("CDC"), Redford, LLC ("Redford") and the Agency entered into a sale/leaseback transaction wherein the Agency acquired a fee interest in certain real property in the Town of Bethel ("Town"), County of Sullivan ("County"), State and identified on the Town tax map as Section 26, Block 1, Lot 6 and Section 22, Block 1, Lot 62 ("Project Land") to facilitate the construction and equipping of a distillery, office, barrel storage house and restaurant/saloon ("Project"); and

WHEREAS, the Agency took title to Bethel Section 22, Block 1, Lot 62 by Bargain and Sale Deed from Redford to the Agency dated August 12, 2009, which Deed was recorded in the Office of the Clerk of Sullivan County on August 14, 2009 in Deed Liber 3603 at page 365; and

WHEREAS, the Agency took title to Bethel Section 26, Block 1, Lot 6 by Bargain and Sale Deed from Redford to the Agency dated August 12, 2009, which Deed was recorded in the Office of the Clerk of Sullivan County on August 14, 2009 in Deed Liber 3603 at page 371; and

WHEREAS, on or about May 1, 2018, Redford merged into CDC; and

WHEREAS, on November 19, 2019, CDC filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, initiating a bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Proceeding”); and

WHEREAS, on July 31, 2020, CDC and the Company entered into an Asset Purchase Agreement pursuant to the terms of which the Land and other assets of CDC were to be acquired by the Company (“APA”); and

WHEREAS, on May 3, 2021, the Company presented an application (“Application”) to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider (i) the continuation of financial assistance to the Company on the same terms as contemplated by the various agreements in place between the Agency and CDC at the time of commencement of the Bankruptcy Proceeding and (ii) the Agency enter into a lease/leaseback involving three (3) additional parcels of property which were required to be mortgaged by the lender providing financing to the Company to complete the transactions contemplated by the APA (“Additional Premises” and together with the Project Land, the “Leased Premises”); and

WHEREAS, by Resolution 16-2021, duly adopted on May 10, 2021, the Agency approved the Company’s application conditioned on the Company and Agency entering into a direct contractual relationship; and

WHEREAS, the Agency and CDC entered into a Project Termination Agreement effective May 24, 2021, pursuant to which the prior transaction documents between the Agency and CDC were terminated; and

WHEREAS, on or about May 24, 2021, the Agency transferred the Project Land to CDC and CDC transferred the Leased Premises to the Company; and

WHEREAS, in order to induce the Company to purchase and operate the Project, on May 24, 2021 the Agency entered into a lease/leaseback transaction involving a lease of the Leased Premises from the Company to the Agency and a leaseback of the Leased Premises from the Agency to the Company; 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 entered into the PILOT Agreement making provision for payments in lieu of taxes by the Company for the benefit of the County, Town and the Monticello Central School District ("School District" and together with the County and the Town, the "Taxing Jurisdictions"); and

WHEREAS, Section 7(a)(iii) of the PILOT Agreement established an employment goal of five (5) full time equivalent employees with respect to the period October 1, 2020 through September 30, 2021 ("Employment Goals"); and

WHEREAS, by letter to the Agency dated November 22, 2021, the Company ("Company Request Letter") advised the Agency that due to unforeseen delays in issuance of certain licenses for the production and sale of alcoholic beverages, the Employment Goals were not met for the October 1, 2020 to September 30, 2021 employment year; and

WHEREAS, the Company has requested the Agency amend the PILOT Agreement so the first year following the Closing that Employment Goals shall apply is the employment year October 1, 2021 to September 30, 2022; and

WHEREAS, the Agency in recognition of the facts and circumstances detailed in the Company Request Letter is willing to amend the PILOT Agreement establishing the employment year October 1, 2021 to September 30, 2022 as the first post-closing period to which Employment Goals apply.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

1. The first subparagraph of Paragraph 7(a)(iii) of the Agreement is hereby deleted and the following inserted in its place and stead:

"(iii) Computation of PILOT Payment if FTE Goals Not Attained: In the event the FTE goal is not attained with respect to any October 1st to September 30th periods commencing on or after October 1, 2021 preceding any PILOT Payment due date, the amount due ("Adjusted PILOT Payment") shall be the amount calculated in ¶3 above, plus an amount equal to the tax calculated as if an exemption under RPTL §485-b were in effect, less the amount calculated in ¶3, times the percentage."

2. Integration. Except as herein amended, all other terms and conditions of the Agreement shall remain in full force and effect. If there shall be any conflict or inconsistency between the terms of this First Amendment and the Agreement, the terms of this First Amendment shall control

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment effective as of the date hereof.

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY



By: Suzanne Loughlin, Chairperson

SVG 26 LLC



By: Solomon Ellner, Managing Member
