

FIRST REALTY ASSOCIATES LLC

and

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

AMENDMENT OF LEASE AGREEMENT

Town of Brookhaven Industrial Development Agency
(First Realty Associates LLC/Global Tissue Group, Inc. 2008 Facility)

Dated as of October 1, 2020

Tax Account Numbers: 0200-703.00-01.00-030.000
0200-704.00-01.00-014.001
0200-704.00-01.00-015.001

AMENDMENT OF LEASE AGREEMENT

This AMENDMENT OF LEASE AGREEMENT, dated as of October 1, 2020 (this “**Amendment of Lease Agreement**”), is made by and between TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “**Agency**”), as lessor, and FIRST REALTY ASSOCIATES LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office at 870 Expressway Drive South, Medford, New York 11763 (the “**Company**”), as lessor.

RECITALS

WHEREAS, the Agency previously provided its assistance in the acquisition of an approximately 23.4303-acre vacant parcel of land located near the intersection of the northerly side of Long Island Avenue and the westerly side of Patchogue Yaphank Road, West Yaphank, Town of Brookhaven, Suffolk County, New York, and the construction and equipping thereon of an approximately 166,700 square foot building including, without limitation, the furnishing and equipping of warehouse and distribution space to be used for the manufacturing and distribution of paper products such as facial tissues, bath tissues, napkins and paper towels (the “**Facility**”), which Facility is leased by the Agency to the Company and subleased by the Company to Global Tissue Group, Inc. (the “**Sublessee**”), for use by the Sublessee in the manufacturing and distribution of paper products for customers of the Sublessee; and

WHEREAS, the Agency currently leases the Facility to the Company pursuant to a certain Lease Agreement, dated as of July 1, 2008 (the “**Original Lease Agreement**”; and together with this Amendment of Lease Agreement, the “**Lease Agreement**”), between the Agency and the Company, a memorandum of which Original Lease Agreement was recorded in the Suffolk County Clerk’s office on August 15, 2008 in Liber 12561 of Deeds, Page 746; and

WHEREAS, in connection with the leasing and subleasing of the Facility, the Agency, the Company, and the Sublessee entered into a certain Payment-in-Lieu-of Tax Agreement, dated as of July 1, 2008 (the “**Original PILOT Agreement**”), whereby the Company and Sublessee agreed to make payments in lieu of taxes on the Facility; and

WHEREAS, in connection with the leasing and subleasing of the Facility, the Agency, the Company, and the Sublessee entered into a certain Recapture Agreement, dated as of July 1, 2008 (the “**Original Recapture Agreement**”), which Original Recapture Agreement was recorded in the Suffolk County Clerk’s office on August 15, 2008 in Liber 12561 of Deeds, Page 749; and

WHEREAS, the Agency and the Company previously mortgaged their respective interests in the Facility to Genworth Life Insurance Company (the “**Lender**”), pursuant to a certain Mortgage, Assignment of Rents and Leases, and Security Agreement, dated

April 9, 2020 (the “**Mortgage**”), which Mortgage secured the aggregate principal amount of \$14,900,000 (the “**Loan**”); and

WHEREAS, the Company and the Sublessee have now submitted a request for the Agency’s consent to an extension of payments-in-lieu-of-taxes benefits presently provided under the Original PILOT Agreement; and

WHEREAS, the Agency proposes to provide financial assistance to the Company and the Sublessee in the form of the modification and extension of current abatements of real property taxes on the Facility, consistent with the policies of the Agency (the “**PILOT Extension**”); and

WHEREAS, the Agency, the Company and the Sublessee will enter into a certain Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of October 1, 2020 (the “**Amended and Restated PILOT Agreement**”); and together with the Original PILOT Agreement, the “**PILOT Agreement**”), by and among the Agency, the Company and the Sublessee; and

WHEREAS, in connection with the leasing of the Facility and the extension of the PILOT Agreement, the Agency and the Company agree that the term of the Lease Agreement between the Agency and the Company shall be extended to coincide with the extension of the PILOT Agreement pursuant to this Amendment of Lease Agreement.

NOW THEREFORE, THE PARTIES HERETO DECLARE:

1. Amendment of Lease Agreement. The Agency and the Company mutually agree that the Lease Agreement shall be amended as follows:

(A) Section 2.2 shall be amended to include the following subsection (g):

(g) The Facility and the design and operation of the Facility will conform with all applicable zoning, planning, building and Environmental Laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. All Environmental Permits necessary for the ownership, use and operation of the Facility have been obtained and are in full force and effect. Under penalty of perjury, the Company certifies that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

(B) Section 5.2 (b) shall be amended and restated in its entirety to read as follows:

(b) Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. EST (Eastern Standard Time) on November 30, 2027, or on such earlier date as may be permitted by Section 11.1 hereof; provided, however, that, except as provided in Section 10.2 and Article XI hereof, in the event that this Lease Agreement shall be terminated before the Loan shall have been paid in full or provision for such full payment shall have been made, then the Agency shall reconvey

title to the Facility to the Company subject to the Lien of the Mortgages and subject to any other Liens recorded against the Facility in favor of a Lender securing the Loan.

(C) Section 5.3 shall be amended to include the following subsection (d):

(d) In addition, the Company shall pay to the Agency an annual compliance fee of \$1,000 on or before January 1 of each year commencing January 1, 2021 and continuing through the Lease Term.

