

MATT BREWING CO., INC.

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

THIRD AMENDED AND RESTATED
PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Oneida County Industrial Development Agency
2021 Lease Amendment and Restatement
(Matt Brewing Co., Inc. 2021 Capital Projects)

Oneida County, City of Utica, Utica City School District

Tax Account Nos.: 318.040-1-5.1
318.040-1-5.2
318.032-2-38

**THIRD AMENDED AND RESTATED
PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS THIRD AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of December 1, 2021, is by and between **MATT BREWING CO., INC.**, a corporation duly organized and validly existing under the laws of the State of New York, having an address of 811 Edward Street, Utica, New York 13502 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Agency previously provided financial assistance to the Company in connection with (i) demolition of a portion of and renovations to the 15,732± square foot existing second floor of the bottling facility and the construction of a new 25,000± square foot finished goods warehouse facility after the 2008 fire at the Company (collectively, the "2009 Improvements"), all situated on a 7.1± acre parcel of land located at 811 Edwards Street, City of Utica, Oneida County, New York (the "2009 Land"); and the acquisition and installation of equipment in the Improvements (the "2009 Equipment" and together with the 2009 Land and the 2009 Improvements, the "2009 Facility"); (ii) acquisition of a 39,407.15± square foot parcel of land (the "2012 Land") and construction of a compact Anaerobic Fluidized Bed Digester system (the "AFBD system") for wastewater treatment and on-site energy generation and a small control building (collectively, the "2012 Improvements"); and the acquisition and installation of equipment in the 2012 Improvements (the "2012 Equipment" and together with the 2012 Land and the 2012 Improvements the "2012 Facility"); and (iii) a capacity expansion and brewery modernization project consisting of (a) acquisition of a 1± acre vacant parcel of land located at 806 – 832 (consolidated to 814) Edward Street, City of Utica, New York (the "2018 Land") and construction of a 15,000± square foot fermenting and aging cellar (the "Aging Cellar"); (b) construction of a two-story, 4,800 square foot addition to the existing brew house (the "Brew House Addition"); (c) construction of an overhead pipe bridge over Edward Street to connect the Aging Cellar with the Existing Facility (the "Pipe Bridge"); (d) removal of a portion of the parking lot and restriping of the parking lot (the "Parking Lot" and together with the Aging

Cellar, the Brew House Addition and the Pipe Bridge, the "2018 Improvements"); and (d) acquisition and installation of equipment in the 2018 Improvements and the 2009 Improvements, including but not limited to a new centrifuge, malt cooker, brew kettle, and sixteen vertical fermenting and aging tanks (the "2018 Equipment" and together with the 2018 Land and the 2018 Improvements, the "2018 Facility" and together with the 2009 Facility and the 2012 Facility, the "Existing Facility"); and

WHEREAS, the Company has applied to the Agency to enter into a transaction in which the Agency will assist with a capital project consisting of (a) renovations and infrastructure enhancements within the Existing Facility, including but not limited to construction of a ±300 square foot distilled spirits handling facility (collectively, the "2021 Improvements"), and (b) acquisition and installation of equipment in the 2021 Improvements (collectively, the "2021 Equipment"), all for the purpose of expanding operations to increase production and creating jobs (the 2021 Improvements and the 2021 Equipment are referred to collectively as the "2021 Facility," and the construction, renovation and equipping of the 2021 Improvements is referred to collectively as the "2021 Project"); and

WHEREAS, the Company leases the Existing Facility to the Agency pursuant to a Lease Agreement dated July 1, 2009, a Lease Agreement dated May 1, 2012 and a Lease Agreement dated May 1, 2018 (collectively, the "Existing Lease Agreements") and the Agency leases the Existing Facility back to the Company pursuant to a Second Amended and Restated Leaseback Agreement dated as of May 1, 2018 (the "Second Amended Leaseback Agreement"); and

WHEREAS, in order to induce the Company to develop the 2021 Facility, the Agency is willing to accept a leasehold interest in the 2021 Facility pursuant to a Lease Agreement dated of even date herewith (the "2021 Lease Agreement" and together with the Existing Lease Agreements, the "Lease Agreement"), extend the leasehold interest in the Existing Facility, and lease the 2021 Facility back to the Company together with the Existing Facility pursuant to the terms and conditions contained in a Third Amended and Restated Leaseback Agreement dated as of December 1, 2021 (the "Third Amended and Restated Leaseback Agreement"); and

