

THANX M.S. ZORN BLVD., LLC

and

MS PACKAGING AND SUPPLY CORP.

to

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY  
(TOWN OF BROOKHAVEN, NEW YORK)

**RECAPTURE AGREEMENT**

Dated as of March 1, 2014

Town of Brookhaven Industrial Development Agency  
(Thanx M.S. Zorn Blvd., LLC / MS Packaging and Supply Corp. Facility)

Property Address:	Zorn Boulevard, Yaphank, Town of Brookhaven Suffolk County New York
District:	0200
Section:	777.00
Block:	02.00
Lot:	003.000

Record and return to:  
Weinberg, Gross & Pergament LLP  
400 Garden City Plaza, Suite 403  
Garden City, New York 11530  
Attn: Howard R. Gross, Esq.

## RECAPTURE AGREEMENT

THIS RECAPTURE AGREEMENT, made and entered into as of March 1, 2014 (this "Recapture Agreement"), is from THANX M.S. ZORN BLVD., LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an office at 50-1 Industrial Way, Rocky Point, New York 11778 (the "Company") and MS PACKAGING AND SUPPLY CORP., a corporation duly organized and validly existing under the laws of New York, having an office at 50-1 Industrial Way, Rocky Point, New York 11778 (the "Sublessee") to the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the "Agency").

### WITNESSETH:

Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York.

The aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "State").

The aforesaid act further 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, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation 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 their standard of living.

Pursuant to and in accordance with the provisions of the aforesaid act and Chapter 358 of the Laws of 1970 of the State, as amended (collectively, the "Act"), the Agency was created and is empowered to undertake the providing, financing and leasing of the Facility defined below.

The Agency has agreed to provide its assistance with the Facility which shall consist of the Agency's acquisition of an approximately 10 acre parcel of land located at the intersection of the easterly side of Miller Avenue and the southerly side of Zorn Boulevard, and approximately 2,092.51 feet northerly from the intersection of the easterly side of Miller Avenue with the northerly side of Horse Block Road (C.R. 16), Yaphank, Town of Brookhaven, Suffolk County, New York (shown on the Suffolk County Tax Map as 0200-777.00-02.00-003.000) (the "Land"), the demolition of existing structures thereon, construction and equipping of an approximately 70,000 square foot building (the "Building") on the Land, including related site improvements (the "Facility"), the lease of the Facility by the Agency to the Company with an obligation of the Company to purchase same, the sublease of the Facility by the Company to the Sublessee, to be used by the Sublessee for the purposes of warehousing and wholesale distribution of paper and packing supplies, corrugated boxes, stretch film, tape, cartons, and related items, the Agency's

grant of mortgage liens on, and security interests in, the Facility, and other financial assistance within the meaning of the Act.

Pursuant to the Lease Agreement (as defined below), the Agency is leasing to the Company the Facility, including the following, to the extent owned by the Agency pursuant to the Lease Agreement, as they relate to the acquisition, construction, renovation, and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction, renovation, and equipping of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, construction, renovation, and equipping of the Facility, and (iii) all equipment, machinery, and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility.

The Agency has agreed to lease the Facility to the Company pursuant to a Lease Agreement, dated as of March 1, 2014 (the "Lease Agreement"), by and between the Agency, as lessor, and the Company, as lessee.

The Company has agreed to sublease the Facility to the Sublessee pursuant to a certain Sublease Agreement, dated as of March 1, 2014, (the "Sublease Agreement"), by and between the Company, as sublessor, and the Sublessee, as sublessee.

In order to define the Company's and the Sublessee's obligations regarding payments-in-lieu-of taxes with respect to the Facility, the Agency, the Company and the Sublessee will enter into a Payment-in-Lieu-of-Tax Agreement, dated as of March 1, 2014 (the "PILOT Agreement"), by and among the Agency, the Company and the Sublessee.

The Agency has conferred on the Company and the Sublessee in connection with the acquisition, construction, renovation, equipping, financing and leasing of the Facility certain benefits, tax exemptions and other financial assistance more particularly described in Section 1(b) hereof, consisting of, among other things, sales and use tax exemptions on the acquisition, construction, renovation, and equipping of the Facility, real property tax abatements (pursuant to the PILOT Agreement), and mortgage recording tax exemptions.

The Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the PILOT Agreement and the Lease Agreement, that the Company and the Sublessee provide assurances with respect to the recapture of benefits granted under the PILOT Agreement, the Lease Agreement and the other Agency agreements on the terms herein set forth.

## AGREEMENT

### 1. Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into, among other instruments, the PILOT Agreement and the Lease Agreement in order to provide financial assistance to the Company and the Sublessee for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company and the Sublessee hereby jointly and severally agree as follows:

(i) If there shall occur a Recapture Event (as defined below) after the Closing Date, but on or before the end of two (2) years thereafter, the Company and/or the Sublessee, shall pay to the Agency, or to the State of New York, if so directed by the Agency, (except as otherwise specified below) as a return of public benefits conferred to it by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);

(ii) If there shall occur a Recapture Event after the end of two (2) years but on or before the end of four (4) years after the Closing Date, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred to it by the Agency, seventy-five percent (75%) of the Recaptured Benefits;

(iii) If there shall occur a Recapture Event after the end of four (4) years but on or before the end of six (6) years after the Closing Date, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred to it by the Agency, fifty percent (50%) of the Recaptured Benefits;

(iv) If there shall occur a Recapture Event after the end of six (6) years but on or before the end of eight (8) years after the Closing Date, the Company and/or the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred to it by the Agency, twenty-five percent (25%) of the Recaptured Benefits; and

(v) If there shall occur a Recapture Event after the end of eight (8) years after the Closing Date, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits.

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and other financial assistance, if any, derived from the Agency's participation in the transactions contemplated by the PILOT Agreement, the Sales Tax Letter from the Agency to the Company and the Sublessee, dated January 15, 2014 (the "Sales Tax Letter"), delivered by the Agency to the Company and the Sublessee, and the Lease Agreement, including, but not limited to, the amount equal to 100% of any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency, sales or use tax exemptions, and real property tax abatements granted under the PILOT Agreement (that is, the difference

between the amounts that would be payable for real estate taxes and assessments with respect to the Facility if the Facility were owned by the Company and not the Agency, and the amounts payable by the Company or the Sublessee under the PILOT Agreement), which amounts from time to time shall be payable directly to the Agency or to any party or parties at the direction of the Agency. However, the recapture of any amounts of the mortgage recording tax shall be subordinate to the lien of the Mortgage.

(c) The term “Recapture Event” shall mean any of the following events:

(1) A default by the Company and/or the Sublessee under the PILOT Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(2) An Event of Default under the Lease Agreement (including the failure of the Company and/or the Sublessee to achieve and maintain employment levels at and attributable to the Facility as provided in the Lease Agreement); or

(3) A default by the Sublessee, or by any other party thereto, under the Agency Compliance and Guaranty Agreement; or

(4) The Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date or the Company and the Sublessee shall close the Facility.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or part of the Facility, or (ii) the inability at law of the Company and/or the Sublessee after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a “Loss Event”) to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Company, the Sublessee or any of their respective affiliates so long as the Company, the Sublessee or any of their respective affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(d) Notwithstanding the foregoing, but not in limitation thereof, if at any time, the Company, the Sublessee, or any agent, project operator or any other person or entity shall enjoy, directly or indirectly, by reason of the Agency’s participation in the transactions contemplated by the Sales Tax Letter, or the Lease Agreement, any state sales and use tax exemption benefits to which any of such persons is not entitled, which are in excess of the amounts authorized, which are for property or services not authorized, or which are taken in cases where such person fails to comply with a term or condition to use property or services in the manner prescribed by the Agency or applicable law, then, in addition to any other rights and remedies available to the Agency, the Company or the Sublessee shall repay on demand the amount of such benefits to which such person is not entitled, the amount of such excess, the amount of such benefits associated with such property or services that is not authorized, and the

amount of such benefits taken in cases where such person fails to comply with a term or condition to use property or services in the manner prescribed by the Agency or applicable law.

(e) The Company and the Sublessee covenant and agree to furnish the Agency with written notification (i) within thirty (30) days after the end of each calendar year the number of FTEs (as defined in the Lease Agreement) located at the Facility for the preceding calendar year, and (ii) within thirty (30) days after the occurrence of a Recapture Event, or notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder.