(D) Section 8.6 shall be amended and restated in its entirety to read as follows:

Section 8.6 Agreement to File Annual Statements and Provide Information. The Company shall file with the New York State Department of Taxation and Finance (“NYS DTF”), an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the New York State General Municipal Law (the “GML”). The Company shall submit a copy of such annual statement to the Agency at the time of filing with NYS DTF. The Company shall also provide the Agency with the information the Agency deems necessary for the Agency to comply with Section 874(9) of the GML. Annually, and upon request, the Company shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Agency’s financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs as the Agency deems necessary, including to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. The Company shall cause any and all sublessees at the Facility to comply with the requirements of this Section 8.6 by requiring each such sublessee to enter into a Tenant Agency Compliance Agreement as described in Section 9.3 hereof.

(E) Section 9.3 (vi) shall be amended and restated in its entirety to read as follows:

(vi) any sublessee will execute and deliver a Tenant Agency Compliance Agreement, satisfactory to the Agency in substantially the form attached hereto as Exhibit C.

- (F) In accordance with the GML, the Lease Agreement is hereby amended to include the PILOT Agreement as attached hereto as Exhibit B.
- (G) The following defined terms in Schedule A to the Lease Agreement are hereby added or amended and restated in their entirety as follows:

“Lender” means Genworth Life Insurance Company and its successors and assigns.

“Loan” means the \$14,900,000 loan made by Genworth Life Insurance Company to the Company and secured by the Mortgage, Assignment of Rents and Leases, and Security Agreement, dated April 9, 2020, from the Company and the Agency to the Lender.

“Mortgage” means the Mortgage, Assignment of Rents and Leases, and Security Agreement, dated April 9, 2020, from the Agency and the Company to the Lender.

2. Lease Agreement Affirmed. Except as expressly amended by this Amendment of Lease Agreement, the provisions of the Lease Agreement shall remain unchanged, binding and full force and effect.

3. Binding Effect. This Amendment of Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns and/or successors in interest.

4. Execution of Counterparts. This Amendment of Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

5. Applicable Law. This Amendment of Lease Agreement shall be governed exclusively by the applicable laws of the State of New York without giving effect to conflicts of law principles.

(Remainder of Page Intentionally Left Blank – Signature Pages Follow)

IN WITNESS WHEREOF, the Agency and the Company have caused this Amendment to Lease Agreement to be executed in their respective names as of the date and year first above written.

**TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY**

By: *Lisa MG Mulligan*
Name: Lisa MG Mulligan
Title: Chief Executive Officer

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

On the 21st day of October in the year 2020, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Joelyn B. Linse
Notary Public

<p>JOCELYN B. LINSE Notary Public - State of New York No. 01LI6351400 Qualified in Suffolk County My Comm. Expires Dec. 5, 2020</p>
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FIRST REALTY ASSOCIATES LLC

By: [Signature]
Name: Freydoun Elnekaveh
Title: Member

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

On the 21 day of October in the year 2020, before me, the undersigned, personally appeared **Freydoun Elnekaveh**, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

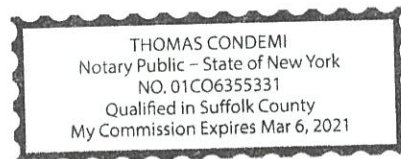


EXHIBIT A

Legal Description of Real Property

COMMONWEALTH LAND TITLE INSURANCE COMPANY

SCHEDULE A
PROPERTY DESCRIPTION

The land referred to in this Policy is described as follows:

AMENDED 7/1/08
AMENDED 3/24/2008

PARCEL 1

ALL that certain plot, piece or parcel of land, situate, lying and being at West Yaphank, Town of Brookhaven, County of Suffolk and State of New York.

BEGINNING at a point formed by the intersection of the southerly side of Long Island Avenue with the westerly side of Patchogue Yaphank Road.

RUNNING THENCE along the westerly side of Patchogue Yaphank Road, South 02 degrees 24 minutes 48 seconds east 159.62 feet to a point and the northerly side of the Long Island Railroad;

THENCE along the northerly side of the Long Island Railroad, South 82 degrees 57 minutes 40 seconds west 159.79 feet to a point and land now or formerly of Nicholas Racanelli Associates;

THENCE along land now or formerly of Nicholas Racanelli Associates, North 05 degrees 10 minutes 33 seconds west 160.03 feet to a point and the southerly side of Long Island Avenue;

THENCE along the southerly side of Long Island Avenue, North 83 degrees 15 minutes 10 seconds east 167.46 feet to the point and place of BEGINNING.

FOR INFORMATION ONLY:

District: 0200 Section: 703.00 Block: 01.00 Lot: 030.000

PARCEL 2

ALL that certain plot, piece or parcel of land, situate, lying and being at West Yaphank, Town of Brookhaven, County of Suffolk and State of New York.

BEGINNING at a point formed by the intersection of the northerly side of Old Town Road, with the easterly side of Patchogue Yaphank Road;

RUNNING THENCE along the easterly side of Patchogue Yaphank Road, the following three [3] courses and distances:

1. North 39 degrees 29 minutes 40 seconds east 22.52 feet to a point;
2. North 38 degrees 49 minutes 40 seconds east 136.95 feet to a point;
3. North 46 degrees 08 minutes 10 seconds east 23.17 feet to a point and land now or formerly of 66 Partners LLC;

THENCE along land now or formerly of 66 Partners LLC, South 05 degrees 33 minutes 45 seconds east 211.80 feet to a point and the northerly side of Old Town Road;

THENCE along the northerly side of Old Town Road, North 62 degrees 46 minutes 49 seconds west 154.53 feet to the point place of BEGINNING.