WHEREAS, the Agency has agreed to accept a leasehold interest to the 2021 Facility and extend its leasehold interest in the Existing Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Existing Facility has been exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Existing Facility or the interest therein of the Company or the occupancy thereof by the Company commencing August 1, 2009, the taxable status date, (the "Exempt Taxes"), because the Agency has a leasehold interest in the Existing Facility and the Existing Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including

the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the 2021 Facility will be exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the 2021 Facility or the interest therein of the Company or the occupancy thereof by the Company commencing August 1, 2022, the taxable status date, (the "Exempt Taxes"), because the Agency has a leasehold interest in the 2021 Facility and the 2021 Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Third Amended and Restated Leaseback Agreement from the first date of the Exemption Term (as that date is determined by the parties and described herein) through the term of the Third Amended and Restated Leaseback Agreement (the "Exemption Term"); and

WHEREAS, each year of the Exemption Term is more particularly set forth on Schedule B attached hereto (each year being referred to as an "Exemption Year"); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an amended and restated agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the City of Utica, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Oneida County, Utica City School District and appropriate special districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, the PILOT Payments (as defined below) represent a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"); and

WHEREAS, pursuant to Section 874 of the Act, the Agency sent a notice to the chief executive officer of each Taxing Authority providing a description of the PILOT Payments, the Agency's reasons for deviating from the Policy as well as the time and location of the meeting during which the Agency would consider a resolution approving the deviation from its Policy and the PILOT Payments; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:

(a) all taxes and payments-in-lieu-of-taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and

(b) all special assessments and ad valorem taxes coming due and payable during the term of the Lease Agreement and the Third Amended and Restated Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. (a) With respect to the Existing Facility, the Company shall pay to each Taxing Authority as set forth on Schedule A attached hereto and made a part hereof an amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

(i) the sum of one hundred thousand dollars (\$100,000.00) through and including the first Exemption Year;

(ii) a sum equal to the 2008 taxes paid by the Company from the second through and including the fifth Exemption Year; and

(iii) a sum equal to the greater of (a) 2008 taxes paid by the Company or (b) two-thirds of Exempt Taxes, from the sixth through and including the ninth Exemption Year.

(b) Beginning with the tenth Exemption Year, the Company shall make fixed PILOT Payments on the entire Facility in the following aggregate amounts:

Year 10	\$168,276.00
Year 11	\$171,641.52
Year 12	\$175,074.35
Year 13	\$178,575.84
Year 14	\$182,147.35
Year 15	\$185,790.30
Year 16	\$189,506.11
Year 17	\$193,296.23
Year 18	\$197,162.15
Year 19	\$201,105.40
Year 20	\$205,127.09
Year 21	\$209,229.64
Year 22	\$213,414.23

Such PILOT Payments shall be allocated among the Taxing Authorities in the same proportion as taxes would have been allocated but for the Agency's involvement, unless the Taxing Authorities have consented in writing to a specific allocation. For the purposes of

preparing a PILOT bill, each Taxing Authority shall use the tax rate for the prior Exemption Year.

(c) With respect to the 2012 Equipment and the 2018 Equipment, whether attached to the Improvements or not, the Company shall pay as PILOT Payments no Exempt Taxes from the fourth through and including the nineteenth Exemption Year.

Anything herein to the contrary, notwithstanding, this Second Amended and Restated PILOT Agreement shall terminate on the date on which the Second Amended and Restated Leaseback Agreement shall terminate and the Agency shall terminate its leasehold interest in the Facility pursuant to the Second Amended and Restated Leaseback Agreement. The benefits under this Agreement are subject to the terms and conditions of (a) a certain Job Creation and Recapture Agreement dated as of May 1, 2018 and (b) a certain Job Creation and Recapture Agreement dated as of December 1, 2021.

Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, such failure shall constitute an Event of Default under Section 7.1(a)(vi) of the Third Amended Leaseback Agreement, and the Agency may take any one or all remedial steps afforded it in Section 7.2 of the Third Amended Leaseback Agreement; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document. PILOT Payments which are late under this Agreement shall be subject to a late payment penalty of five percent (5%) of the amount due which shall be paid by the Company to the affected Taxing Authority at the time the PILOT Payment is paid. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid to the affected Taxing Authority on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the PILOT Payment is made.

3. The Company will make PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility.

4. The PILOT Payments to be made by the Company pursuant to this Third Amended and Restated PILOT Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Third Amended Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to

be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

6. This Third Amended and Restated PILOT Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will 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 taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

(b) This Third Amended and Restated PILOT Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United

States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

If to the Agency:

Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441
Attn.: Executive Director

With a Copy to:

Bond, Schoeneck & King, PLLC
501 Main Street
Utica NY 13501
Attn.: Linda E. Romano, Esq.

