

THIS AMENDMENT TO LEASE AND PROJECT AGREEMENT, dated as of November 26, 2021 (this “**Amendment**”), is between the **LONG ISLAND AVENUE HOLDING, LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office at 520 Old Country Road West, Hicksville, New York 11802-1818 (the “**Company**”), and 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**”).

RECITALS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 358 of the Laws of 1970 of the State of New York, as amended from time to time (collectively, the “**Act**”), the Town of Brookhaven Industrial Development Agency (the “**Agency**”) was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously provided it assistance to Company, in connection with the acquisition of an approximately 2.05 acre parcel of land located at Long Island Avenue, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 200-703.00-01.00-050.001) (the “**Land**”), the construction of an approximately 15,000 square foot building to be located thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment (the “**Equipment**”; together with the Land and Improvements, the “**Facility**”), to be initially leased by the Agency to the Company and further subleased by the Company to future multiple tenants not yet determined (the “**Tenants**”) for use as warehouse and ancillary office space (the “**Project**”); and

WHEREAS, the Agency previously acquired a leasehold interest in the Land and Improvements pursuant to a certain Company Lease Agreement, dated as of December 1, 2019 (the “**Company Lease**”), by and between the Company and the Agency, and a memorandum of which was recorded on March 25, 2020, in the office of the Suffolk County Clerk in Liber 13053, page 208; and

WHEREAS, the Agency currently subleases the Land and Improvements and leases the Equipment to the Company pursuant to a certain Lease and Project Agreement, dated as of December 1, 2019 (the “**Lease Agreement**”), by and between the Agency, as lessor, and the Company, as lessee, and a memorandum of which was recorded on March 25, 2020, in the office of the Suffolk County Clerk in Liber 13053, page 209; and

WHEREAS, the Company submitted a request to the Agency (1) for the extension of the terms of the Company Lease and the Lease Agreement, (2) for extensions of the date by which the Completion Date (as defined in the Lease Agreement) shall occur, (3) to defer the real estate tax abatement under the Lease Agreement in

accordance with the PILOT Schedule attached hereto as Exhibit A such that the abatement shall commence with the 2024/25 Tax Year, and end at the conclusion of the 2033/34 Tax Year, (4) to defer the dates applicable to the percentages of the amounts to be recaptured of the public benefits conferred by the Agency upon the occurrence of Recapture Events (as defined in the Lease Agreement), and (5) to defer the date by which there shall be created and thereafter maintained full time equivalent employees whose place of employment or workplace is at the Facility (collectively, the “**Requested Relief**”); and

WHEREAS, the Agency by resolution duly adopted on November 17, 2021 (the “**Authorizing Resolution**”), approved the Requested Relief, and the execution and delivery of this Amendment.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, each to the other paid, the receipt whereof and sufficiency of which are hereby acknowledged, and the promises and covenants hereinafter contained, it is agreed as follows:

1. Amendment of Lease Agreement.

a. The last sentence of Section 3.6 of the Lease Agreement is hereby amended in its entirety as of the date hereof as follows:

“The Company agrees that the Completion Date shall be no later than May 30, 2024, except as otherwise extended by the Agency.”

b. Paragraph (b) of Section 4.2 of the Lease Agreement is hereby amended in its entirety as of the date hereof as follows:

“Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate at 11:58 p.m. on November 30, 2034 (the “**Lease Term**”).”

c. Paragraph (c) of Section 5.1 of the Lease Agreement is hereby amended in its entirety as of the date hereof as follows:

“Commencing with the 2024/2025 Tax Year the Company shall pay, as PILOT Payments, the amounts set forth on Exhibit C attached hereto and made a part hereof.”

d. Exhibit C attached to the Lease Agreement is hereby replaced as of the date hereof with Exhibit C attached hereto.

e. Subparagraph (i), (ii), (iii), (iv) and (v) of paragraph (a) of Section 5.4 of the Lease Agreement are hereby amended in their entirety as of the date hereof as follows:

“(i) If there shall occur a Recapture Event after the Closing Date, but on or before December 31, 2026, the Company 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 by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);

(ii) If there shall occur a Recapture Event on or after January 1, 2027 but on or before December 31, 2030, the Company 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 by the Agency, seventy-five percent (75%) of the Recaptured Benefits;

(iii) If there shall occur a Recapture Event on or after January 1, 2031 but on or before December 31, 2032, the Company 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 by the Agency, fifty percent (50%) of the Recaptured Benefits;

(iv) If there shall occur a Recapture Event on or after January 1, 2033 but on or before December 31, 2033, the Company 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 by the Agency, twenty-five percent (25%) of the Recaptured Benefits; and

(v) If there shall occur a Recapture Event on or after January 1, 2034, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits.”

f. The first sentence of Section 8.11 of the Lease Agreement is hereby amended in its entirety as of the date hereof as follows:

g. “The Company hereby agrees to create and maintain at all times at the Facility: thirteen (13) full time equivalent employees as of December 31, 2025 and thereafter throughout the Lease Term, calculated on the basis of 35 hours per week who are employees of the Company or any subsidiary or affiliates of the Company, or any consultants, contractors or subcontractors of the Company, or any subsidiary or affiliates of the Company, whose place of employment or workplace is located at the Facility (including the full time equivalent employees of all tenants at the Facility) (“FTE”).”

h. There is hereby added Section 8.13 to the Lease Agreement immediately after Section 8.12 of the Lease Agreement to read as follows:

“Section 8.13 Compliance with Labor Law Section 224-a.