FOR INFORMATION ONLY:

District: 0200 Section: 704.00 Block: 01.00 Lot: 014.001

SCHEDULE A
PROPERTY DESCRIPTION
(Continued)

PARCEL 3

ALL that certain plot, piece or parcel of land, situate, lying and being at West Yaphank, Town of Brookhaven, County of Suffolk and State of New York.

BEGINNING at a point at the southwesterly terminus of the arc of a curve connecting the westerly side of Patchogue Yaphank Road with the northerly side of Long Island Avenue ;

RUNNING THENCE along the northerly side of Long Island Avenue, South 83 degrees 15 minutes 10 seconds west 37.36 feet to a point and land now or formerly of REP C LLC;

THENCE along land or formerly of REP C LLC, North 05 degrees 10 minutes 33 seconds west 1,623.53 feet to a point and the southerly side of the Long Island Expressway;

THENCE along the southerly side of the Long Island Expressway, the following three [3] courses and distances:

1. North 77 degrees 19 minutes 00 seconds 896.92 feet to a point;
2. South 12 degrees 41 minutes 00 seconds 1.00 feet to a point;
3. North 77 degrees 19 minutes 00 second east 83.14 feet to a point and land now or formerly of the Long Island Expressway 66 LLC;

THENCE along land now or formerly of LIE 66 LLC, South 05 degrees 33 minutes 45 seconds east 454.72 feet to a point and the westerly side of Patchogue Yaphank Road;

THENCE along the westerly side of Patchogue Yaphank Road, the following five [5] courses and distances:

1. South 46 degrees 08 minutes 10 seconds west 79.51 feet to a point;
2. South 38 degrees 49 minutes 40 seconds west 140.78 feet to a point;
3. South 39 degrees 29 minutes 40 seconds west 436.04 feet to a point;
4. South 25 degrees 31 minutes 20 seconds west 392.43 feet to a point;
5. South 14 degrees 55 minutes 48 seconds west 383.76 feet to a point and the northeasterly terminus of the arc of a curve connecting the westerly side of Patchogue Yaphank Road with the northerly side of Long Island Avenue;

THENCE along said arc of a curve bearing to the right having a radius of 142.92 feet, the distance of 213.69 feet [said chord having a bearing of South 40 degrees 25 minutes 09 seconds west a distance of 194.33 feet] to the point and place of BEGINNING.

FOR INFORMATION ONLY:

District: 0200 Section: 663.00 Block: 02.00 Lot: 001.001 and 003.002

**NOTE: District: 0200 Section: 663.00 Block: 02.00 Lot: 001.001 is now known as:

District: 0200 Section: 663.00 Block: 02.00 Lot: 001.002

District: 0200 Section: 663.00 Block: 02.00 Lot: 001.003

District: 0200 Section: 704.00 Block: 01.00 Lot: 015.000

EXHIBIT B
PILOT Agreement

FIRST REALTY ASSOCIATES LLC

and

GLOBAL TISSUE GROUP, INC.

and

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

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

Town of Brookhaven Industrial Development Agency
(First Realty Associates LLC/Global Tissue Group, Inc. 2008 Facility)

Originally Dated as of July 1, 2008

Amended and Restated as of October 1, 2020

Town of Brookhaven, Suffolk County, Longwood Central School District

Tax Account Numbers: 0200-703.00-01.00-030.000
 0200-704.00-01.00-014.001
 0200-704.00-01.00-015.001

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

THIS AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of October 1, 2020 (this “**Amended and Restated PILOT Agreement**”), is among FIRST REALTY ASSOCIATES LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an office at 870 Expressway Drive South, Medford, New York 11763 (the “**Company**”), GLOBAL TISSUE GROUP, INC., a business corporation duly organized and validly existing under the laws of the State of New York, having an office at 870 Expressway Drive South, Medford, New York 11763 (the “**Sublessee**”), and TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “**Agency**”).

W I T N E S S E T H:

WHEREAS, the Agency was created by Chapter 358 of the Laws of 1970 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the “**Act**”); and

WHEREAS, the Agency previously provided its assistance in the acquisition of an approximately 23.4303-acre vacant parcel of land located near the intersection of the northerly side of Long Island Avenue and the westerly side of Patchogue Yaphank Road, West Yaphank, Town of Brookhaven, Suffolk County, New York, and the construction and equipping thereon of an approximately 166,700 square foot building including, without limitation, the furnishing and equipping of warehouse and distribution space to be used for the manufacturing and distribution of paper products such as facial tissues, bath tissues, napkins and paper towels (the “**Facility**”), which Facility is leased by the Agency to the Company and subleased by the Company to the Sublessee for use by the Sublessee in the manufacturing and distribution of paper products for customers of the Sublessee; and

WHEREAS, the Agency currently leases the Facility to the Company pursuant to a certain Lease Agreement, dated as of July 1, 2008 (the “**Original Lease Agreement**”; and together with this Amendment of Lease Agreement, the “**Lease Agreement**”), between the Agency and the Company, a memorandum of which Original Lease Agreement was recorded in the Suffolk County Clerk’s office on August 15, 2008 in Liber 12561 of Deeds, Page 746; and