(e) In the event any payment owing by the Company and/or the Sublessee under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to ten percent (10%) per annum (or the maximum lawful rate, if less) until the Company and/or the Sublessee shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(f) The Agency shall be entitled to deduct all expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Recapture Agreement, from amounts received by the Agency pursuant to this Recapture Agreement.

## 2. Obligations Unconditional.

(a) The obligations of the Company and the Sublessee under this Recapture Agreement shall be absolute and unconditional and shall remain in full force and effect until the PILOT Agreement and the Lease Agreement have expired or been terminated, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, whether or not with notice to or the consent of the Company and the Sublessee.

(b) It is hereby expressly agreed that the Sublessee's obligations under this Recapture Agreement are not limited in any manner, and the Sublessee shall be liable for the payment of all recapture amounts with respect to the entire Facility.

(c) It is hereby also expressly agreed that the Company's obligations under this Recapture Agreement are not limited in any manner, and the Company shall be liable for the payment of all recapture amounts with respect to the entire Facility.

3. Condition to Reconveyance of Facility. The parties hereto agree that the Agency shall have no obligations to re-convey the Facility to the Company pursuant to the Lease Agreement until all payments to the Agency under the Lease Agreement, under the PILOT Agreement and hereunder have been paid in full.

4. Recordation of Recapture Agreement. The parties hereto agree that this Recapture Agreement shall be recorded as a lien against the Facility and as a covenant and

restriction running with the Land until this Recapture Agreement has been discharged by the Agency.

5. Terms Defined. The words and phrases used in this Recapture Agreement and not otherwise defined herein shall have the meanings assigned thereto in Lease Agreement.

6. Directly or Indirectly. Where any provision in this Recapture Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

7. Survival. All warranties, representations, and covenants made by the Company and the Sublessee herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Recapture Agreement to the Agency regardless of any investigation made by the Agency.

8. Binding Effect. This Recapture Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties.

9. Notices. All notices, certificates and other communications under this Recapture Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, return receipt requested, postage prepaid, or by overnight courier, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Brookhaven Industrial Development Agency  
1 Independence Hill, 3rd Floor  
Farmingville, New York 11738  
Attention: Chief Executive Officer

With a copy to:

Town of Brookhaven  
Department of Law  
1 Independence Hill, 3rd Floor  
Farmingville, New York 11738  
Attention: Annette Eaderesto, Esq.

To the Company:

Thanx M.S. Zorn Blvd., LLC  
50-1 Industrial Way  
Rocky Point, New York 11778  
Attention: Mr. Michael Savino, Member

With a Copy Sent by Regular Mail To:

Andrew Presberg, PC  
Law Offices of Andrew Presberg, PC  
100 Corporate Plaza  
Islandia, NY 11749

To the Sublessee:

MS Packaging and Supply Corp.  
50-1 Industrial Way  
Rocky Point, New York 11778  
Attention: Mr. Michael Savino, President

With copies for Company and Sublessee to:

Andrew Presberg, PC  
Law Offices of Andrew Presberg, PC  
100 Corporate Plaza  
Islandia, NY 11749

A duplicate copy of each communication hereunder by the Company or the Sublessee shall be given to the Agency.

10. Entire Understanding; Counterparts. This Recapture Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and 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.

11. Amendments. No amendment, change, modification, alteration or termination of this Recapture Agreement shall be made except in writing upon the written consent of the Company and the Agency.

12. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Recapture Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Recapture Agreement or any part thereof.

13. Governing Law. This Recapture Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles. Any actions, suits or proceedings arising under or by virtue of this Recapture Agreement shall be commenced, prosecuted or maintained by the Company or the Sublessee solely in the State of New York, County of Suffolk and the Company and the Sublessee consent to the jurisdiction of the courts of said State and of the United States sitting within said County in any action, suit or proceedings commenced, prosecuted or maintained under or in connection with this Recapture Agreement.



14. Waiver of Trial by Jury. The Company and Sublessee hereby waive any and all rights to a trial by jury of any dispute or litigation.

15. Joint and Several Liability. The Company and the Sublessee, jointly and severally, shall be liable under this Agreement, and shall indemnify and hold Agency harmless from and against any liability arising from any default by the Company or the Sublessee in performing their respective obligations hereunder or any expense incurred under this Agreement, including any expenses of the Agency, including attorneys' fees.