(a) The Agency hereby informs the Company that, effective January 1, 2022, certain Construction work done under contract in connection with financial assistance from the Agency may be subject to the requirements of Section 224-a, of the Labor Law of the State, including but not limited to the requirement that such Construction shall be subject to prevailing wage requirements of Section 220 and 220-b of the Labor Law of the State. Accordingly, for any Construction that commences on or after January 1, 2022, the Company shall comply with the following requirements:

- (i) The Company shall certify or cause to be certified, under penalty of perjury within five (5) days of commencement of Construction work, to the Commissioner of Labor of the State, whether the Project is subject to the provisions of Section 224-a of the Labor Law. A copy of such certification shall be filed with the Agency no later than ten (10) days after filing with the Commissioner of Labor.
- (ii) The Company may seek guidance from the public subsidy board contained in Section 224-c of the Labor Law, and such board may render an opinion as to whether or not the Project is subject to the requirements of Section 224-a of the Labor Law. A copy of any such opinion of the public subsidy board shall be filed with the Agency no later than ten (10) days after receipt by the Company.
- (iii) The Company shall be responsible for retaining original payroll records in accordance with section two hundred twenty of this article for a period of six years from the conclusion of the Project Work. All payroll records maintained by the Company pursuant to Section 224-a of the Labor Law shall be subject to inspection on request of the Commissioner of Labor. The Company may authorize the prime contractor of the Construction project to take responsibility for retaining and maintaining payroll records, but will be held jointly and severally liable for any violations of such contractor. All records obtained by the Commissioner of Labor shall be subject to the Freedom of Information Law.

(b) The Company shall promptly provide the Agency with such information and documentation with respect to the forgoing as the Agency may from time to time reasonably require."

i. The "Expiration Date" of December 3, 2020 set forth on the first page of first page of the Sales Tax Agent Authorization Letter (Exhibit E to the Lease Agreement) is hereby replaced with November 30, 2024.

2. Lease Agreement Affirmed. Except as expressly amended by this Amendment, the provisions of the Lease Agreement shall remain unchanged, binding and in full force and effect. This Amendment shall be deemed incorporated in and made a part of the Lease Agreement has fully as if set forth therein.

2. Definitions. The words and phrases herein shall have the meanings ascribed thereto in the Lease Agreement unless the context or use indicates another or different meaning or intent.

3. Binding Effect. This Second Amendment 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 Second Amendment 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 Second Amendment 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 Page Follows)

IN WITNESS WHEREOF, the Agency and the Company have caused this Amendment to be executed in their respective names by their duly authorized representatives, all as of the day and year first above written.

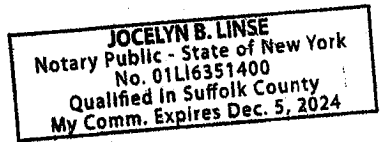
**TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY**

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

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

On the 23rd day of November in the year 2021, 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



IN WITNESS WHEREOF, the Agency and the Company have caused this Amendment to be executed in their respective names by their duly authorized representatives, all as of the day and year first above written.

LONG ISLAND AVENUE HOLDING, LLC

By: Matthew Howe
Name: Matthew Howe
Title: Assistant Manager

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

On the 24th day of November in the year 2021, before me, the undersigned, personally appeared **MATTHEW HOWE**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Kathleen A. Deinger
Notary Public

KATHLEEN A. DEINGER
Notary Public, State of New York
No. 01DE6171749
Qualified in Suffolk County
Commission Expires July 30, 2023

EXHIBIT C

PILOT Schedule

<u>Tax Year</u>	<u>PILOT Amount</u>
2024/25	\$8,050
2025/26	\$8,211
2026/27	\$8,375
2027/28	\$8,543
2028/29	\$8,713
2029/30	\$8,888
2030/31	\$9,065
2031/32	\$9,247
2032/33	\$9,432
2033/34	\$9,620

Thereafter, 100% of all taxes and assessments, including special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be for special improvements or special district improvements, that the Company would pay without exemption as if the Facility was owned by the Company exclusive of the Agency's leasehold interest therein.

In addition, at all times, 100% of all special ad valorem levies, special assessments, special district taxes and service charges levied (or would be levied if the Facility were owned by the Company exclusive of the Agency's leasehold interest therein) against the Facility for special improvements or special district improvements.

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 leasehold interest.

All annual PILOT Payments as described above shall be payable 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 due dates as may be established from time to time by the Agency during the Lease Term.