WHEREAS, in connection with the leasing and subleasing of the Facility, the Agency, the Company, and the Sublessee entered into a certain Payment-in-Lieu-of Tax Agreement, dated as of July 1, 2008 (the “**Original PILOT Agreement**”; and together with this Amended and Restated PILOT Agreement, the “**PILOT Agreement**”), whereby the Company and Sublessee agreed to make payments in lieu of taxes on the Facility; and

WHEREAS, in connection with the leasing and subleasing of the Facility, the Agency, the Company, and the Sublessee entered into a certain Recapture Agreement, dated as of July 1, 2008 (the “**Original Recapture Agreement**”), which Original Recapture Agreement was recorded in the Suffolk County Clerk’s office on August 15, 2008 in Liber 12561 of Deeds, Page 749; and

WHEREAS, the Company and Sublessee have now requested the Agency's assistance in granting an extension of benefits provided under the Original PILOT Agreement for a period of six (6) years (the "**PILOT Extension**"); and

WHEREAS, the Original PILOT Agreement shall be amended and restated pursuant to and in accordance with this Amended and Restated PILOT Agreement; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes and assessments imposed upon real property owned by it, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven, New York (including 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) which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency, the Company and the Sublessee deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Company to the Town of Brookhaven, New York, 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, Suffolk County, Longwood Central School District and appropriate special districts (hereinafter the "**Taxing Authorities**") in which any part of the Facility is or is to be located.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants herein contained, it is mutually agreed as follows:

1. (a) As long as the Lease Agreement is in effect, the Company and the Sublessee agree to make payments in lieu of all real estate taxes and assessments (the "**PILOT Payments**") (in addition to paying all special ad valorem levies, special assessments or Special District Taxes and service charges against real property located in the Town of Brookhaven, Suffolk County, Longwood Central School District (including 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) which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Facility if the Facility were owned by the Company exclusive of the Agency's interest therein (the "**Taxes on the Facility**"). Through the end of the 2019/2020 Tax Year, the amounts of such PILOT Payments are set forth in Exhibit A attached to the Original PILOT Agreement. PILOT Payments shall be allocated among the Taxing Authorities in proportion to the amount of real property tax and other taxes which would have been received by each Taxing Authority if the Facility was owned by the Company exclusive of the Agency's interest.

(b) Commencing with the 2020/2021 Tax Year, the Company and the Sublessee shall pay, as payments in lieu of taxes and assessments, inclusive of land and improvements, the amounts set forth on Exhibit A attached hereto and made a part hereof.

(c) The Company and the Sublessee shall pay, or cause to be paid, the amounts set forth in paragraphs 1(a) and (b) above, as applicable, after receipt of tax bills from

the Agency or the Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company or the Sublessee of their obligations to make all payments provided for hereunder. If, for any reason, the Company and/or the Sublessee does not receive an appropriate tax bill, the Company and the Sublessee shall have the responsibility and obligation to make all reasonable inquiries to the Agency and the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided therein. PILOT Payments shall be made directly to the Agency. PILOT Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one (1) month delinquent. Anything contained in this paragraph (c) to the contrary notwithstanding, the Company and the Sublessee shall have the obligation to make all annual payments required by this paragraph (other than payments of penalties, if any) in two equal semi-annual installments on or prior to January 31 and May 31 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term.

(d) During the term of this Amended and Restated PILOT Agreement, the Company and the Sublessee shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Facility for special improvements or special district improvements.

(e) In the event that any structural addition shall be made to the building or buildings included in the Facility subsequent to the Completion Date (as such term is defined in the Lease Agreement), or any additional building or improvement shall be constructed on the real property described on Exhibit B hereto (such structural additions, buildings and improvements being referred to hereinafter as “**Additional Facilities**”), the Company and the Sublessee agree to make additional payments in lieu of taxes to the Taxing Authorities in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company and not the Agency times the assessment or assessments established for that tax year by the Town of Brookhaven, New York. All other provisions of this Amended and Restated PILOT Agreement shall apply to this obligation for additional payments.

2. In the event that the Agency’s fee title interest in the Facility or any part thereof is terminated at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Town of Brookhaven, Suffolk County, Longwood Central School District, 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, or appropriate special districts, as the case may be, by such taxable status date, the Company and the Sublessee hereby agree to pay, at the first time taxes or assessments are due following the taxable status date on which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time the Agency’s interest in the Facility was terminated until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any

amounts previously paid pursuant to this Amended and Restated PILOT Agreement by the Agency, the Company or the Sublessee to the respective Taxing Authorities relating to any period of time after the date of termination of the Lease Agreement. The provisions of this paragraph 2 shall survive the termination or expiration of the Lease Agreement. Any rights the Company and the Sublessee may have against its designee are separate and apart from the terms of this paragraph 2, and this paragraph 2 shall survive any transfer from the Agency to the Company.

3. In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act or other legislative change or by a final judgment of a court of competent jurisdiction, the obligations of the Company and the Sublessee hereunder shall, to such extent, be null and void.