16. Remedies Cumulative. No remedy conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Recapture Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

17. Attorneys' Fees and Expenses. In the event the Company or Sublessee should default under any of the provisions of this Recapture Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company or Sublessee herein contained, the Company and the Sublessee, jointly and severally, shall, on demand therefor, pay to the Agency the fees of such attorneys and such other expenses so incurred.

18. Section Headings. The headings of the several Sections in this Recapture Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Recapture Agreement.

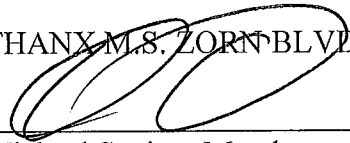
19. Recordation of Recapture Agreement. The Agency covenants that it will record or cause this Recapture Agreement to be duly recorded in all offices where recordation thereof is necessary. The Company and the Sublessee shall execute and deliver to the Agency all documents and pay all amounts necessary or appropriate to effectuate the recordation of this Recapture Agreement.

IN WITNESS WHEREOF, the Company and the Sublessee have caused this Recapture Agreement to be duly executed and delivered as of the day and year first above written.

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THANX M.S. ZORN BLVD., LLC

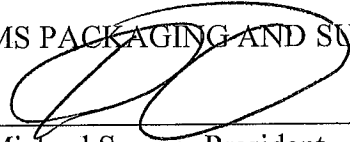
By:



Michael Savino, Member

MS PACKAGING AND SUPPLY CORP.

By:

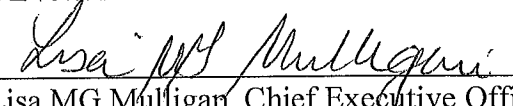


Michael Savino, President

ACCEPTED:

TOWN OF BROOKHAVEN INDUSTRIAL  
DEVELOPMENT AGENCY

By:

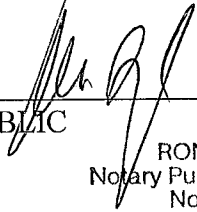


Lisa MG Mulligan, Chief Executive Officer

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

On the 10th day of March in the year 2014, before me, the undersigned, personally appeared MICHAEL SAVINO, 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

  
RONALD M. BEIGEL  
Notary Public, State of New York  
No. 01BE4861461  
Qualified in Nassau County  
Commission Expires June 9, 2014

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

On the 4 day of March in the year 2014, before me, the undersigned, personally appeared LISA MG MULLIGAN, 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

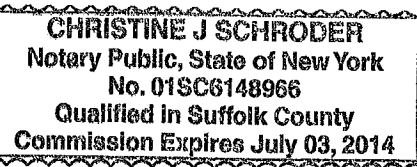


EXHIBIT A

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING at Yaphank, Town of Brookhaven, County of Suffolk and State of New York, being bounded and described as follows:

BEGINNING at a point on the easterly side of 25 foot strip reserved as a public highway known as Miller Avenue distant 2092.85 feet (deed) 2092.51 actual northerly from the intersection of the easterly side of the 25 foot strip known as Miller Avenue with the northerly side of Horse Block Road (C.R. 16); said point being where the northerly line of land now or formerly of Yale and Elizabeth Murov intersects with the easterly side of 25 foot strip known as Miller Avenue;

RUNNING THENCE along the easterly side of a 25 foot strip known as Miller Avenue North 07 degrees 45 minutes 07 seconds East (actual) (North 05 degrees 31 minutes 27 seconds West deed) 660.00 feet to the southerly side of Zorn Boulevard;

THENCE along the southerly side of Zorn Boulevard, South 82 degrees 14 minutes 53 seconds East (actual) (North 84 degrees 28 minutes 33 seconds East deed) 635.00 feet to land now or formerly of Lake Windwood Properties, Inc.;

THENCE along said last mentioned land South 07 degrees 45 minutes 07 seconds West (actual) (South 05 degrees 31 minutes 27 seconds East deed) 660.00 feet to land now or formerly of Yale and Elizabeth Murov first above mentioned;

THENCE along land now or formerly of Yale and Elizabeth Murov, North 82 degrees 14 minutes 53 seconds West (actual) (South 84 degrees 28 minutes 33 seconds West deed) 635.00 feet to the easterly side of the 25 foot strip known as Miller Avenue, the point or place of BEGINNING.