

AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT

THIS AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT (hereinafter, the "Agent Agreement"), made as of the 20th day of March, 2021, by and between the LANCASTER INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at 21 Central Avenue, Lancaster, New York 14086 (the "Agency"), and Brewfun Enterprises, LLC, a New York Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 185 Sunburst Circle, East Amherst, New York 14051 (the "Company") and Brazen Brewery, LLC, a New York Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 185 Sunburst Circle, East Amherst, New York 14051 ("Sublessee").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 995 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 and Sublessee have submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: the acquisition of an interest to construct a new 6,000 square foot Brewery and Taproom facility with associated infrastructures for brewery production, taproom and operation of a brewery, located at 5839 Genesee Street in the Town of Lancaster, New York and the purchase of fixtures and equipment in connection therewith, which facilities are to be acquired and/or leased by the Agency and leased back by the Agency to the Lessee and which fixtures and equipment are to be acquired by the Agency conveyed to the Sublessee through an Installment Sale Agreement; and

WHEREAS, by Resolutions adopted on February 2, 2021 and March 9, 2021 the Agency authorized the Company and Sublessee to act as its agent for the purposes of undertaking the Project subject to the Company and Sublessee entering into this Agent Agreement, and pursuant to the Resolution and this Agent Agreement, the Company and Sublessee have 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 hereto (collectively, the "Subagent"). The Company and Sublessee 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 and Sublessee in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits 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 acquisition, construction or equipping of the Facility, (b) an exemption benefit from mortgage recording tax, and (c) a partial

abatement from real property taxes benefit through a 485(b) equivalent "payment in lieu of tax-agreement" (the "PILOT Agreement") with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption benefit, the mortgage recording tax benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company and Sublessee enter into this Agent Agreement for the purposes of, among other things, to govern administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company And Sublessee; and

WHEREAS, no agent status in favor of the Company and/or Sublessee or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company and/or Sublessee by the Agency prior to the effective date of this Agreement; and

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Purpose of Project and Scope of Agency. The purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of the Town of Lancaster and to specifically promote the activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. The right of the Company and Sublessee to act as agent of the Agency shall expire on February 2, 2022, unless extended as contemplated by the Resolution. The aggregate amount of work performed as agent for the Agency shall not exceed the amounts identified in the Resolution and Section 2(h)(i) of this Agreement. All contracts entered into as agent for the Agency shall include the following language:

"This contract is being entered into by BREWFUN ENTERPRISES, LLC OR BRAZEN BREWERY, LLC (the "Agent"), as agent for and on behalf of the TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), in connection with a certain project of the Agency for the benefit of BREWFUN ENTERPRISES, LLC OR BRAZEN BREWERY, LLC, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 5839 Genesee Street, Lancaster, New York (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project

shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Financial Assistance Agreement by and between BREWFUN ENTERPRISES, LLC OR BRAZEN BREWERY, LLC and the Agency dated as of February 2, 2021. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.

2. Representations and Covenants of the Company and Sublessee. The Company and Sublessee make the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) The Company and the Sublessee are New York Limited Liability Companies duly organized, validly existing and in good standing under the laws of the State of New York, have the authority to enter into this Agent Agreement, and have each duly authorized the execution and delivery of this Agent Agreement.

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company and/or Sublessee are a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company or Sublessee under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company and Sublessee shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company and Sublessee to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public Board or body pending or, to the knowledge of the Company and Sublessee, threatened against or affecting the Company or Sublessee, to which the Company or Sublessee is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's or Sublessee's ability to fulfill their respective obligations under this Agent Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) that the Company will take all reasonable and

prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company and/or Sublessee in the name of the Agency shall be located in the Town of Lancaster, except for temporary period during ordinary use.

(g) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company and Sublessee covenants and agrees that they may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture and/or termination of any and all Financial Assistance, as described below, if the Company and/or Sublessee receives, or its Subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

- (1) the Company and Sublessee or their Subagents, if any, authorized to make purchases for the benefit of the Projects not entitled to the sales and-use-tax-exemption-benefits; or
- (2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or Sublessee or their Subagents, if any; or
- (3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or
- (4) the Company and/or Sublessee have made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect) on its application for Financial Assistance; or
- (5) the Company and/or Sublessee fail to meet and maintain the thresholds and requirements representing certain material terms and conditions, said Material Term Commitment #1, and Material Term Commitment #2 all as further defined

below, being the purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of two (2) years following the construction completion date (said date hereinafter referred to as the "Project Completion Date" and the time period so referenced being hereinafter defined as the "Material Terms and Conditions Monitoring Period") confirming:

- (a) As this is a new Facility, there are currently no jobs at the Facility; and
- (b) The creation of fourteen employees (more specifically four full time employees and ten part time employees);

In order to accomplish the foregoing, the Company or Sublessee shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance. The Company shall annually complete and submit to the Agency the Annual Certification Report in the form attached hereto as Exhibit E. Failure by the Company or Sublessee to complete and submit said form to the Agency by February 15 of each year during the Material Terms and Conditions Monitoring Period shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion, may terminate this Agreement and/or the PILOT Agreement and undertake a Recapture Event Determination.

The findings made by the Agency with respect to Section 2(g)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(g)(5) with respect to the thresholds and requirements as identified in Section 2(g)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(g)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Recapture of Benefits and Policy", to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(g)(1), (2), (3) and/or (4) and/or the failure under Section 2(g)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(g)(5) are

hereby defined as a "Recapture Event Determination"). If the Agency makes a Recapture Event Determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or County Comptroller may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

(h) In accordance with the Resolution the Company and Sublessee further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to **\$260,000.00**, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed **\$23,000.00**, (ii) confirms that the mortgage recording tax exemption amount shall be approximately **\$7,000.00** and (iii) and confirms that real property tax abatement benefits to be provided to the Company over the 485(b) equivalent benefit period of the payment in lieu of tax agreement (the "PILOT Agreement"), said PILOT Agreement attached hereto as **Exhibit F** immediately upon its execution, are estimated to be approximately **\$53,000.00**.

(i) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (NYS Form ST-60), in the form attached hereto as Exhibit A for each Subagent, if any, and such other parties as the Company and Sublessee choose who provides materials, equipment, supplies or services and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(j) The Company and Sublessee acknowledges and agree 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, BREWFUN ENTERPRISES, LLC **OR** BRAZEN BREWERY, LLC, certify that I am a duly appointed agent of the TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the BREWFUN ENTERPRISES, LLC AND BRAZEN BREWERY, LLC Project located at 5839 Genesee Street, Lancaster New York , IDA Project Number "1406-21-02". 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.

(k) The Company and Sublessee further covenant and agree to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340, a copy of which is attached hereto as **Exhibit C**) regarding the value of sales and use tax exemptions the Company and the Sublessee and their Subagents, if any, have claimed pursuant to the agency conferred on the Company and Sublessee with respect to the Project in accordance with General Municipal Law Section 874(8). The Company and Sublessee further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15th of each year. The Company and Sublessee understands and agrees that the failure to file such annual statement will result in the removal of the Company's and Sublessee's authority to act as agents for the Agency.

(l) The Company and Sublessee acknowledge and agree 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 and Sublessee shall be the sole party liable thereunder.

(m) The Company and Sublessee covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period, they will (i) maintain their existence and not dissolve, (ii) continue to be limited liability companies 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. This Agreement may not be assigned in whole or part without the prior written consent of the Agency.

(n) The Company and Sublessee agrees that they 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, 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 and Sublessee 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 or Sublessee, 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 and/or Sublessee that they must comply with such requirement or requirements.

3. Hold Harmless Provision. The Company and Sublessee hereby release the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, employees, agents

(except the Company and Sublessee), representatives, successors and assigns harmless from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company or Sublessee of this Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, rehabilitating, renovating, equipping, owning and leasing of the Equipment or of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective executive director, directors, members, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

4. Insurance Required. Coverage.

(i) To the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Lessee and the Agency in an aggregate amount that shall be the greater of (a) the amount the Lessee and/or the Contractor customarily obtains or (b) \$3,000,000 for personal injury and property damage; (ii) Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" during any period of construction or reconstruction of the Project, which insurance shall include coverage for removal of debris, insuring the buildings, structures, machinery, equipment, facilities, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee or the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than 80% of the actual replacement value of the Facility; any such insurance may provide that the insurer is not liable to the extent of the first \$50,000 with the result that the Lessee is its own insurer to the extent of \$50,000 of such risks; (iii) Property damage insurance, which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, fixtures, machinery, equipment and other property constituting a part of the Facility against loss or damage to the Project by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee or the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than the greater of actual replacement value of the Project or the outstanding principal balance of the Mortgage, and at the