4. In the event the Company and the Sublessee shall enter into a subsequent payment-in-lieu-of-tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company and the Sublessee hereunder, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

5. As long as this Amended and Restated PILOT Agreement is in effect, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency, at the request of the Company, shall request the Assessor of the Town of Brookhaven, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such administrative or judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities exclusive of the Agency's interest therein, such complaining party shall not be entitled to receive a refund or refunds of the PILOT Payments paid pursuant to this Amended and Restated PILOT Agreement and the PILOT Payments set forth on Exhibit A hereto shall not be reduced. In no event shall the Agency be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. If the Company receives a reduction in assessment in the last year of the Lease Agreement after it has made its final PILOT Payment, the Company acknowledges that it shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Facility which will be due after the Facility is returned to the tax rolls. The Company hereby agrees that it will notify the Agency if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or shall have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with any reassessment of

the Facility, reduction of taxes with respect to the Facility or tax certiorari proceedings with respect to the Facility.

6. The Company and the Sublessee, in recognition of the benefits provided under the terms of this Amended and Restated PILOT Agreement, including, but not limited to, the formula for In-Lieu-of-Taxes Payments set forth in Exhibit A hereto, and for as long as the Lease Agreement is in effect, expressly waive any rights they may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title I of Article 18-A of the General Municipal Law) with respect to the Facility. The Company and the Sublessee, however, reserve any such rights with respect to the Additional Facilities as referred to in paragraph 1(f) and with respect to the assessment and/or exemption of the Additional Facilities.

7. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

The Agency:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 2nd Floor
Farmingville, New York 11738
Attention: Lisa MG Mulligan, Chief Executive Officer

The Company:

First Realty Associates LLC
870 Expressway Drive South
Medford, New York 11763
Attention: Freydoun Elnekaveh

With a copy to:

Jaspan Schlesinger LLP
300 Garden City Plaza
Garden City, New York 11530
Attention: Leslie Feifer, Esq.

The Sublessee:

Global Tissue Group, Inc.
870 Expressway Drive South
Medford, New York 11763
Attention: Philip Shaoul

With a copy to:

Jaspan Schlesinger LLP
300 Garden City Plaza
Garden City, New York 11530
Attention: Leslie Feifer, Esq.

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third Business Day after mailing with respect to certified mail and one Business Day after mailing with respect to overnight mail

8. Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Company and the Sublessee under this Amended and Restated PILOT Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Company's or Sublessee's defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Company's and Sublessee's obligations hereunder. No waiver, amendment, release or modification of this Amended and Restated PILOT Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Company and Sublessee or receipt by the Agency of a lesser amount than or different manner from the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any checks or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Amended and Restated PILOT Agreement or otherwise provided at law or in equity.

9. This Amended and Restated PILOT Agreement shall become effective the date of execution by the parties and PILOT Payments hereunder shall commence with the 2020/2021 Tax Year. All taxes, assessments, special assessments, service charges, special ad valorem levies or similar tax equivalents due or to become due based upon prior taxable status dates shall be paid by the Company and Sublessee when due. Upon termination of the Lease Agreement, this Amended and Restated PILOT Agreement shall terminate.

10. Whenever the Company and/or the Sublessee fail to comply with any provision of this Amended and Restated PILOT Agreement, the Agency may, but shall not be obligated to, take whatever action at law or in equity may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company and the Sublessee under this Amended and Restated PILOT Agreement. The Agency agrees to notify the Company and the Sublessee in writing of any failure by the Company and/or the Sublessee to comply with any provision of this Amended and Restated PILOT Agreement and shall provide the Company and the Sublessee with the opportunity to cure such failure within thirty (30) days after receipt by the Company and the Sublessee of such notice.

11. This Amended and Restated PILOT Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

12. The Company and the Sublessee agree to hold the Agency harmless from and against any liability arising from any default by the Company and the Sublessee in performing its obligations hereunder or any expense incurred under this Amended and Restated PILOT Agreement, including any expenses of the Agency, including without limitation, attorneys' fees.

13. This Amended and Restated PILOT Agreement may be modified only by written instrument duly executed by the parties hereto.

14. This Amended and Restated PILOT Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs, distributees and assigns.

15. Except as provided in paragraphs 3 and 4, if any provision of this Amended and Restated PILOT Agreement (excluding paragraph 1) shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Amended and Restated PILOT Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

16. All capitalized terms used in this Amended and Restated PILOT Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A, which definitions are incorporated herein and made a part hereof.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated PILOT Agreement as of the date first written above.

FIRST REALTY ASSOCIATES LLC

By: 
Name: Freydoun Elnkaveh
Title: Member

GLOBAL TISSUE GROUP, INC.

By: _____
Name: Philip Shaoul
Title: President

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**


By: _____
Name: Lisa MG Mulligan
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated PILOT Agreement as of the date first written above.

FIRST REALTY ASSOCIATES LLC

By: _____
Name: Freydoun Elnekaveh
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DEVELOPMENT AGENCY**

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By: _____
Name: Philip Shaoul
Title: President

**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Lisa MG Mulligan
Title: Chief Executive Officer

EXHIBIT A

PILOT Schedule

Schedule of payments-in-lieu-of-taxes: Town of Brookhaven, (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Longwood Central School District, Suffolk County and Appropriate Special Districts

<u>Year</u>	<u>PILOT Payment</u>
2020/2021	\$10,672
2021/2022	\$66,095
2022/2023	\$134,833
2023/2024	\$206,294
2024/2025	\$280,560
2025/2026	\$357,714

EXHIBIT B

Legal Description of Real Property

COMMONWEALTH LAND TITLE INSURANCE COMPANY

SCHEDULE A
PROPERTY DESCRIPTION

The land referred to in this Policy is described as follows:

AMENDED 7/1/08
AMENDED 3/24/2008

PARCEL 1

ALL that certain plot, piece or parcel of land, situate, lying and being at West Yaphank, Town of Brookhaven, County of Suffolk and State of New York.