If to the Company:

Matt Brewing Co., Inc.
811 Edward Street
Utica NY 13502
Attn.: Alfred D. Matt, President

With a Copy to:

Matt Law Firm, PLC
1701 Genesee Street
Utica NY 13501
Attn.: F.X. Matt, Esq.

provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

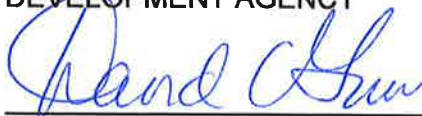
(e) This Third Amended and Restated PILOT Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(f) This Third Amended and Restated PILOT Agreement is intended to replace and supercede in all respects the Second Amended and Restated PILOT Agreement, effective the date first above written.

[Signature page follows]

SECOND SIGNATURE PAGE TO THIRD AMENDED PILOT AGREEMENT
(MATT BREWING CO., INC. FACILITY)

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
David C. Grow
Chairman

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

On December 15th, 2021 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, 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



SCHEDULE A

COUNTY OF ONEIDA
Receiver of Taxes
800 Park Avenue
Utica, New York 13501

CITY OF UTICA
Receiver of Taxes
City Hall
One Kennedy Plaza
Utica, New York 13502
Attn.: City Treasurer

UTICA CITY SCHOOL DISTRICT
Receiver of Taxes
929 York Street
Utica, New York 13502

SCHEDULE B
EXEMPTION YEARS

Exemption Year (Assessment Roll Year)	County Taxes	City Taxes	School Taxes
Year One (08/01/2009)	01/01/2010 – 12/31/2010	04/01/2010 – 03/31/2011	07/01/2010 – 06/30/2011
Year Two (08/01/2010)	01/01/2011 – 12/31/2011	04/01/2011 – 03/31/2012	07/01/2011 – 06/30/2012
Year Three (08/01/2011)	01/01/2012 – 12/31/2012	04/01/2012 – 03/31/2013	07/01/2012 – 06/30/2013
Year Four (08/01/2012)	01/01/2013 – 12/31/2013	04/01/2013 – 03/31/2014	07/01/2013 – 06/30/2014
Year Five (08/01/2013)	01/01/2014 – 12/31/2014	04/01/2014 – 03/31/2015	07/01/2014 – 06/30/2015
Year Six (08/01/2014)	01/01/2015 – 12/31/2015	04/01/2015 – 03/31/2016	07/01/2015 – 06/30/2016
Year Seven (08/01/2015)	01/01/2016 – 12/31/2016	04/01/2016 – 03/31/2017	07/01/2016 – 06/30/2017
Year Eight (08/01/2016)	01/01/2017 – 12/31/2017	04/01/2017 – 03/31/2018	07/01/2017 – 06/30/2018
Year Nine (08/01/2017)	01/01/2018 – 12/31/2018	04/01/2018 – 03/31/2019	07/01/2018 – 06/30/2019
Year Ten (08/01/2018)	01/01/2019 – 12/31/2019	04/01/2019 – 03/31/2020	07/01/2019 – 06/30/2020
Year Eleven (08/01/2019)	01/01/2020 – 12/31/2020	04/01/2020 – 03/31/2021	07/01/2020 – 06/30/2021
Year Twelve (08/01/2020)	01/01/2021 – 12/31/2021	04/01/2021 – 03/31/2022	07/01/2021 – 06/30/2022
Year Thirteen (08/01/2021)	01/01/2022 – 12/31/2022	04/01/2022 – 03/31/2023	07/01/2022 – 06/30/2023
Year Fourteen (08/01/2022)	01/01/2023 – 12/31/2023	04/01/2023 – 03/31/2024	07/01/2023 – 06/30/2024
Year Fifteen (08/01/2023)	01/01/2024 – 12/31/2024	04/01/2024 – 03/31/2025	07/01/2024 – 06/30/2025
Year Sixteen (08/01/2024)	01/01/2025 – 12/31/2025	04/01/2025 – 03/31/2026	07/01/2025 – 06/30/2026
Year Seventeen (08/01/2025)	01/01/2026 – 12/31/2026	04/01/2026 – 03/31/2027	07/01/2026 – 06/30/2027
Year Eighteen (08/01/2026)	01/01/2027 – 12/31/2027	04/01/2027 – 03/31/2028	07/01/2027 – 06/30/2028
Year Nineteen (08/01/2027)	01/01/2028 – 12/31/2028	04/01/2028 – 03/31/2029	07/01/2028 – 06/30/2029
Year Twenty (08/01/2028)	01/01/2029 – 12/31/2029	04/01/2029 – 03/31/2030	07/01/2029 – 06/30/2030
Year Twenty-One (08/01/2029)	01/01/2030 – 12/31/2030	04/01/2030 – 03/31/2031	07/01/2030 – 06/30/2031
Year Twenty-Two (08/01/2030)	01/01/2031 – 12/31/2031	04/01/2031 – 03/31/2032	07/01/2031 – 06/30/2032