request of the Agency, as determined by a qualified insurance appraiser or insurer not less often than once every year, a written computation of which shall be sent to the Agency, and any such insurance may provide that the insurer is not liable to the extent of the first \$50,000 with the result that the Lessee is its own insurer to the extent of \$50,000 of such risks, provided that the Lessee represents that it is the customary business practice of the Lessee to be its own insurer to the extent of \$50,000 in similar property damage insurance policies; (iv) Liability insurance in accordance with customary insurance practices for similar operations with respect to the Project and the business thereby conducted in an aggregate amount that shall be the greater of (a) the amount the Lessee customarily obtains or (b) \$3,000,000 and which (c) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 hereof, (d) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, and (e) shall not contain a provision for deductible amounts in excess of \$50,000; (v) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee, or the Agency is required by law to provide, covering loss resulting from injury, sickness, disability or death of the employees of the Lessee or any Affiliate thereof or of any contractor, subcontractor or their respective employees performing work with respect to the Project; (vi) Such other insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require.

Policy and Binder Requirements. Each of the policies, binders or certificates evidencing the insurance required above to be obtained shall be provided by an insurance company rated at least A-XI or better according to the current Best's Insurance Guide and must be licensed to do business in New York and shall: (i) designate (except in the case of workers' compensation insurance) the Lessee and the Agency as additional insureds as their respective interests may appear; (ii) provide that all insurance proceeds with respect to loss or damage to the property shall be paid in accordance with the provisions of the Mortgage; (iii) provide that there shall be no recourse against the Agency for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments; (iv) provide that in respect of the respective interests of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee, any future Sublessees or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, (A) any act or negligence, including any breach of any condition, declaration or warranty contained in any such policy of insurance by the Agency, the Lessee, any future Sublessees or any other Person, (B) the occupation, operation or use of the Project for purposes more hazardous than permitted by the terms of the policy, (C) any foreclosure or other proceeding or notice of sale relating to the Project, or (D) any change in the title to or ownership of all or any portion of the Project; (v) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its interest as such in the Project, and shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if there were a separate policy covering each insured; (vi) provide that if the insurers cancel such insurance for any reason whatsoever, or the same is allowed to lapse or expire, or there be any

reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change; (vii) waive any right of subrogation of the insurers thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy; and (viii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Project owned or operated by it.

5. Additional Provisions Respecting Insurance. At all times throughout the term of the Leaseback Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee shall maintain insurance in form and substance satisfactory to the Agency, with insurance companies licensed to do business in the State and acceptable to the Agency, against such risk, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as set forth in Appendix D of the Leaseback Agreement. The insurance policies shall name the Agency as an additional insured and provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its interest as such in the Project, and shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if there were a separate policy covering each insured. All insurance required shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State.

6. This Agent Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

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

To the Agency: Town of Lancaster Industrial Development Agency

21 Central Avenue, Lancaster, New York 14086

To the Company/Sublessee: Brewfun Enterprises, LLC/Brazen Brewery, LLC

185 Sunburst Circle, East Amherst, New York 14051

With a copy to:

Company Counsel Firm:

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

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

9. The warranties, representations, obligations and covenants of the Company and Sublessee under this Agent Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Agent Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agent, regardless of any investigation made by the Agency. This Agent Agreement shall survive any termination or expiration of the Leaseback Agreement or the PILOT Agreement, as described below.

10. The parties are contemplating that, after any applicable public hearing(s), if required, the Agency will negotiate and enter into a lease agreement (the "Lease Agreement"), a leaseback agreement (the "Leaseback Agreement"), and a PILOT Agreement with the Company. The Company and Sublessee agree not to take title to any real property as agent for the Agency. The Agency will provide the Company and/or Sublessee with a bill of sale (a form of which is attached hereto as **Exhibit D**) which sells, transfers and delivers unto the Company and Sublessee and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Company and Sublessee as agent for the Agency pursuant to this Agent Agreement which Equipment is located or intended to be located at 5839 Genesee Street, Lancaster, New York.

11. By executing this Agent Agreement, the Company and Sublessee covenant and agree to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel or transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; in accordance with the terms of the Administrative Fee Agreement between the Company and the Agency, and (c) with respect to enforcing this Agent Agreement (including reasonable attorney fees). The Company and Sublessee agree that the Company and Sublessee are liable for payment to the Agency of all charges Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's and/or Sublessee's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company or Sublessee to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's and/or Sublessee's failure, for whatever reason, to undertake and/or successfully complete the Project.

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