BEGINNING at a point formed by the intersection of the southerly side of Long Island Avenue with the westerly side of Patchogue Yaphank Road.

RUNNING THENCE along the westerly side of Patchogue Yaphank Road, South 02 degrees 24 minutes 48 seconds east 159.62 feet to a point and the northerly side of the Long Island Railroad;

THENCE along the northerly side of the Long Island Railroad, South 82 degrees 57 minutes 40 seconds west 159.79 feet to a point and land now or formerly of Nicholas Racanelli Associates;

THENCE along land now or formerly of Nicholas Racanelli Associates, North 05 degrees 10 minutes 33 seconds west 160.03 feet to a point and the southerly side of Long Island Avenue;

THENCE along the southerly side of Long Island Avenue, North 83 degrees 15 minutes 10 seconds east 167.46 feet to the point and place of BEGINNING.

FOR INFORMATION ONLY:

District: 0200 Section: 703.00 Block: 01.00 Lot: 030.000

PARCEL 2

ALL that certain plot, piece or parcel of land, situate, lying and being at West Yaphank, Town of Brookhaven, County of Suffolk and State of New York.

BEGINNING at a point formed by the intersection of the northerly side of Old Town Road, with the easterly side of Patchogue Yaphank Road;

RUNNING THENCE along the easterly side of Patchogue Yaphank Road, the following three [3] courses and distances:

1. North 39 degrees 29 minutes 40 seconds east 22.52 feet to a point;
2. North 38 degrees 49 minutes 40 seconds east 136.95 feet to a point;
3. North 46 degrees 08 minutes 10 seconds east 23.17 feet to a point and land now or formerly of 66 Partners LLC;

THENCE along land now or formerly of 66 Partners LLC, South 05 degrees 33 minutes 45 seconds east 211.80 feet to a point and the northerly side of Old Town Road;

THENCE along the northerly side of Old Town Road, North 62 degrees 46 minutes 49 seconds west 154.53 feet to the point place of BEGINNING.

FOR INFORMATION ONLY:

District: 0200 Section: 704.00 Block: 01.00 Lot: 014.001

SCHEDULE A
PROPERTY DESCRIPTION
(Continued)

PARCEL 3

ALL that certain plot, piece or parcel of land, situate, lying and being at West Yaphank, Town of Brookhaven, County of Suffolk and State of New York.

BEGINNING at a point at the southwesterly terminus of the arc of a curve connecting the westerly side of Patchogue Yaphank Road with the northerly side of Long Island Avenue ;

RUNNING THENCE along the northerly side of Long Island Avenue, South 83 degrees 15 minutes 10 seconds west 37.36 feet to a point and land now or formerly of REP C LLC;

THENCE along land or formerly of REP C LLC, North 05 degrees 10 minutes 33 seconds west 1,623.53 feet to a point and the southerly side of the Long Island Expressway;

THENCE along the southerly side of the Long Island Expressway, the following three [3] courses and distances:

1. North 77 degrees 19 minutes 00 seconds 896.92 feet to a point;
2. South 12 degrees 41 minutes 00 seconds 1.00 feet to a point;
3. North 77 degrees 19 minutes 00 second east 83.14 feet to a point and land now or formerly of the Long Island Expressway 66 LLC;

THENCE along land now or formerly of LIE 66 LLC, South 05 degrees 33 minutes 45 seconds east 454.72 feet to a point and the westerly side of Patchogue Yaphank Road;

THENCE along the westerly side of Patchogue Yaphank Road, the following five [5] courses and distances:

1. South 46 degrees 08 minutes 10 seconds west 79.51 feet to a point;
2. South 38 degrees 49 minutes 40 seconds west 140.78 feet to a point;
3. South 39 degrees 29 minutes 40 seconds west 436.04 feet to a point;
4. South 25 degrees 31 minutes 20 seconds west 392.43 feet to a point;
5. South 14 degrees 55 minutes 48 seconds west 383.76 feet to a point and the northeasterly terminus of the arc of a curve connecting the westerly side of Patchogue Yaphank Road with the northerly side of Long Island Avenue;

THENCE along said arc of a curve bearing to the right having a radius of 142.92 feet, the distance of 213.69 feet [said chord having a bearing of South 40 degrees 25 minutes 09 seconds west a distance of 194.33 feet] to the point and place of BEGINNING.

FOR INFORMATION ONLY:

District: 0200 Section: 663.00 Block: 02.00 Lot: 001.001 and 003.002

**NOTE: District: 0200 Section: 663.00 Block: 02.00 Lot: 001.001 is now known as:

District: 0200 Section: 663.00 Block: 02.00 Lot: 001.002

District: 0200 Section: 663.00 Block: 02.00 Lot: 001.003

District: 0200 Section: 704.00 Block: 01.00 Lot: 015.000

EXHIBIT C

FORM OF TENANT AGENCY COMPLIANCE AGREEMENT

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of _____, 20__, is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “Agency”), and _____, a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ having its principal office at _____ (the “Tenant”).

R E C I T A L S

WHEREAS, the Agency was created by Chapter 358 of the Laws of 1970 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”); and

WHEREAS, the Agency has agreed to assist in in the acquisition of an approximately 23.4303-acre vacant parcel of land located near the intersection of the northerly side of Long Island Avenue and the westerly side of Patchogue Yaphank Road, West Yaphank, Town of Brookhaven, Suffolk County, New York, and the construction and equipping thereon of an approximately 166,700 square foot building including, without limitation, the furnishing and equipping of warehouse and distribution space to be used for the manufacturing and distribution of paper products such as facial tissues, bath tissues, napkins and paper towels (the “Facility”), which Facility is leased by the Agency to First Realty Associates LLC (the “Company”), and subleased by the Company to Global Tissue Group, Inc. (the “Sublessee”), for use by the Sublessee in the manufacturing and distribution of paper products for customers of the Sublessee; and

WHEREAS, the Agency leases the Facility to the Company pursuant to the Lease Agreement, dated as of July 1, 2008, as amended by the Amendment of Lease Agreement, dated as of October 1, 2020 (collectively, the “Lease Agreement”), by and between the Agency and the Company; and

WHEREAS, the Company intends to sublease a portion of the Facility to be used as _____ (the “Demised Premises”), to the Tenant pursuant to a [Tenant Lease Agreement], dated as of _____, 20__ (the “Tenant Lease Agreement”), by and between the Company and the Tenant, which may be amended from time to time.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I
REPRESENTATIONS AND COVENANTS OF TENANT

Section 1.1 Representations and Covenants of Tenant. The Tenant makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Tenant is a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ [and authorized to transact business in the State of New York], and in good standing under the laws of the State of New York,[and the State of [____]] and has full legal right, power and authority to execute, deliver and perform this Tenant Agency Compliance Agreement. This Tenant Agency Compliance Agreement has been duly authorized, executed and delivered by the Tenant.

(b) To the best of the Tenant's knowledge, neither the execution and delivery of this Tenant Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Tenant's organizational documents, as amended, or any restriction or any agreement or instrument to which the Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises and the design, acquisition, construction, renovation, equipping and operation thereof by the Tenant will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Tenant shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Tenant to comply with the provisions of this subsection.

(d) The Tenant Agency Compliance Agreement constitutes a legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

(e) Under penalty of perjury, the Tenant certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.

ARTICLE II INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, the Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto. Such insurance shall include, without limitation, the following (but without duplication of insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s)):

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Tenant, but in no event less than \$1,000,000. During the construction of the Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance that the Tenant is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Tenant or any permitted sublessee who are located at or assigned to the Facility. This coverage shall be in effect from and after the date any such employees first occupy the Facility.

(c) Insurance protecting the Agency and the Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Tenant under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (per occurrence for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than \$5,000,000 per occurrence, protecting the Agency and the Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(d) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Tenant shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation and employer's liability with limits in accordance with applicable law.

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard

Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (per occurrence for personal injury, including bodily injury or death, and property damage).

- (iii) Business auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).
- (iv) Excess “umbrella” liability providing liability Insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000 per occurrence.

(e) The Agency does not in any way represent that the insurance specified in this Tenant Agency Compliance Agreement, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the Tenant’s business or interests.

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Tenant Agency Compliance Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 2.1(a) hereof shall be rated “A” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies of insurance required by Section 2.1 hereof shall provide for at least thirty (30) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 2.1(d)(ii) and (iv) shall name the Agency and the Tenant as additional insureds. The policies required under Sections 2.1(a), (b) and (c) shall contain appropriate waivers of subrogation.

(b) In addition, each contractor must protect the Agency with respect to the policies required under Section 2.1(d)(ii), (iii) and (iv) as an additional insured on a primary and non-contributory basis via ISO endorsements CG 20 26 and CG 20 37 or their equivalents and the endorsements must specifically identify the Agency as an additional insured.

(c) The certificate of insurance required by Section 2.1(c) hereof shall be delivered to the Agency on or before the date hereof. The certificate of insurance required by Section 2.1(b) hereof shall be delivered to the Agency by such date as required therein. A copy of the certificates of insurance required by Section 2.1(d)(ii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any

construction or renovation of the Demised Premises. The Tenant shall deliver to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering the current year of the Tenant's insurance policy, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(a) hereof. Prior to the expiration of each such policy or policies, the Tenant shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Tenant Agency Compliance Agreement. The Tenant shall provide such further information with respect to the insurance coverage required by this Tenant Agency Compliance Agreement as the Agency may from time to time reasonably require.

(d) The minimum insurance requirements set forth under Section 2.1 and this Section 2.2 shall not limit, abridge, or modify the Tenant's obligation under Section 3.2 hereof to indemnify and hold the Agency harmless from and against certain damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses, as more fully set forth in Section 3.2.

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(a) hereof shall be applied in accordance with the provisions of the Tenant Lease Agreement.

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Tenant fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Tenant. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Tenant. The Tenant shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section, together with interest thereon from the date of payment of such amount by the Agency.

ARTICLE III SPECIAL COVENANTS

Section 3.1 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE DEMISED PREMISES FOR THE

PURPOSES OR NEEDS OF THE TENANT OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE TENANT WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE DEMISED PREMISES. THE TENANT ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE TENANT, ON BEHALF OF ITSELF IS SATISFIED THAT THE DEMISED PREMISES IS SUITABLE AND FIT FOR PURPOSES OF THE TENANT. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE TENANT OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 3.2 Hold Harmless Provisions.

(a) The Tenant agrees that the Agency and its directors, members, officers, agents (except the Company) and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents and employees 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, directly or indirectly, any cause whatsoever pertaining to the Demised Premises or to common areas or other portions of the Facility to which the Tenant has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the "**Tenant Premises**"), or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Tenant Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Demised Premises to the Tenant, including, without limiting the generality of the foregoing, all claims arising from the breach by the Tenant of any of its covenants contained herein, the exercise by the Tenant of any authority conferred upon it pursuant to this Tenant Agency Compliance Agreement and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Tenant Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Tenant Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law,

and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Tenant Agency Compliance Agreement, the obligations of the Tenant pursuant to this Section shall remain in full force and effect after the termination of this Tenant Agency Compliance Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency or its members, directors, officers, agents and employees relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Tenant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Tenant hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 3.3 Right to Inspect Demised Premises. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises.

Section 3.4 Qualification as Project.

(a) The Tenant will not take any action, or fail to take any action, which action or failure to act would cause the Facility not to constitute a “project” as such quoted term is defined in the Act. Without limiting the generality of the foregoing, the Tenant will in no event use the Demised Premises in such a way as to cause or permit the Facility to be used in violation of Section 862(2)(a) of the Act.

(b) The occupation of the Demised Premises has not and will not result in the removal of a facility or plant of the Tenant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Tenant located within the State.

Section 3.5 Tenant to Maintain Its Existence. The Tenant agrees that during the Lease Term it will maintain its existence, will not dissolve, liquidate or otherwise dispose of substantially all of its assets, and will not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it.

Section 3.6 Compliance with Orders, Ordinances, Etc.

(a) The Tenant, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee of the Tenant or occupant of the Demised Premises which is occupying the Demised Premises by permission of the Tenant to comply, with

all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or the Demised Premises, or to the acquisition, construction and equipping of the Demised Premises, or to any use, manner of use or condition of the Facility or any part of the Demised Premises, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Facility or any part thereof, and companies or associations insuring the premises.

(b) The Tenant shall keep or cause the Demised Premises to be kept free of Hazardous Substances. Without limiting the foregoing, the Tenant shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Tenant or any of its contractors, subcontractors or tenants, a release of Hazardous Substances onto the Facility or onto any other property. The Tenant shall comply with, and ensure compliance by all of its contractors, subcontractors and subtenants with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, subcontractors and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Tenant shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Demised Premises (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Tenant or any of its contractors, subcontractors or subtenants, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Tenant may have to the Agency at common law and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) above, the Tenant may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Tenant 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 Tenant that, by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Tenant shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Agency. If at any time the then existing use or occupancy of the Demised Premises shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Tenant shall use reasonable efforts not to cause or permit such use or occupancy by the Tenant to be discontinued without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

(d) Notwithstanding the provisions of this Section, if, because of a breach or violation of the provisions of subsection (a) or (b) above (without giving effect to subsection (c)), the Agency or any of its members, directors, officers, agents or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Tenant shall immediately provide legal protection or pay an amount or post a bond in an amount necessary, in the opinion of the Agency and of its members, directors, officers, agents and employees, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Tenant.

Section 3.7 Agreement to Provide Information. Annually, the Tenant shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained.¹ The Tenant further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency any other information concerning the Tenant, its respective finances, its respective operations, its respective employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act, the Public Authorities Accountability Act of 2005, or the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller, or any of the Agency Documents or Tenant Documents.

¹ Cannot be removed or modified; required by GML Section 859-a(6)(b).

Such information shall be provided within thirty (30) days following written request from the Agency.

Section 3.8 Employment Opportunities; Notice of Jobs. The Tenant covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Demised Premises to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300), as superseded by the Workforce Innovation and Opportunity Act (PL 113-128), in which the Facility is located (collectively, the “**Referral Agencies**”). The Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.²

Section 3.9 Subleasing.

(a) In accordance with Section 862(1) of the Act, the Demised Premises shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

- (i) that such occupation of the Demised Premises is reasonably necessary to discourage the proposed sublessee from removing such other plant or facility to a location outside the State, or
- (ii) that such occupation of the Demised Premises is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

(b) The Tenant may not assign the Tenant Lease Agreement or sub-sublease the Demised Premises without the prior written consent of the Agency. Any assignment or sub-sublease shall conform with the restrictions and requirements set forth in Section 9.3 of the Lease Agreement.

Section 3.10 Approval of Tenant Lease Agreement. The Agency hereby approves the subleasing of the Facility by the Company to the Tenant pursuant to the terms of the Tenant Lease Agreement.

Section 3.11 Definitions. All capitalized terms used in this Tenant Agency Compliance Agreement and not otherwise defined herein shall have the meanings

² Cannot be removed or modified; required by GML Section 858-b.

assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

Section 3.12 Execution of Counterparts. This Tenant Agency Compliance Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the Agency and the Tenant have caused this Tenant Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of _____, 20__.

**TOWN OF BROOKHAVEN
INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

[NAME OF ENTITY]

By: _____
Name:
Title: