

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(Brookhaven, New York)

and

THANX M.S. ZORN BLVD., LLC

MS PACKAGING AND SUPPLY CORP.

MICHAEL SAVINO

AND

DANA SAVINO

—

AMENDMENTS

TO

LEASE AGREEMENT AND RECAPTURE AGREEMENT

AND

REAFFIRMATION OF PILOT AGREEMENT

AND AGENCY COMPLIANCE AND GUARANTY AGREEMENT

Town of Brookhaven Industrial Development Agency

(Thanx M.S. Zorn Blvd., LLC / MS Packaging and Supply Corp. Facility)

Dated July 30, 2020

AMENDMENT OF LEASE AGREEMENT AND RECAPTURE AGREEMENT

This AGREEMENT, dated July 30, 2020 (this “**Amendment Agreement**”), is made by and among 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 **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 its principal office at 53 Zorn Boulevard, Yaphank, New York 11980 (the “**Company**”), **MS PACKAGING AND SUPPLY CORP.**, a business corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 53 Zorn Boulevard, Yaphank, New York 11980 (the “**Sublessee**”), **MICHAEL SAVINO**, an individual residing at 915 Lakeside Drive North, Southold, NY 11971 (“**Michael**”), and **DANA SAVINO**, an individual residing at 915 Lakeside Drive North, Southold, NY 11971 (**Dana**”).

RECITALS

WHEREAS, the Town of Brookhaven Industrial Development Agency was created by 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 (collectively, the “**Act**”), with the authority and power to, among other things, acquire, construct and equip a project, provide financial assistance, and mortgage, lease, grant options with respect to and dispose of property; and

WHEREAS, the Agency has previously assisted Thanx M.S. Zorn Blvd., LLC with the acquisition of approximately 10 acres of land, more particularly shown on the Suffolk County Tax Map as District 0200 Section 777 Block 2 Lot 3 (the “**Land**”), the demolition of existing structures thereon, and the acquisition, construction and equipping of an approximately 70,000 square foot building and related improvements thereon (the “**Improvements**”), to be subleased by the Company to, and to be used by, MS Packaging And Supply Corp. for the warehousing and wholesale distribution of paper and packing supplies, corrugated boxes, stretch film, tape, cartons, and related items (the “**Facility**”); and

WHEREAS, the Agency acquired a fee interest in the Land and existing Improvements pursuant to a deed, dated as of September 14, 2014 (the “**Deed** ”), from the Company to the Agency, recorded in the Suffolk County Clerk’s Office on April 4, 2014, in Liber 12769, page 466; and

WHEREAS, the Agency leased the Facility to the Company pursuant to a certain Lease Agreement, dated as of March 1, 2014 (the “**Original Lease Agreement**”), by and between the Agency and the Company, a memorandum of which was recorded in the Suffolk County Clerk’s Office on April 4, 2014, in Liber 12769, page 469; and

WHEREAS, in connection with the acquisition, construction and equipping of the Facility, the Agency, the Company and the Sublessee entered into a certain Payment in Lieu of

Tax Agreement, dated as of March 1, 2014 (the "**PILOT Agreement**"), pursuant to which the Company and the Sublessee agreed to make payments in lieu of taxes on the Facility; and

WHEREAS, in connection with the acquisition, construction and equipping of the Facility, the Agency, the Company and the Sublessee entered into a certain Recapture Agreement, dated as of March 1, 2014 (the "**Original Recapture Agreement**"), pursuant to which the Company and the Sublessee agreed to repay certain benefits, including benefits derived under the PILOT Agreement, sales and use tax exemptions and mortgage recording tax exemptions, upon the occurrence of certain events; the Original Recapture Agreement was recorded in the Suffolk County Clerk's Office on April 4, 2014, in Liber 12769, page 468; and

WHEREAS, in connection with the acquisition, construction and equipping of the Facility, the Agency, the Sublessee, Michael and Dana entered into a certain Agency Compliance and Guaranty Agreement, dated as of March 1, 2014 (the "**Agency Compliance Agreement**"), pursuant to which the Sublessee, Michael and Dana agreed to provide to the Agency certain assurances and guarantees;

WHEREAS, at the request of the Company, the Agency granted to the Company an increase in sales and use tax exemptions pursuant to a certain Amendment to Lease Agreement, dated May 16, 2014 (the "**First Amendment**"), and a certain letter agreement, dated May 16, 2014 (the "**First Letter Agreement**"; together with the Original Lease Agreement and the First Amendment, the "**Lease Agreement**"), both between the Agency and the Company, and in connection therewith, amended the Recapture Agreement by an Amendment to Recapture Agreement, dated May 16, 2014 (the "**First Recapture Amendment**"; together with the Original Recapture Agreement, the "**Recapture Agreement**"), between the Agency and the Company; and

WHEREAS, in connection with the acquisition, construction and equipping of the Facility, the Company and the Agency mortgaged their respective interests in the Facility by entering into a Building Loan Mortgage (the "**2014 Building Loan Mortgage**") and a Collateral Assignment of Leases and Rents (the "**2014 Collateral Assignment of Leases and Rents**"), each dated March 10, 2014, from the Company and the Agency to Suffolk Federal Credit Union (the "**Original Lender**"), securing the principal amount of \$3,000,000 (the "**2014 Loan**"); and

WHEREAS, the 2014 Loan was refinanced with the Original Lender, and in connection therewith, the Company and the Agency mortgaged their respective interests in the Facility by entering into a Mortgage (the "**2015 Mortgage**") and a Collateral Assignment of Leases and Rents (the "**2015 Collateral Assignment of Leases and Rents**"), each dated September 22, 2015, from the Company and the Agency to the Original Lender, securing the principal amount of \$3,000,000 (the "**2015 Loan**"); and

WHEREAS, simultaneous herewith, the Company is financing or refinancing the 2015 Loan with Island Federal Credit Union (the "**2020 Lender**"), with respect to the Facility in the aggregate principal amount of \$6,500,000.00 (the "**2020 Loan**"); and

WHEREAS, as security for such 2020 Loan being made to the Company by the 2020 Lender, the Agency is joining with the Company in executing and delivering to the 2020 Lender

a Mortgage and Security Agreement in the principal amount \$6,500,000.00 (the "2020 Mortgage"), and other loan documents (together with the 2020 Mortgage, the "2020 Loan Documents"); and

WHEREAS, the proceeds of the 2020 Loan will be used to satisfy the 2015 Mortgage, in the approximate principal amount of \$2,660,00.00, together with accrued and unpaid interest thereon, and the amounts in excess thereof (the "Excess Proceeds") will be used thereafter to purchase land, and a building and other improvements thereon, or to purchase land and to construct a building and other improvements thereon, in the Town of Brookhaven, for lease to, and use by, the Sublessee for the warehousing and wholesale distribution of paper and packing supplies, corrugated boxes, stretch film, tape, cartons, and related items, all in compliance with applicable law; and

WHEREAS, in connection with the granting of the 2020 Mortgage, the Agency will provide financial assistance to the Facility, consistent with the policies of the Agency, by allowing and assisting in the creation of the 2020 Mortgage, consistent with the Agency's uniform tax exemption policy, in the form of exemption from mortgage recording tax thereon;

NOW THEREFORE, THE PARTIES, IN CONSIDERATION OF ONE DOLLAR (\$1.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, EACH TO THE OTHERS PAID, RECEIPT WHEREOF AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, MUTUALLY AGREE AS FOLLOWS:

1. Definitions. The words and phrases herein not otherwise defined herein shall have the meanings assigned thereto in the Lease Agreement.

2. References. All references in the Lease Agreement to "this Lease", "this Lease Agreement" or "the Lease Agreement", or in the Recapture Agreement to "this Recapture Agreement" or "the Recapture Agreement", or words of similar import, and the terms "hereby", "hereof", "hereto", "herein", "hereunder", "thereby", "thereof", "thereto", "therein", "thereunder" and any similar terms as used in any such instrument or agreement shall be deemed to refer to such instrument or agreement as amended, modified, supplemented and assigned by this Assignment, Assumption and Amendment Agreement.

3. Representations.

a. The Company repeats, reiterates and confirms each of its representations contained in the Lease Agreement as of the date hereof, and as fully as if set forth herein at length.

b. The Sublessee, Michael and Dana each repeat, reiterate and confirm their respective representations contained in the Agency Compliance Agreement as of the date hereof, and as fully as if set forth herein at length.

c. The Company, the Sublessee, Michael and Dana represent and warrant that:

i. No event has occurred or is continuing that immediately or with the lapse of time, or with notice, or both, constitutes a default under the Lease Agreement, the PILOT Agreement, the Recapture Agreement or the Agency Compliance Agreement.

ii. 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.

iii. The transactions contemplated by this Agreement shall not result in the removal of any facility or plant of any Facility occupant(s) from one area of the State to another area of the State or in the abandonment of one or more facilities or plants of the Facility occupant(s) located within the State.

iv. There is no action or proceeding pending or, to the best of the Company's, Sublessee's, Michael's and Dana's knowledge, after diligent inquiry, threatened, by or against the Company, Sublessee, Michael or Dana, by or before any court or administrative agency that would adversely affect the ability of the Company, Sublessee, Michael or Dana, to perform their respective obligations under the Lease Agreement, the PILOT Agreement, the Recapture Agreement, or the Agency Compliance Agreement, as amended by this Amendment Agreement.

4. The Lease Agreement is hereby amended as of the date hereof as follows:

a. The definition of "Assignment of Rents and Leases" set forth in Article I of the Lease Agreement is amended to replace "March 10, 2014" with "July 30, 2020."

b. The subprovision (i) of the definition of Bank set forth in Article I of the Lease Agreement is amended to read as follows:

ISLAND FEDERAL CREDIT UNION, with an office for the transaction of business located at 120 Motor Parkway, Hauppauge, New York 11788;

c. The definition of "Mortgage" set forth in Article I of the Lease Agreement is amended to read as follows:

"Mortgage" means the Mortgage and Security Agreement, dated July 30, 2020, executed and delivered by the Agency and the Company to the Bank on the date thereof creating a first Lien on the Facility, subject only to Permitted Encumbrances, as security for payment of the Note and other Indebtedness due the Bank, and such additional, supplemental and substitute mortgages and security agreements thereafter executed and delivered by the Agency, at the request of the Company, and/or the Company, creating, modifying, extending or supplementing any Lien or Liens on or with respect to the Facility or any portion thereof.

d. The definition of "Note" set forth in Article I of the Lease Agreement is amended to read as follows:

"Note" means the Commercial Mortgage Note, dated July 30, 2020, executed and delivered by the Company to the Bank, evidencing the indebtedness to the Bank in the amount of \$6,500,000.00 together with interest thereon and other charges and obligations thereunder; "Note" shall also mean any additional, supplemental and substitute note or notes evidencing, individually or collectively, Indebtedness

to the Bank.

e. The definition of "Subtenant" set forth in Article I of the Lease Agreement is amended to read as follows:

"Subtenant" or "Sublessee" means MS Packaging and Supply Corp.

f. Section 4.2 of the Lease Agreement is hereby amended by inserting at the beginning of the first sentence thereof, "(a)", and inserting at the end of Section 4.2 additional subparagraphs (b) and (c) as follows:

(b) Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law. The Agency hereby grants to the Company exemption from mortgage recording taxes for the 2020 Mortgage, securing an aggregate principal amount not to exceed \$6,500,000.00 (the "**2020 Mortgage Recording Tax Exemption**"). The Company represents and warrants (1) that the real property secured by the 2020 Mortgage is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the 2020 Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

(c) The proceeds of the 2020 Loan shall be used solely for the following purposes on or before August 1, 2023: (i) to satisfy the 2015 Mortgage in the approximate principal amount of \$2,660,000.00, together with accrued and unpaid interest thereon, and (ii) the amount of the 2020 Loan in excess thereof, that is, the Excess Proceeds, to purchase land, an approximately 100,000 square foot building, but not less than 90,000 square foot building, and other improvements thereon, or to purchase land and to construct an approximately 100,000 square foot building, but not less than a 90,000 square foot building, and other improvements thereon, in the Town of Brookhaven, for lease to, and to be used and occupied solely by, the Subtenant for at least one year following the completion of such purchase and, if applicable, construction, for the warehousing and wholesale distribution of paper and packing supplies, corrugated boxes, stretch film, tape, cartons, and related items, all in compliance with applicable law (collectively, the "**2020 Loan Purposes**").

(d) Recapture of 2020 Mortgage Recording Tax Exemption.

1. It is understood and agreed by the parties hereto that the Agency is providing the 2020 Mortgage Recording Tax Exemption in order to provide financial assistance to the Company for the Facility and to accomplish the Public Purposes of the Act. In consideration therefor, the Company hereby agrees if there shall occur a 2020 Mortgage Recording Tax Exemption Event (as defined below), 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 2020 Mortgage Recording Tax Exemption Recaptured Benefits (as defined below);

2. The term **“2020 Mortgage Recording Tax Exemption Recaptured Benefits”** shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the 2020 Loan contemplated herein, that is, the amount equal to 100% of the 2020 Mortgage Recording Tax Exemption; which 2020 Mortgage Recording Tax Exemption Recaptured Benefits from time to time shall upon the occurrence of a 2020 Mortgage Recording Tax Exemption Recapture Event in accordance with the provisions of subsection (3) below and the declaration of a 2020 Mortgage Recording Tax Exemption Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

3. The term **“2020 Mortgage Recording Tax Exemption Recapture Event”** shall mean any of the following events that occur prior to the complete fulfilment of the 2020 Loan Purposes:

a. The occurrence of an Event of Default under the Lease Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

b. The occurrence of a default under the PILOT Agreement, the Recapture Agreement or the Agency Compliance Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder.

4. In the event any payment owing by the Company under this Section 4.2(d) 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 one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company 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).

5. The Company shall pay to the Agency all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 4.2(d).

g. Article VIII of the Lease Agreement is hereby amended by inserting at the end thereof the following:

Section 8.16 Publicity. The Company hereby irrevocably authorizes the Agency, and represents that the Subtenant has irrevocably authorized the Agency, without further notice or consent, to use the Company’s or the Subtenant’s name and logo and photographs related to the Facility in its advertising, marketing and

communications materials. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Agency also has the right to publicize its involvement in the Project.

h. Article VIII of the Lease Agreement is hereby amended by inserting at the end thereof the following:

Section 8.16 Annual Compliance Certificate. The Company shall deliver to the Agency each year no later than January 15th, a certificate signed by an Authorized Representative of the Company in the form attached hereto as Exhibit D, together with all attachments referenced therein.

i. Section 13.2 of the Lease Agreement is hereby amended by replacing the address for the Bank with the following:

To the Bank:
Island Federal Credit Union
120 Motor Parkway
Hauppauge, New York 11788.

5. Paragraph (b) of the Recapture Agreement is hereby amended as of the date hereof as follows:

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,

(i) mortgage recording tax exemption with respect to the Facility on mortgages granted by the Agency, provided, however, if solely by reason of the Company's failure to completely fulfill the 2020 Loan Purposes by August 1, 2023, a Recapture Event occurs, then for purposes of the amount to be paid as a return of public benefits, the Recaptured Benefits shall be limited to the amount of the 2020 Mortgage Recording Tax Exemption,

(ii) sales or use tax exemptions, and

(iii) 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.

6. This Amendment of Lease shall be deemed incorporated in and made a part of the Lease Agreement and the Recapture Agreement, as applicable, as fully as if set forth therein at length.

7. Except as expressly amended by this Amendment Agreement, the parties hereto approve, ratify and confirm the Lease Agreement, the PILOT Agreement, the Recapture Agreement and the Agency Compliance Agreement, each of which shall remain unchanged, binding and in full force and effect.

8. This Amendment 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.

9. This Amendment 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.

10. This Amendment 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, the Company, the Sublessee, Michael and Dana have caused this Amendment to Lease Agreement to be executed in their respective names as of the date and year first above written.

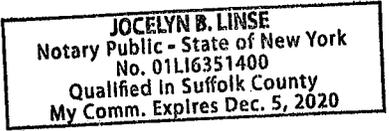
**TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY**

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

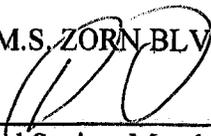
STATE OF NEW YORK)
 : SS.:
COUNTY OF SUFFOLK)

On the 28th day of July 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



THANX M.S. ZORN BLVD., LLC

By: 
Michael Savino, Member

MS PACKAGING AND SUPPLY CORP.

By: 
Michael Savino, President


MICHAEL SAVINO

DANA SAVINO

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

On the 23rd day of July in the year 2020, 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
WILLIAM M. MAHONEY
Notary Public, State of New York
No. 01MA6140569
Qualified in Suffolk County
Commission Expires Jan. 30, 2022

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

On the 23rd day of July in the year 2020, before me, the undersigned, personally appeared DANA 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

Signature Page 2 of 2
Amendment Agreement

WILLIAM M. MAHONEY
Notary Public, State of New York
No. 01MA6140569
Qualified in Suffolk County
Commission Expires Jan. 30, 2022

EXHIBIT D

COMPLIANCE CERTIFICATE

[_____] , being duly sworn, deposes and says:

1. That s/he is the duly appointed [_____] of [_____] , a [_____] duly organized and existing under the laws of the State of [_____] , having its office at [_____] , New York (the "Company").

2. That the Company has previously entered into a straight-lease transaction with the [_____] Industrial Development Agency pursuant to a certain Company Lease Agreement, dated as of [_____] 1, 20[] (the "Company Lease") whereby the Company leased the Facility (as such term is defined in the hereinafter defined Lease Agreement) to the Agency, and a Lease and Project Agreement, dated as of [_____] 1, 20[] (the "Lease Agreement"), whereby the Agency subleased and leased the Facility to the Company.

3. That the Company is not in default under the Lease Agreement and that no Event of Default exists under this Lease Agreement or any other Company Document (as such term is defined in the Lease Agreement).

4. That there is no action or proceeding pending or, to the best of the Company's knowledge, after diligent inquiry, threatened, by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under the Lease Agreement or any other Company Document.

5. That the Company has not received written notice of default in payment of any taxes, PILOT Payments, sewer rents or water charges which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

6. That there are no mechanics liens or other liens by reason of any labor, services or materials on the Facility, except in compliance with the provisions in the Lease Agreement.

7. That there are no municipal violations outstanding on the premises.

8. That attached hereto as Appendix A hereto are copies of the certificates of insurance required to be provided to the Agency pursuant to Sections 6.4 and 6.5 of the Lease Agreement.

9. That attached hereto as Appendix B hereto is a certified statement of the Company and documentation (i) enumerating the FTE (as such term is defined in the Lease Agreement) 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.

10. That attached hereto as Appendix C is a copy of the Form NYS-45 filed with respect to the New York State Department of Labor.

11. That attached hereto as Appendix D hereto is a copy of the ST-340 filed with the New York State Department of Taxation and Finance in compliance with Section 874(8) of the General Municipal Law evidencing the annual value of all sales and use tax exemptions claimed in connection with Facility.

By:

Name:

Title:

Subscribed and sworn to before
me this ___ day of _____, 201[]

Notary Public

Appendix A

Insurance Certificates

Appendix B

Certified Statement and Documentation Regarding FTEs

Appendix C

Form NYS-45

Appendix D

Form ST-340

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(Brookhaven, New York)

and

THANX M.S. ZORN BLVD., LLC

LEASE AGREEMENT

Town of Brookhaven Industrial Development Agency

(Thanx M.S. Zorn Blvd., LLC / MS Packaging and Supply Corp. Facility)

Dated as of March 1, 2014

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Exhibit B -	Equipment
Exhibit C -	Compliance with Labor Law, Executive Law and Civil Rights Law

LEASE AGREEMENT, dated as of March 1, 2014, by and between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly organized and existing under the laws of the State of New York, maintaining an office at 1 Independence Hill, Farmingville, New York 11738 (the "Agency"), and THANX M.S. ZORN BLVD., LLC, a limited liability company duly organized and existing under the laws of the State of New York, maintaining a place of business at 50-1 Industrial Way, Rocky Point, New York 11778 (the "Company").

RECITALS

WHEREAS, the Town of Brookhaven Industrial Development Agency (the "Agency") was created by 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 (collectively, the "Act"), with the authority and power to, among other things, acquire, construct and equip a project, provide financial assistance, and mortgage, lease, grant options with respect to and dispose of property; and

WHEREAS, the Company has submitted to the Agency a proposal for the Agency to acquire from the Company approximately 10 acres of land located at Zorn Boulevard, Yaphank, New York (SCTM # 0200-777.00-02.00-003.000) (the "Land") and acquire, construct and equip a proposed approximately 70,000 square foot building and related improvements thereon (the "Facility"), for the Agency to lease the Facility to the Company with an obligation of the Company to purchase same, for the Company to sublease the Facility to MS Packaging and Supply Corp., to grant mortgage liens thereon and security interests therein, and for the Agency to provide financial assistance within the meaning of the Act; and

WHEREAS, on January 15, 2014, the Agency adopted its authorizing resolution, which resolution was duly amended by the Agency on February 19, 2014, by which, among other matters, the Agency determined that the action relating to the acquisition, construction, equipping and operation of the Facility is an "unlisted" action, as that term is defined in the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law) and will not have a "significant effect" on the environment and, therefore, an environmental impact statement will not be prepared, such determination constituting a negative declaration for purposes of said law, determined to proceed under the provisions of the Act to acquire, construct, equip, repair and maintain the Facility, lease the Facility to the Company (with an obligation to purchase), and to provide "financial assistance" within the meaning of the Act to the Company, including straight leases, and exemptions from taxation in accordance with Section 874 of the Act; and

WHEREAS, a public hearing (the "Hearing") was held on January 2, 2014, so that all persons with views in favor of, or opposed to either the financial assistance contemplated by the Agency or the location or nature of the facility, could be heard; and

WHEREAS, the acquisition, construction and equipping of the Facility, the leasing of the Facility to the Company, with an obligation to purchase, the providing of financial assistance to the Company within the meaning of the Act, and the granting of mortgages on, and security interests in, the Facility, will promote and maintain the job opportunities, health, general prosperity

and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

WHEREAS, the Agency has approved the location of the site of the Facility; and

WHEREAS, the Facility shall be the acquisition, construction and equipping constituting an industrial development facility within the meaning of the Act and located at Zorn Boulevard, Yaphank, Suffolk County, New York to be used as an office, warehouse and commercial facility; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to construct and equip the Facility in accordance with the Plans and Specifications as approved by the Agency and the Bank (as hereinafter defined); and

WHEREAS, the Agency proposes to lease the Facility to the Company, with an obligation of the Company to purchase the Facility, and the Company desires to rent and acquire the Facility from the Agency, upon the terms and conditions hereinafter set forth in this Lease Agreement.

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I DEFINITIONS

The following words and terms as used in this Lease Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent:

“Act” means Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended from time to time, together with Chapter 358 of the Laws of 1970 of the State of New York, as amended from time to time.

“Agency” means the (i) Town of Brookhaven Industrial Development Agency and its successors and assigns, and (ii) a public benefit corporation or political subdivision resulting from or surviving any consolidation or merger to which the Agency or its successors may be a part.

“Agency Compliance and Guaranty Agreement” means that certain Agency Compliance and Guaranty Agreement, dated as of March 1, 2014, between the Agency and MS Packaging and Supply Corp., Michael Savino and Dana Savino.

“Agency Counsel” means the law firm of Weinberg, Gross & Pergament LLP, or another attorney or firm of attorneys selected by the Agency from time to time.

“Agency Fee” means the fees of the Agency, as prescribed from time to time by the Agency, to be paid by the Company or Guarantor based upon the costs and expenses of the acquisition, demolition, renovations, construction and equipping of the Facility or the administrative regulatory efforts and responsibilities. In addition, the Agency Fee shall include an annual administrative fee (the “PILOT Administrative Fee”) in such amounts as may be prescribed and determined by the Agency from time to time on account of administering the PILOT Agreement; such amounts shall be in addition to, and not in limitation of, such interest, penalties, expenses and other charges as may be prescribed or provided pursuant to the PILOT Agreement, this Lease Agreement or otherwise, or applicable by reason of or in connection with the failure of the Company to comply with the PILOT Agreement in any respect.

“Application” means that certain application of the Company and/or others to the Agency for financial assistance in connection with the Facility, dated April 1, 2013, as amended and supplemented.

“Assignment of Rents and Leases” means the Assignment of Rents and Leases, dated March 10, 2014, executed and delivered by the Company to the Bank, assigning, conveying and transferring to the Bank rights in and to certain leases and rents thereunder as security for the Note and other Indebtedness due the Bank, and such additional, supplemental and substitute assignments of rents and leases thereafter executed and delivered by the Company, creating, modifying, extending or supplementing any assignment of rents or leases on or with respect to the Facility or any portion thereof.

“Authorized Representative” means, in the case of the Agency, the Chairman, Vice Chairman, any Member of the Board of the Agency, or the Chief Executive Officer; in the case of the Company, any member; and in the case of both, such additional persons as, at the time, are designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the other and to the Bank, containing the specimen signature of each such person and signed on behalf of (i) the Agency by the Chairman or the Chief Executive Officer, or (ii) the Company by any member.

“Bank” shall mean, collectively and severally, (i) Suffolk Federal Credit Union, 3681 Horseblock Road, Medford, New York 11763, (ii) any of the successors or assigns of the foregoing, or (iii) any surviving, resulting or transferee banking association or corporation authorized to do business in the State; however, each of the foregoing shall be a “Bank” only during such period that the Person shall hold a mortgage lien on, or a security interest in, the Facility or any portion thereof.

“Closing Date” means the date of the execution and delivery of this Lease Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, and the final, temporary and proposed regulations of the Department of the Treasury promulgated thereunder.

“Company” means Thanx M.S. Zorn Blvd., LLC , a limited liability company duly organized and existing under the laws of the State of New York and its successors and assigns.

“Company Member” means collectively or individually Michael Savino or Dana Savino, each a member of the Company.

“Completion Date” means, as to the Facility, the date of completion of the acquisition, construction and equipping of the Facility, as certified to pursuant to Section 4.3 of this Lease Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

“Construction Period” means, with respect to the Facility, the period (i) beginning on the earlier of the date of commencement of acquisition, construction and equipping of the Facility, or the Closing Date with respect to this Lease Agreement, and (ii) ending on the Completion Date with respect to the Facility.

“Equipment” means all machinery, equipment and other personal property acquired by the Company as agent for the Agency, and used and to be used in connection with the Project or the Land, with such additions thereto and substitutions therefor as may exist from time to time in accordance with the provisions of this Lease Agreement.

“Expiration Date” means November 30, 2025.

“ERISA” means the Employment Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

“Facility” means the Land, Project and Equipment leased to the Company hereunder and to be located at Zorn Boulevard, Yaphank, Suffolk County, New York (SCTM # 200-777.00-02.00-003.000).

“Guarantors” mean collectively or individually each Company Member, each shareholder of the Subtenant, and the Subtenant.

“Indebtedness” means any and all loans, advances, debts and other obligations.

“Independent Counsel” means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Agency, the Company, the Subtenant, or the Bank.

“Independent Engineer” means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of the State and not a full time

employee of the Agency, or the Company and selected by the Company and acceptable to the Agency and the Bank.

“Labor Laws” means Section 220 of the New York Labor Law and any other labor or similar laws of the State of New York.

“Land” means the interest in real estate leased pursuant to this Lease Agreement and more particularly Exhibit A attached hereto.

“Lease Agreement” means this Lease Agreement, dated as of March 1, 2014, by and between the Agency and the Company, as the same may be amended from time to time.

“Lease Term” means the duration of the leasehold estate created in this Lease Agreement as specified in Section 5.3 hereof.

“Lien” means any interest in Property securing an obligation owed to a Person whether such interest is based on the common law, statute or contract, and including the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, easements, rights of way, covenants conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar encumbrances, affecting real property. For the purposes of this Lease Agreement, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Loan Documents” means, collectively, the Mortgage, the Assignment of Rents and Leases, the Note and other documents executed and delivered to the Bank in connection with the Indebtedness to the Bank.

“Mortgage” means the Building Loan Mortgage, dated March 10, 2014, executed and delivered by the Agency and the Company to the Bank on the Closing Date creating a first Lien on the Facility, subject only to Permitted Encumbrances, as security for payment of the Note and other Indebtedness due the Bank, and such additional, supplemental and substitute mortgages and security agreements thereafter executed and delivered by the Agency, at the request of the Company, and/or the Company, creating, modifying, extending or supplementing any Lien or Liens on or with respect to the Facility or any portion thereof.

“Net Proceeds” means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such gross proceeds.

“Note” means the Note, dated March 10, 2014, executed and delivered by the Company to the Bank, evidencing the indebtedness to the Bank in the amount of \$3,000,000.00 together with interest thereon and other charges and obligations thereunder; “Note” shall also

mean any additional, supplemental and substitute note or notes evidencing, individually or collectively, Indebtedness to the Bank.

“PILOT Agreement” means that certain Payment-In-Lieu-of-Tax Agreement, dated as of March 1, 2014, by and among the Agency, the Company and the Subtenant, as same may be amended from time to time.

“Permitted Encumbrances” means (i) this Lease Agreement, any sublease entered into in accordance with this Lease Agreement, (ii) utility, access and other easements and rights of way, restrictions and exceptions that do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (iii) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens to the extent permitted by Section 8.9(b) hereof, (iv) Liens for taxes at the time not delinquent, (v) exceptions set forth in the policy of title insurance under Section 3.2 hereof, and (vi) such other encumbrances to which the Agency expressly consents in writing.

“Person” includes natural persons, sole proprietorships, firms, associations, limited liability companies, partnerships (including limited partnerships), joint ventures, trusts, associations, corporations and other legal entities or government (whether Federal, state, county, city, municipal, town, village or otherwise, including any instrumentality, division, agency, body or department thereof).

“Plans and Specifications” means the plans and specifications for the Facility satisfactory to the Agency and the Bank prepared by an architect and/or engineer and approved by the Company, the Agency and the Bank, as the same may be implemented and detailed from time to time and as the same may be revised from time to time with the approval of the Company, the Agency and the Bank.

“Prime Rate” means the rate of interest established from time to time by Bank, or such other lending institution as may be selected by the Agency from time to time, as its “Prime Rate.”

“Project” means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land, and (ii) not part of the Equipment, all as same may exist from time to time.

“Property” means any interest of any kind in any property or asset, whether real, personal or mixed, or tangible or intangible.

“Recapture Agreement” means that certain Recapture Agreement, dated as of March 1, 2014, by and among the Agency, the Company and the Subtenant.

“SEQR Act” means the State Environmental Quality Review Act and the regulations thereunder.

“Sublease” means that certain sublease agreement, dated as of March 1, 2014 by and between the Company and the Subtenant pursuant to which the entire Facility is subleased by the Company to the Subtenant.

“Subtenant” means MS Packaging and Supply Corp.

“State” means the State of New York.

“Title Insurance” or “Title Policy” means the title insurance policy referred to in Section 3.2 of this Lease Agreement.

The word “shall” is mandatory; the word “may” is permissive.

Any reference in this Agreement, by name or number, to a government department, agency, statute, regulation, program, or form, shall include any successor or similar department, agency, statute, regulation, program or form.

Except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Lease Agreement shall include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other genders; (ii) references herein to “Sections,” “Exhibits” and “Schedules,” without reference herein to this document, are to designated sections, exhibits and schedules to this Lease Agreement; (iii) “including,” “included” and words of similar import are deemed followed by “but not limited to”; (iv) the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease Agreement as a whole and not to any particular provision, (v) the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Lease Agreement, and (vi) “or” is not exclusive.

ARTICLE II REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Facility will constitute a “project”, as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute and deliver this Lease Agreement.

(b) The Agency will accept from Company the Land, lease the Facility (when and as acquired or constructed) to the Company pursuant to this Lease Agreement, permit the Project to be constructed by the Company and the Equipment to be acquired and installed in the Project or elsewhere on the Land, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and improve their standard of living.

(c) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default under any of the foregoing.

(d) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to locate the Facility in the Town of Brookhaven, Suffolk County, State of New York.

(e) On January 2, 2014, following publication of notice of public hearing, the Agency held a public hearing on the transactions contemplated hereby.

(f) By resolution adopted on January 15, 2014, the Agency accepted the application of the Company, approved the undertaking of the Facility, and authorized all parties to proceed with the transactions contemplated hereby; the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the Company relating to the Facility, the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act.

(g) By resolution, adopted on January 15, 2014, as amended by resolution adopted on February 19, 2014, the Agency authorized the execution and delivery of this Lease Agreement, the Mortgage, the PILOT Agreement, the Recapture Agreement, and such other instruments as may be necessary or desirable in connection with the transactions contemplated hereby.

Section 2.2 Representations and Covenants of the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is duly organized and validly existing under the laws of the State and has full legal right, power and authority to execute, deliver and perform this Lease Agreement and by proper company action has been duly authorized to execute, deliver and perform this Lease Agreement.

(b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease Agreement, the Sublease, the Mortgage, the Assignment of Leases and Rents, any of the other Loan Documents, the PILOT Agreement, or the Recapture Agreement, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which the Company is bound or will constitute a default under any of the foregoing, or constitute a violation of any law or ordinance or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company other than the Lien created by the Mortgage.

(c) The Lease Agreement, the Sublease, the Loan Documents, the PILOT Agreement, and the Recapture Agreement, constitute legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms.

(d) The Agency Compliance and Guaranty Agreement constitutes legal, valid and binding obligations of the Guarantors, enforceable against the Guarantors in accordance with its terms.

(e) The sole members of the Company are Michael Savino and Dana Savino and the sole shareholders of the Subtenant are Michael Savino and Dana Savino.

(f) The acquisition, construction and equipping of the Facility, the leasing by the Agency to the Company with an obligation to purchase the Facility, and the providing by the Agency of financial assistance and assistance with the financing of the Facility will induce the Company and the Subtenant to locate the Facility in the Town of Brookhaven, Suffolk County, thereby increasing employment opportunities and promoting the welfare of the inhabitants, will not result in the removal of another facility from one area of the State to another area of the State or the abandonment of one or more facilities of the Company or the Subtenant located in the State unless, as represented by the Company in its application to the Agency, the Company or the Subtenant will be forced to proceed with respect to the Facility in order to maintain its competitive position in its industry.

(g) The transactions contemplated hereby are reasonably necessary to induce the Company to maintain and expand its operations within the State of New York, and to preserve the competitive position of the Company.

(h) The Facility is and will continue to be a “project” as such quoted term is defined in the Act, the Company will not take any action, or fail to take any action, which would cause the Facility not to constitute a “project” as such quoted term is defined in the Act.

(i) The Facility and the operation thereof will conform with all, and will not result in the violation of any, applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility.

(j) The Facility conforms with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local use plans for the area in which the Facility is located.

(k) The Facility shall not be used for retail sales (“retail sales” shall include the meaning ascribed thereto in New York General Municipal Law §875).

(l) The Company, as tenant, and Subtenant, as subtenant, will be the sole occupants and users of all portions of the Facility.

(m) A true and complete original counterpart of the Sublease has been delivered to the Agency, and the Sublease shall not be terminated, modified or amended without the express consent of the Agency.

(n) The Company acknowledges and agrees that the Facility and the interest therein to be conveyed by the Lease Agreement, are not “Property” as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the interests therein are securing the financial obligations of the Company, and that the Facility and the

leasehold interest therein have been pledged to secure the Indebtedness of the Company to the Bank. The Facility and the interests therein secure the Company's obligations to the Agency under the PILOT Agreement, the Recapture Agreement, and this Lease Agreement, including the Company's obligation to indemnify and hold harmless the Agency.

(o) No representation or warranty by or on behalf of the Company herein nor any statement, certificate or application (including the Application) furnished or to be furnished by or on behalf of the Company to the Agency in connection herewith or in connection with the transactions contemplated hereby, contain nor will contain any untrue statement of a material fact nor will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE III
FACILITY SITE AND TITLE INSURANCE
AND SUBORDINATION OF LEASE AGREEMENT

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) all of the interest in real property, including any buildings, structures or improvements thereon, described in Exhibit A attached hereto, and (ii) all Equipment described in Exhibit B hereto. Title to such real property and any interests described in such Exhibit A, including such real property as may subsequently be conveyed to the Agency as part of the Project, and Equipment described in Exhibit B, together with all substitutions, additions, and replacements of or to the items described in Exhibit A and Exhibit B, attached hereto, and all such other property and interest as set forth in this Section 3.1, vested in the Agency, shall be good and marketable and free and clear of all Liens except for Permitted Encumbrances and shall be sufficient for the purposes intended by this Lease Agreement. Without limiting the generality of the Company's obligations under this Lease Agreement, the Company shall defend, indemnify and hold the Agency harmless from any claim, suit, action, proceeding, obligation, damage, liability, judgment, cost or expense, including legal fees and expenses, arising out of a defect in title or a Lien adversely affecting the Facility and shall pay all expenses incurred by the Agency in defending any action respecting title to or a Lien affecting the Facility.

Section 3.2 Title Insurance. The Company has obtained or will obtain title insurance for the benefit of the Agency in an amount equal to \$4,350,000.00 insuring title to the Land with such exceptions therein as may be acceptable to the Agency.

Section 3.3 Subordination of Lease Agreement.

(a) The encumbrance created by this Lease Agreement shall in all respects be subject and subordinate to the lien of the Mortgage.

(b) Any and all subleases created under this Lease Agreement shall in all respects be subject and subordinate to the lien of the Mortgage.

ARTICLE IV
ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE FACILITY;
GRANT OF THE MORTGAGE

Section 4.1 Acquisition, Construction and Equipping of the Facility.

(a) The Company shall, on or before February 28, 2016, at the Company's sole cost, expense and effort, promptly, diligently and expeditiously construct the Project on the Land in accordance with the Plans and Specifications, and acquire and install the Equipment in the Project or elsewhere on the Land in accordance with the Plans and Specifications.

(b) The Company, with the approval of the Agency and the Bank, may revise the Plans and Specifications from time to time.

(c) Title to all materials, equipment, machinery and other items of Property intended to be incorporated or installed in the Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title to the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) The Agency may enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

(e) The Agency hereby appoints the Company and the Subtenant its true and lawful agent, and the Company and the Subtenant hereby accept such agency to acquire, construct and equip the Facility in accordance with the Plans and Specifications on behalf of the Agency (but at sole cost and expense of the Company and the Subtenant), with the authority to delegate its status as agent of the Agency to the Company's or the Subtenant's agents, subagents, contractors, subcontractors, suppliers, vendors and other parties as the Company may choose. This appointment includes the following activities as same relate to the acquiring, constructing and equipping of the Facility, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquiring, constructing and equipping the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description in connection with acquiring, constructing and equipping the Facility, (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Facility, including all repairs and replacements of such property, (iv) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things that be requisite or proper, all for acquiring, constructing, furnishing, equipping, improving and installing the Facility and the additional items contemplated by Section 6.2 hereof with the same powers and with the same validity as the Agency could do if acting on its own behalf, (v) to pay all fees, costs and expenses incurred in the construction of the Project and the acquisition and installation of the Equipment from funds made available therefor in accordance with this Lease Agreement, and (vi) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other

demands whatsoever which may be due, owing and payable the Agency under the terms of any contract, order, receipt, or writing in connection with construction and completion of the Project and the acquisition and installation of the Equipment and to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This appointment shall expire upon the earliest of (a) February 28, 2016, (b) completion of the initial construction and equipping of the Facility, or (c) the date on which the Company and the Subtenant, collectively, receive in the aggregate exemptions from sales and use taxes on the acquisition, construction and equipping of the Facility, including the acquisition of fixtures, furniture and equipment to be installed or used in or at the Facility, \$190,000.00. This agency appointment expressly excludes the Company and the Subtenant from purchasing motor vehicles, including cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles, for use on public highways or streets. Without limiting the generality of the Company's obligations under this Lease Agreement, the Company shall forever defend, indemnify and hold harmless the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them and anyone for whose acts or omissions the Agency or any of them may be liable, from and against any and all claims, demands, actions, suits, litigation, proceedings, damages, losses, liabilities, obligations, penalties, fines, defenses, judgments, costs, disbursements or expenses (including reasonable attorneys' and experts' fees, expenses and disbursements, and attorneys fees incurred to enforce the terms, conditions and provisions of this agreement) of whatever kind or nature arising, directly or indirectly, out of, any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Facility, or are in any manner otherwise payable directly or indirectly in connection with the Facility.

(f) The Company shall cooperate, and shall cause the Subtenant, and all other agents, project operators and other persons that shall enjoy, directly or indirectly, the state sales and use tax exemption benefits provided by the Agency, whether pursuant to the immediately preceding paragraph, that certain sales tax exemption letter, dated January 14, 2014, between the Agency and the Company and the Subtenant, or otherwise, as a condition precedent to receiving or benefitting from such sales and use exemption benefits, to cooperate, and to undertake in writing satisfactory to the Agency to cooperate, with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such state sales and use exemptions benefits (and shall promptly pay over any such amounts to the Agency that the Agency requests) taken or purported to be taken by the Company or any other such person to which any of them is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where any of such persons failed to comply with a term or condition to use property or services in the manner required by the Agency or applicable law. The provisions of paragraph 3 of Section 875 of the General Municipal Law of the State of New York are hereby incorporated in, and made a part hereof, and the Company shall comply, and shall cause the Subtenant, and all other agents, project operators and other persons and entities to comply, and to undertake in writing satisfactory to the Agency to comply, with the provisions of such law, and all regulations and directives promulgated thereunder.

(g) The Company, as agent for the Agency, shall comply with all provisions of the Labor Laws applicable to the construction of the Facility. The Company shall include in all construction contracts all provisions which may be required to be inserted therein by the Labor Laws applicable to the construction of the Facility. The provisions of this subsection do not

create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 4.2 Grant of Mortgage and Other Security. In order to provide funds for payment of the costs and expenses of acquiring, constructing and equipping the Facility, together with other payments and incidental expenses in connection therewith, at the request of the Company, the Agency may grant from time to time to the Bank a mortgage lien or mortgage liens and security interest or interests, in form and substance satisfactory to the Agency, on or in the Facility or a part thereof in favor of the Bank as security for the obligations of the Company, including the Note, arising out of the acquisition, construction and equipping of the Facility by the Company, provided that such mortgage or mortgages and other security devices shall be without recourse to the Agency, its members, directors, officers, employees and agents who shall have no personal liability thereunder, nor in their capacity as officers, directors, members, employees and agents and shall otherwise be upon such terms, conditions and provisions as shall be acceptable to the Agency. The Company, throughout the Lease Term, shall, at its sole cost and expense, promptly comply with the Mortgage and the Assignment of Rents and Leases and, without limiting the generality of the Company's obligations under this Lease Agreement, defend, indemnify and hold the Agency and its officers harmless from any liability or expenses arising in connection with, or resulting from any failure of the Company to promptly comply with the Mortgage or the Assignment of Rents and Leases.

Section 4.3 Certificates of Completion. The Company shall furnish the Agency with evidence of completion of the Facility, including (i) a certificate signed by an Authorized Representative stating that construction and equipping of the Facility has been completed in accordance with the Plans and Specifications therefor, and stating that the payment of all labor, services, materials and supplies used in such acquisition, construction and equipping has been made or provided for; (ii) such certificates, permits and licenses required for the Facility as may be satisfactory to the Agency and the Bank, including a final certificate of occupancy; and (iii) such documents or certificates as may be reasonably required by the Agency and the Bank.

Section 4.4 Completion by Company. The Company shall, for the benefit of the Agency, but at the sole cost and expense of the Company, pay in full all costs of constructing and equipping the Facility in accordance with the Plans and Specifications therefor. Title to all portions of the Facility shall immediately upon such installation or construction vest in the Agency. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's title or the Lien of the Mortgage.

Section 4.5 Remedies to be Pursued Against Contractors and Subcontractors and Their Sureties. In the event of a default by any contractor or other Person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other Person so in default and against such surety for the performance of such contract. The Company, in its own name or, if necessary, in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other Person which the

Company deems reasonably necessary, and in such event the Agency, at the Company's expense, shall cooperate fully with the Company and take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding provided that the Agency, its members, officers, directors, employees and agents shall not thereby be subjected to risk of loss, liability or expense.

ARTICLE V
DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Facility. The Agency hereby demises and leases the Facility to the Company and the Company hereby hires and takes the Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 5.2 Use of Facility. The Company shall use and occupy, and shall permit the use and occupancy of the Facility for the warehousing and wholesale distribution of paper and packing supplies, corrugated boxes, stretch film, tape, cartons, and related items and not for any other purpose without the approval of the Agency.

Section 5.3 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency hereby delivers to the Company, and the Company acknowledges receipt of, sole and exclusive possession of the Facility (subject to the provisions of Section 10.2 and the provisions of Section 8.3 hereof) and the leasehold estate created hereby shall commence on the Closing Date. The Company hereby accepts possession of the Facility on this date.

(b) Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on the Expiration Date, or on such earlier date as may be permitted by Section 11.1 hereof, provided, however, that the Agency reserves the right not to terminate this Lease Agreement until all fees and expenses of the Agency required to be paid hereunder shall have been paid in full.

(c) The Agency, subject to the provisions of Section 4.2, shall not take any action, other than pursuant to Article X of this Lease Agreement, to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and, at the request of the Company and at the Company's sole cost and expense, shall cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided. The rights of the Company hereunder and this Lease Agreement shall be subordinate to the Lien of the Mortgage.

Section 5.4 Rents and Other Amounts Payable.

(a) Throughout the Lease Term, the Company shall pay to the Agency as rent, within ten (10) days after demand therefor, an amount equal to (i) the sum of the costs and expenses (including attorneys' fees) of the Agency and the members thereof incurred by reason of the Agency's acquisition, construction, renovation, equipping, operation, ownership, financing or leasing of the Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease Agreement, the Mortgage or any other agreement arising under or by virtue the transactions contemplated hereby, the payment of which is not otherwise provided

for under this Lease Agreement, (ii) the Agency Fee, and (iii) the PILOT Administrative Fee, (iv) all other sums due from the Company to the Agency under, by virtue of or in connection with this Lease Agreement, the PILOT Agreement, the Recapture Agreement, or otherwise.

(b) The Company, under the provisions of subsection 5.4(a) above, shall make the above-mentioned payments (and all other payments required hereunder) in immediately available funds and without any further notice in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to timely make any payment required in this Section 5.4, the Company shall pay the same together with all additional interest or late payment penalties at the maximum rate of interest and amount permitted by law. The receipt by the Agency of any rent with knowledge of the breach of any covenant of this Lease Agreement shall not be deemed a waiver of such breach and no provision of this Lease Agreement shall be deemed to have been waived by the Agency unless such waiver shall be in writing signed by the Agency. No payment of the Company or receipt by the Agency of a lesser amount than the rent due shall be deemed to be other than on account of the earliest rent due, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and the Agency may accept such check or payment without prejudice to the Agency's right to recover the balance of such rent or pursue any other remedy provided in this Lease Agreement. All checks tendered to the Agency as and for the rent hereunder shall be deemed payments for the account of the Company. The acceptance by the Agency of rent from anyone other than the Company shall not be deemed to operate as an attornment to the Agency by the payor of such rent or as a consent by the Agency to an assignment or subletting by the Company or the Subtenant of the Facility or a portion thereof to such payor, or as a modification of the provisions of this Lease Agreement.

(c) All charges, payments, taxes and assessments, together with such other sums as are payable by the Company pursuant to the terms of this Lease Agreement, shall constitute additional rent, may be referred to as rent, shall be due and payable as rent under this Lease Agreement at the time and in the manner herein provided, and in the event of the nonpayment of same by the Company, the Agency shall have all the rights and remedies with respect thereto as the Agency has for the nonpayment of the rent herein.

(d) This Lease Agreement, including the rent herein specified, shall be absolutely net to the Agency, and all costs, expenses and obligations of every kind relating to or arising in connection with the Facility, including the Mortgage and the acquisition, construction, renovation, improvement, maintenance, operation, repair and replacement of the Facility, which may arise or become due during the Lease Term shall be paid by the Company. Without limiting the generality of the Company's obligations under this Lease Agreement, the Company shall defend, indemnify and hold the Agency and the Bank harmless from any claim, suit, action, proceeding, obligation, damage, liability, judgment, cost or expense, including legal fees and expenses, arising out any and all of the foregoing.

Section 5.5 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 5.4 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company, and shall be absolute and unconditional irrespective of any defense

or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company shall not (i) suspend, discontinue or abate any payment required hereof or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement or (iii) except as provided in Sections 11.1 or 11.2 hereof, terminate this Lease Agreement for any cause whatsoever including without limiting the generality of the foregoing, the failure to complete the Facility, failure of the Company to occupy or to use the Facility as contemplated in this Lease Agreement or otherwise, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes, or needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by Condemnation of title to or the use of all or any part of the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or a duty, liability or obligation arising out of or in connection with this Lease Agreement. Subject to the foregoing provisions, nothing contained in this Section 5.5 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may, as its sole remedy, institute such separate action against the Agency as the Company may deem necessary to compel performance, and the Agency covenants that it shall not, subject to the express provisions of this Lease Agreement, take any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or estate of the Company hereunder, except upon the consent of the Company.

Section 5.6 Rights and Obligations of the Company upon Prepayment of Obligations to the Bank. In the event all Indebtedness due the Bank and secured by the Mortgage, and all fees and expenses of the Agency and the Bank, required to be paid thereunder or hereunder shall be paid in full prior to the termination date specified in Section 5.3 hereof, and instruments evidencing such satisfaction of the obligations to the Bank shall have been duly recorded and/or filed to the satisfaction of the Agency, and provided no event has occurred or is continuing which either immediately or with the lapse of time or with notice, or both, shall constitute an Event of Default under this Lease Agreement, (i) all references in this Lease Agreement to the Bank, the Note, Indebtedness due the Bank, the Mortgage, and the Assignment of Rents and Leases shall be ineffective and (ii) the Company shall be entitled, at its option, to the exclusive use, occupancy and enjoyment of the Facility from the date of such payment until the Expiration Date, on all of the terms and conditions hereof, except that the Company shall not be required to carry any insurance for the benefit of the Bank. The Company, at its sole cost and expense, shall obtain and record or file appropriate discharges or releases of the Mortgage, the Assignment Rents and Leases and any other security interests relating to the Facility or this Lease Agreement to the satisfaction of the Agency.

ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Agency shall not be required to make any repairs, replacements or improvements of any kind upon, or to maintain, the Facility.

(b) The Company shall not abandon, or cause or permit any waste to, the Facility, and shall keep the Facility in good condition. The Company shall not remove any part of the Facility outside the jurisdiction of the Agency. At the Company's sole cost and expense, the Company shall, throughout the Lease Term, take good care of the Facility, including the fixtures and appurtenances thereto and all structures, improvements, betterments, landscaping, utilities and equipment, devices, heating, air conditioning, ventilating, plumbing systems, and all appurtenances, fixtures and other facilities used or useful in connection with the use, operation or occupancy of the Facility, and all alterations and additions thereto and restorations and replacements thereof, and make all repairs, replacements, and restorations thereto, as and when appropriate or required to preserve same in good, safe, sound, economic condition and good working order, whether such repairs, replacements or restorations are ordinary or extraordinary or foreseen or unforeseen. Without limiting the generality of the Company's obligations under this Lease Agreement, the Company shall defend, protect, indemnify and hold the Agency harmless from any claim, suit, action, proceeding, obligation, damage, liability, judgment, cost or expense, including legal fees and expenses, from the failure by the Company to comply with the foregoing. The Company shall operate the Facility in a sound and economic manner.

(c) The Company may make, from time to time, at its sole cost and expense, any structural and non-structural additions, modifications or improvements to the Facility or any part thereof which it may deem desirable provided that the consent of the Agency shall be obtained in each instance, and further provided that such actions do not adversely affect the structural integrity of the Facility. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility. The Company shall deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to, or other satisfactory interest in, such Property and to perfect or protect the Lien of the Mortgage.

(d) The Company, at its own cost and expense, shall promptly execute and comply with all present and future valid statutes, orders, ordinances, regulations and requirements and rules of the federal, state, county, municipal and other local governments, if any, and all their departments and bureaus, and of the New York Board of Fire Underwriters or any other similar body having jurisdiction over the Facility, whether usual or unusual, ordinary or extraordinary, and whether or not related to structural or non-structural changes or requirements due to the use or occupancy made of the Facility, any unlawful use, negligence of the Company or any breach or default of the Company under this Lease Agreement.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 8.10 hereof, the Company may install from time to time, at its sole cost and expense, additional Equipment, which such Equipment or other personal property shall become, or be deemed to become, part of the Facility. The Company shall execute and deliver to the Agency such

documents and instruments as may be deemed necessary by the Agency to convey title to such additional Equipment to the Agency and subject such additional Equipment to the Lien of the Mortgage. Subject to the prior consent of the Agency, the Company, from time to time, may remove or permit the removal of any other machinery, equipment and other personal property from the Facility and may create or permit to be created any Lien on any other machinery, equipment or other personal property; provided that any such removal of any other machinery, equipment or other personal property shall not adversely affect the integrity or value of the Facility, impair the overall operating efficiency of the Facility for the purposes for which it is intended or violate the Mortgage and provided, further, that if any damage is occasioned to the Facility by such removal the Company shall promptly repair such damage at its own expense.

Section 6.3 Taxes, PILOT Agreement, Recapture Agreement, Assessments and Utility Charges.

(a) The Company shall pay as the same respectively become due and before any fine, penalty, interest or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental of the Facility or any part thereof and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility, (ii) all utility and other charges, including "service charges", incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term, and (iv) all payments under the PILOT Agreement or the Recapture Agreement.

(b) The Company may in good faith contest any such taxes, assessments and other charges set forth in subsection 6.3(a) above. In the event of any such contest, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided, however, that (i) neither the Facility nor any part thereof or interest therein will be in any immediate danger of being sold, forfeited or lost by reasons of such proceedings, and (ii) the Company shall have set aside in its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency. The aforesaid right to refrain from paying taxes or assessments and to reserve for any such contested obligations shall specifically not apply to payments required under the PILOT Agreement. Under all circumstances, payments required under the PILOT Agreement shall be paid in accordance with the terms and provisions as set forth in the PILOT Agreement and the PILOT Agreement shall govern all rights and obligations of the Company as they pertain to payments pursuant to the PILOT Agreement.

(c) If the Company successfully contests any taxes or assessments set forth in the subsection 6.3(a) above, the Company shall look solely to the affected Taxing Authorities, and

not the Agency, for any refunds due or awarded as a result thereof. The provisions of the PILOT Agreement shall govern the contest and/or credit or refund of all payments made under the PILOT Agreement.

(d) Within thirty (30) days after request therefor, the Company shall deliver to the Agency official receipts of the affected Taxing Authorities or other proof satisfactory to the Agency evidencing payment of any and all taxes, assessments or payments pursuant to the PILOT Agreement (if paid to other than the Agency).

(e) Without limiting the generality of the obligations of the Company under this Lease Agreement, the Company shall defend, indemnify and hold the Agency harmless from any claim, suit, action, proceeding, obligation, damage, liability, judgment, cost or expense, including legal fees and expenses, arising out of any failure by the Company to comply with the provisions of this Section 6.3.

Section 6.4 Insurance Required. Except as otherwise provided herein below, at all times throughout the Lease Term, including during the Construction Period, at its sole cost and expense, the Company shall maintain, and shall cause each tenant and occupant of the Facility to maintain, insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including:

(a) Insurance against physical loss or damage to the Facility as provided under a standard "all risk" property policy, including flood coverage (to the extent the Facility is in a flood zone), in amounts not less than the actual replacement cost of all improvements and equipment, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company and approved by the Agency; such policies shall contain Replacement Cost and Agreed Amount Endorsements and may contain deductibles of not more than \$5,000.00 per occurrence; During the Construction Period, 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) Commercial general liability insurance against claims for personal and bodily injury, death or property damage occurring on, in or as a result of the use, occupancy, maintenance, operation, improvement or other acts or omissions with respect to the Facility, in an amount not less than \$5,000,000.00 per occurrence, annual aggregate, including personal injury liability coverage, broad form blanket contractual liability coverage for liability assumed under this Lease Agreement and all other contracts relative to the Facility, broad form property damage coverage, fire damage legal liability coverage, coverage for the "XCU" hazards, an endorsement providing products' liability/completed operations coverage, and an endorsement reflecting that this insurance is intended as primary coverage for the Agency and all other indemnitees named in this Lease Agreement; during the period of the performance of any construction, owners contractors protective insurance in an amount not less than \$5,000,000.00 per occurrence, annual aggregate.

(c) During the period of the performance of any construction, including during the Construction Period, for the benefit of the Agency and others hereafter named by the Agency

from time to time, Builders Risk insurance covering the total completed value, including “soft costs” with respect to the improvements being constructed, altered or repaired (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and material furnished in connection with such construction or repair of improvements or equipment, together with such “soft costs” endorsements and such other endorsements as the Agency may require, and general liability, worker’s compensation and automobile liability insurance with respect to the improvements being constructed, altered or repaired; furthermore, each contractor and subcontractor constructing, improving or altering the Facility shall be required to carry comprehensive general liability insurance with limits acceptable to the Company and the Agency and containing coverages for premises operations, contractors protective, owner’s protective, completed operations (products liability), the X, C and U exclusions removed and coverage for all owned, non-owned and hired vehicles with non-ownership protection for contractor’s or subcontractor’s employees;

(d) Comprehensive boiler and machinery insurance on any of the Equipment on or in the Facility, in an amount acceptable to the Agency for damage to property, bodily injury or death resulting from such covered perils as found in a standard comprehensive boiler and machinery policy; such policies may contain deductibles of not more than \$5,000.00;

(e) Worker’s compensation insurance, disability benefits insurance, and each other form of insurance which the Agency, the Company or any occupant of the Facility is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or such occupancy who are located at or assigned to the Facility;

(f) During the Construction Period (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Company 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 \$1,000,000.00 (combined single limit for personal injury, including bodily injury or death, and property damage).

- (iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000.00 (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 \$5,000,000.00;

(g) During the Construction Period, Owners and Contractor’s Protective Liability insurance, with a combined single limit of \$1,000,000.00 per occurrence on account of bodily injury, personal injury, including death, or property damage; such coverage shall not contain an exclusion for construction activities.

(h) A policy or policies of flood insurance in an amount not less than the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards;

(i) such other insurance on or in connection with the Facility and the activities thereat as the Agency may require from time to time.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained with financially sound and generally recognized responsible insurance companies selected by the Company and approved by the Agency and authorized to write such insurance in the State; the insurance company providing the coverage described at Section 6.4 (b) and (g) shall be the same. The company issuing the policies required by Section 6.4 (a), (b), (c), (d), (f), (g), (h) and (i) shall be rated “A” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. Such insurance shall be written with such deductibles amounts as shall be acceptable to the Agency. All policies evidencing such insurance shall provide for payment of the losses to the Company and the Agency as its interest may appear, and at least thirty (30) days’ written notice of the cancellation or modification thereof to the Agency. The policies required by Section 6.4(a) and (c) hereof shall contain standard New York mortgagee clauses in the name of the Bank until payment in full of the Indebtedness secured by the Mortgage, requiring that all Net Proceeds of insurance resulting from any claim for loss or damage covered thereby be paid to the Bank, for the benefit of the Bank. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a), (c), and (h) and the Net Proceeds thereof have been or may be granted by the Agency to the Bank and the Company consents thereto. The policies maintained hereunder shall contain appropriate waivers of subrogation, shall provide that such coverages shall be primary, irrespective of any other insurance that may be maintained by the Company, the Agency or otherwise, and shall be specific to the Facility, and no other locations. Each of the policies required by Section 6.4 shall name the Agency as a named insured; the policy required by Section 6.4(g) shall name the Agency as the sole named insured.

(b) All such policies of insurance, or a certificate or certificates of the insurers, shall be in form and substance satisfactory to the Agency, and shall be deposited with the Agency on or before the Closing Date; the Company acknowledges that if requested at any time by the Agency, the Company shall deliver the policies, and not merely the certificates, to the Agency. The Company shall deliver to the Agency at least thirty (30) days prior to the expiration of the last such certificate issued pursuant hereto a certificate reciting that there is in full force and effect for the next succeeding twelve (12) month period insurance in the amounts and of the types required by Sections 6.4 and 6.5 hereof. Upon delivery of such certificate, the Company shall also deliver to the Agency proof of payment of the premium earned thereby. Prior to expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement.

(c) The Company shall not violate or permit to be violated any of the conditions or provisions of any insurance policies maintained pursuant to this Lease Agreement and shall comply with the requirements of any company issuing said insurance in order to maintain said insurance in full force and effect. In the event that any policy shall be canceled for non-compliance by the Company, the Company shall procure forthwith a substitute policy in form and content satisfactory to the Agency.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a), (c) and (h) hereof shall be applied as provided in Section 7.1 hereof and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (d), (e), (f), (g) and (i) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, payment in lieu of taxes, assessment or other governmental charge required to be paid by Section 6.3 hereof, (ii) to maintain insurance required to be maintained by Sections 6.4 and 6.5 hereof, or (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.9(b)), or (v) to pay any other amount or perform any act hereunder required to be paid or performed by the Company hereunder, the Agency may pay such tax, payment in lieu of taxes, assessment or other governmental charge or the premium for such insurance, or perform such act. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed after notice of intention to make such payment shall have been given by the Agency to the Company; and in the case of any tax, payment in lieu of taxes, assessment or governmental charge, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company. The Company shall reimburse the Agency on demand for any amount so paid, and expense incurred by the Agency pursuant to this Section 6.7, together with interest and late charges thereon from the date of payment at the maximum rates permitted by law.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction.

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Lease Term: (i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility; (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement, the PILOT Agreement or the Recapture Agreement (whether or not the Facility is replaced, repaired, rebuilt or restored); (iii) except as otherwise provided in subsection (b) of this Section 7.1, the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction with such changes, alterations and modifications as may be desired or approved by the Company, provided that such changes, alterations or modifications do not so change the nature of the Facility that it does not constitute a "project" as such quoted term is defined in the Act; and (iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Bank and except as otherwise provided in Section 11.1, applied by the Bank pursuant to the terms of the Mortgage. Upon full compliance with the foregoing provisions of this paragraph, and provided no event has occurred or is continuing that immediately or with the lapse of time, or with notice, or both, constitutes an Event of Default under this Lease, then, subject to the provisions of the Mortgage, any balance remaining thereafter may be retained by the Company. All replacements, repairs, rebuilding or restoration made pursuant to this Section 7.1, shall automatically become a part of the Facility as if the same were specifically described herein.

(b) If no Event of Default shall have occurred and the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof, the Company shall not be obligated to replace, repair, rebuild or restore the Facility, the Net Proceeds derived from such insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Company. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Company.

(c) Until the occurrence of an Event of Default and the continuance thereof for ten (10) days, subject to the terms of the Mortgage, the Company shall have the right to settle and adjust all claims under, and collect the Net Proceeds of any policies of insurance required by Section 6.4(a) and (c) hereof.

(d) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically described herein. Subject to the terms of the

Mortgage, any balance of such Net Proceeds remaining after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall be retained by the Company.

(e) If the Facility has been substantially damaged or destroyed and is not replaced, repaired, rebuilt, restored or relocated, at the Agency's election, the Facility shall be reconveyed to the Company.

Section 7.2 Condemnation.

(a) If, at any time during the Lease Term, the whole or any part of title to, or the use of, the Facility shall be taken by Condemnation, the Agency shall have no obligation to restore or replace the Facility, there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement, the PILOT Agreement or the Recapture Agreement, and the Net Proceeds derived from the Condemnation shall be paid to the Bank and applied by the Bank pursuant to the terms of the Mortgage. Except as otherwise provided in subsection (b) of this Section 7.2, the Company shall promptly after payment of the Net Proceeds of such condemnation: (i) restore the Facility (including the purchase of necessary land in replacement of any land taken by Condemnation) to substantially the same condition and value as an operating entity as existed prior to such Condemnation; or (ii) acquire, by construction or otherwise, facilities of substantially the same nature and value, reasonably acceptable to the Agency, as an operating entity as the Facility ("Substitute Facilities"). Such Substitute Facilities shall (x) constitute a "project" as such quoted term is defined in the Act, and (y) be subject to no Liens prior to the Lien of the Mortgage other than Permitted Encumbrances. The Facility, as so restored, or the Substitute Facilities shall automatically become part of the Facility as if the same were specifically described herein. Upon full compliance with the foregoing provisions of this paragraph, and provided no event has occurred or is continuing that immediately or with the lapse of time, or with notice, or both, constitutes an Event of Default under this Lease, then, subject to the provisions of the Mortgage, any balance remaining thereafter may be retained by the Company.

(b) If no Event of Default shall have occurred and the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof, the Company shall not be obligated to restore the Facility or acquire Substitute Facilities, the Net Proceeds derived from such Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Company. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof, and subject to the terms of the Mortgage, any balance remaining thereafter shall be retained by the Company.

(c) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any Condemnation proceeding with respect to the Facility. Until the occurrence of an Event of Default hereunder and the continuance thereof for ten (10) days, and subject to the terms and provisions of the Mortgage, the Company shall have the sole right to control any such proceedings and to adjust all claims and make any settlement therein; and in no event shall the Agency voluntarily settle, or consent to the settlement of, any

Condemnation proceeding with respect to the Facility without the written consent of the Company.

(d) All such replacement or restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically described herein. Subject to the terms of the Mortgage, any balance of such Net Proceeds remaining after payment of all costs of replacement or restoration shall be retained by the Company.

(e) If the Facility has been substantially condemned and is not replaced or restored, at the Agency's election, the Facility shall be reconveyed to the Company.

Section 7.3 Condemnation of Company-Owned Property. Subject to the Mortgage, the Company shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

Section 7.4 Waiver of Real Property Law Section 227. The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by the Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THE EQUIPMENT OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2 Hold Harmless Provisions.

(a) The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to defend, indemnify and hold the Agency 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 Facility or arising by reason or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Facility, or (ii) liability arising from or expense incurred by the Agency's financing, acquisition, construction, renovation, equipping, operating, owning or leasing of the Facility, including without limiting the generality of the foregoing, all claims, loss or damage arising under, in connection with, or related to, any breach of this Lease Agreement, the PILOT Agreement, the Recapture Agreement, the Mortgage, or any other instruments relating to any of them, all claims arising from the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(e) of this Lease Agreement, and all causes of action and reasonable attorneys' fees and any other reasonable expenses incurred in prosecuting or defending any suits or actions which may arise as a result of any of the foregoing. The

foregoing indemnities shall not be construed as a limitation of any other indemnification provided herein and shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its officers, members, 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 Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease 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 officers, members, agents and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency, or its officers, members, directors, agents or employees by any employee of the Company or any contractor of the Company 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 Company 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.

(d) To effectuate the provisions of this Section 8.2, the Company shall provide for and insure, in the liability policies required in Section 6.4 hereof, its liabilities assumed pursuant to this Section 8.2.

Section 8.3 Right to Inspect the Facility. The Agency and its duly authorized agents shall have the right to enter upon and at all times to inspect the Facility.

Section 8.4 Company and Subtenant to Maintain Existence; Conditions Under Which Exceptions Permitted. The Company shall, and shall cause the Subtenant to, during the Lease Term, maintain their respective existences, and not dissolve or otherwise dispose of all or any substantial part of their respective assets.

Section 8.5 Qualification in the State. The Company and the Subtenant throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.6 Agreement to Provide Information. The Company shall, (a) within thirty (30) days after the end of each calendar year of the Lease Term, provide to the Agency, and certify to the accuracy of, the New York State Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (currently, Form NYS-45), including the attachments thereto (the Company shall redact employees' social security numbers), for the fourth quarter of such calendar year (if such form shall be superceded or cease to be used, the Agency may designate another form or other method by which to obtain such information reported thereon), together with a detailed analysis satisfactory to the Agency of the full time

equivalency employment, and (b) whenever requested by the Agency, provide and certify or cause to be provided and certified, within thirty (30) days after request, such information concerning the Company, the Subtenant, their respective finances, the Facility and other topics necessary in the judgment of the Agency to enable the Agency to make any report required by law (including the Act or the Public Authorities Accountability Act of 2005, as amended from time to time), governmental regulation, this Lease Agreement, the Mortgage, the Assignment of Rents and Leases, the Agency Compliance and Guaranty Agreement, the PILOT Agreement, the Recapture Agreement, or otherwise, or requested for any other reason desired by the Agency for its business purposes. Without limiting the foregoing, the Company shall file with the New York State Department of Taxation and Finance 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) and (9) of the New York State General Municipal Law; the Company shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance; and the Company shall provide to the Agency within ten (10) days after request therefore, true, accurate and complete copies of such reports and returns filed by the Company, certified by the chief executive officer of the Company to be true, accurate and complete, as the Agency may request from time to time.

Section 8.7 Books of Record and Account; Financial Statements. The Company shall, at all times, maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company. The Company shall furnish and shall cause the Subtenant to furnish to the Agency within thirty (30) days of their filing, copies of all reports filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended (the "1934 Act"), relative to the Company or the Subtenant.

Section 8.8 Compliance With Order, Ordinances, Etc.

(a) The Company, throughout the Lease Term, shall, at its sole cost and expense, promptly comply with, and shall cause all subtenants, occupants and invitees to comply with, the provisions of Exhibit C hereto, and all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to the acquisition, construction, renovation and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof and, without limiting the generality of the Company's obligations under this Lease Agreement, shall defend, indemnify and hold the Agency and its officers, members, directors, agents and employees harmless from any liability or expenses resulting from any failure by the Company to so comply.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.8, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) other than the provision of Exhibit C. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company

that by failure to comply with such requirement or requirement, the Facility or any part thereof may be materially endangered or subject to loss or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the Agency.

(c) Notwithstanding the provisions of Section 8.8(b) hereof, if, because of a breach or violation enumerated in Section 8.8(a) without giving effect to Section 8.8(b) hereof, either the Agency, or any of its members, directors, officers, agents, or employees, shall be threatened with a fine or imprisonment or otherwise jeopardized, then, upon notice from the Agency, the Company shall immediately provide legal protection and/or pay amounts necessary in the opinion of such indemnified party to the Agency and its members, directors, officers, agents, servants and employees sufficient, to the extent permitted by applicable law, to remove the threat of such fine or imprisonment or jeopardy.

(d) Notwithstanding any provisions of this Section 8.8, the Agency retains the right to defend itself, and in any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, attorney and consultant fees, investigation fees, court costs, and litigation expenses shall be paid by the Company.

Section 8.9 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, and shall defend, indemnify and hold harmless the Agency, its members, officers, directors, agents and employees, from any liability or expenses resulting from any failure by the Company to comply with the terms of this subsection (a).

(b) Notwithstanding the provisions of subsection (a) of this Section 8.9, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by nonpayment of any such item or items, the Lien of the Mortgage may be materially endangered or the Facility or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency, thereby causing a Lien to be removed or by taking such other actions as may be satisfactory to the Agency to protect its interests.

Section 8.10 Identification of Equipment. All Equipment which is or may become the property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. In this regard, all improvements, machinery, equipment and other Property of whatever nature affixed or attached to the Land or the Project or used or to be used by the Company in connection with the Land or the Project shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were utilized solely for purposes of construction of the Facility and such improvements, machinery, equipment and other Property were properly identified by such appropriate records as were approved by the Agency.

Section 8.11 Depreciation Deductions. The Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Code.

Section 8.12 Financing Statements. The Company hereby irrevocably appoints the Agency as its true and lawful agent and attorney-in-fact to prepare and execute any UCC-1 Financing Statements, UCC-3 Amendments and UCC-3 Assignments on the Company's behalf in order to protect the Agency's interests in the payments of rent and other amounts required to be paid under this Lease Agreement, and on the Company's behalf to file such Financing Statements, Amendments or Assignments signed by the Agency without the signature of the Company as debtor thereon, in any appropriate public office. The Agency shall send the Company copies of any such financing statements filed by it, as recorded.

Section 8.13 Employment Opportunities, Notice of Jobs. The Company shall, and will cause all sublessees to, except as otherwise provided by collective bargaining contracts or agreements to which it or a sublessee is a party, cause any new employment opportunities created in connection with the Facility 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) in which the Facility is located (collectively, the "Referral Agencies"). The Company shall, and shall cause each sublessee, if any, to, except as otherwise provided by collective bargaining contracts or agreements to which it or a sublessee is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

Section 8.14 Employment Commitments. The Company shall cause the Subtenant to achieve within one (1) year after the completion of the acquisition, construction and equipping of the Facility, employment levels at and attributable to the Facility of at least seventeen (17) full time equivalent ("FTE") employees whose compensation shall be consistent with the Company's Application, and within two (2) years after such date of completion, employment levels at and attributable to the Facility of at least twenty (20) FTE employees whose compensation shall be consistent with the Company's Application, unless and to the extent Subtenant shall fail to achieve and maintain such employment levels due to Subtenant's business cycles and/or local, national and international economic conditions; in addition, the Company shall not permit the Subtenant to change, modify or amend its method of operations so as to effect a "Substantial Change." As used herein, (a) the calculation of FTE shall be based upon 37.5 hours per week, and (b) "Substantial Change" shall mean (i) the sale or closure of all or substantially all of the Facility or departure of the Company or the Subtenant from the Town of Brookhaven, or (ii) any significant deviations from the information and data provided to the Agency in the Company's or the Subtenant's Application which would constitute a significant diminution of the Company's and the Subtenant's activities in or commitment to the Town of Brookhaven.

Section 8.15 Waiver of Trial by Jury, Counterclaim and Right of Redemption. The Company hereby waives any and all rights to (a) to a trial by jury of any dispute or litigation, (b) to assert any counterclaim in any action or proceeding, arising under or in connection with this Lease Agreement (this shall not, however, be construed as a waiver of the Company's right to

assert such claims in any separate action or proceeding brought by the Agency's actions or proceedings), and (c) any and all rights of redemption granted by any current or future law.

ARTICLE IX
RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING;
MORTGAGE AND PLEDGE OF INTERESTS

Section 9.1 Restriction on Sale of Facility; Release of Certain Land.

(a) Except as otherwise specifically provided in this Article IX and in Article X thereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Lease Agreement without the prior consent of the Company and the Bank.

(b) With the prior written consent of the Agency and the Bank, the Agency and the Company from time to time may release from the provisions of this Lease Agreement and the leasehold estate created hereby any part of, or interest in, the Land which is not necessary, desirable or useful for the Facility. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver, and request the Bank to execute and deliver, any and all instruments necessary or appropriate, and approved by the Agency, to so release such part of, or interest in, the Land and convey such title thereto or interest therein free from the Lien of the Mortgage, to the Company or such other Person as the Company may designate. As a condition to such conveyance, the Agency shall be provided with a copy of the instrument transferring such title or interest in such Land, an instrument survey (if the Agency so requests) of the Land conveyed, together with a certificate of an Authorized Representative of the Company stating that there is then no Event of Default under this Lease Agreement, no event has occurred or is continuing, which either immediately or with the lapse of time, or with notice, or both, shall constitute an Event of Default under this Lease Agreement, and such Land or interest therein is not necessary, desirable or useful for the Facility.

(c) No conveyance of any Land or interest therein effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by the Company under Section 5.4 hereof.

Section 9.2 Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, with the prior written consent of the Agency, may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal shall not violate the Mortgage or materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "project" under the Act.

(b) The Agency shall execute and deliver to the Company such instruments, in such form and substance as the Agency shall approve, as the Agency shall determine to be necessary

and appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment subject to the rights, if any of the Bank. The Company shall pay any costs (including counsel fees) incurred in transferring title to and releasing from the Lien of the Mortgage any item of Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Equipment pursuant of this Section 9.2 shall not entitle the Company to any abatement or diminution of the rents payable by it under Section 5.4 hereof.

Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement shall not be assigned, in whole or in part, without the written consent of the Agency, and, except for the sublease of all of the Facility to the Subtenant, the Facility shall not be further subleased (including successive generation subleases) nor used or occupied by an person other than the Company, in whole or in part, without the written consent of the Agency. Any assignment or sublease, except the sublease to the Subtenant, shall be on the following conditions:

(1) No assignment shall relieve the Company from primary liability for any of its obligations hereunder;

(2) The assignee shall assume the obligations of the Company hereunder to the extent of the interest assigned;

(3) The Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease, as the case may be, and the instrument of assumption, in form and substance satisfactory to the Agency;

(4) The Facility shall continue to constitute a "Project" as such quoted term is defined in the Act;

(5) Neither the validity nor the enforceability of the Loan Documents, this Lease Agreement, the PILOT Agreement, the Recapture Agreement, or the Agency Compliance and Guaranty Agreement shall be adversely affected thereby;

(6) Each sublessee shall execute and deliver an Agency Compliance and Guaranty Agreement in form and substance satisfactory to the Agency;

(7) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to this subsection (a) of this Section 9.3, the Company, at its sole cost and expense, shall furnish the Agency with an opinion, in form and substance satisfactory to the Agency, of Independent Counsel that neither the validity nor the enforceability of the Loan Documents, this Lease Agreement, the Sublease, the PILOT Agreement, the Recapture Agreement, or the Agency Compliance and Guaranty Agreement will be adversely affected thereby nor shall such assignment or sublease constitute a default under the Mortgage or the Assignment of Rents and Leases;

(8) such other and further requirements as the Agency may determine in its sole discretion.

(b) If the Company or the Subtenant is a corporation, the transfer of a majority of the issued and outstanding capital stock of the Company or the Subtenant or the issuance of additional shares of the Company or the Subtenant such that if the additional shares had first been issued to the existing shareholders of the Company or the Subtenant and then transferred to the acquiring shareholders, such event would have constituted a transfer of a majority of the issued and outstanding capital stock of the Company or the Subtenant within the meaning of this Section, or, if the Company or the Subtenant is a partnership or a limited liability company, the transfer of a majority of the total interest in the Company or the Subtenant, however any of such corporate stock transfers or issuances or partnership or limited liability company interest transfers are accomplished, whether in a single transaction or in a series of related or unrelated transactions, such transactions shall be deemed an assignment of this Lease. The transfer of outstanding capital stock of the Company or the Subtenant, for purposes of this Section, shall not include sale of such stock by persons other than those deemed “insiders” within the meaning of the 1934 Act, or the initial sale by the Company or the Subtenant of stock to persons other than those deemed “insiders” within the meaning of the 1934 Act, provided in each such instance the sale is effected through the “Over the Counter Market” or through any recognized stock exchange.

(c) If the Company’s interest in this Lease Agreement is assigned, whether or not in violation of the provisions of this paragraph, the Agency may collect rent from the assignee. If the Facility or any part thereof are sublet to, or occupied by, or used by any person other than the Company or the Subtenant, whether or not in violation of this paragraph, the Agency, after default by the Company under this Lease Agreement, may collect rent from the subtenant, user or occupant. In either case, the Agency shall apply the net amount collected to the rent reserved in this Lease Agreement, but no such assignment, subletting, occupancy, or use, whether with or without the Agency’s prior consent, nor any such collection or application of rent, shall be deemed a waiver of any term, covenant or condition of this Lease Agreement or be deemed the acceptance by the Agency of such assignee, subtenant, occupant or be deemed acceptance by the Agency of such subletting, occupancy or use and same shall not relieve the Company from its obligation to obtain the express prior consent of the Agency to any further assignment, subletting, occupancy or use. Neither any assignment of the Company’s interest in this Lease Agreement nor any subletting, occupancy or use of the Facility or any part thereof by any person other than the Company, nor any collection of rent by the Agency from any person other than the Company as provided in this subsection, nor any application of any such rent as provided in this subsection (b) shall, in any circumstances, relieve the Company of its obligation to fully observe and perform the terms, covenants and conditions of this Lease Agreement on the Company’s part to be observed and performed.

Section 9.4 Merger of Agency.

(a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of title of the Facility as an entirety to, any other public benefit corporation or political subdivision which has the legal authority to own

and lease the Facility, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the political subdivision or public benefit corporation resulting from such consolidation of surviving such merger or to which the Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company and the Bank. The Agency shall promptly furnish such additional information with respect to any such transaction as the above mentioned Persons reasonably may request.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall be "Events of Default" under this Lease Agreement and the terms "Event of Default" or "Default" shall mean, whenever used in this Lease Agreement, any one or more of the following events:

(1) The failure by the Company to pay or cause to be paid when due, the amounts specified to be paid pursuant to Section 5.4(a) hereof; or

(2) The failure by the Company to observe and perform any covenant contained in Sections 6.4, 6.5, 8.4 and 9.3 or Article XII hereof; or

(3) Any representation or warranty of the Company herein or in any certificate, application, statement or report furnished in connection herewith is false or misleading in any material respect; or

(4) The dissolution or liquidation of the Company or the Subtenant; or the failure by the Company or the Subtenant to lift within thirty (30) days any execution, garnishment or attachment of such consequence as may impair its ability to carry on its operations; or the Company or the Subtenant is generally not paying its debts as they become due; or the Company or the Subtenant makes an assignment for the benefit of creditors, commences (as the debtor) a case in Bankruptcy or commences (as the debtor) any proceeding under any other insolvency law; or a case in Bankruptcy or any proceeding under any other insolvency law is commenced against the Company or the Subtenant (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company or the Subtenant as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or the Subtenant or remains undismissed for sixty (60) days during which time the Company or the Subtenant is diligently and in good faith contesting the same, or the Company or the Subtenant consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company or the Subtenant for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of creditors; or

- (5) The occurrence of a default under any of the Loan Documents; or
- (6) The occurrence of a default under the Agency Compliance and Guaranty Agreement; or
- (7) The occurrence of a default under the Sublease; or
- (8) The failure by the Company to complete the construction and equipping of the Facility, to obtain a permanent certificate of occupancy therefor and to furnish a Certificate of Completion in accordance with Section 4.3 hereof, on or before February 28, 2016; or
- (9) The failure by the Company or the Subtenant to observe and perform any of the terms, covenants or provisions contained in the PILOT Agreement or the Recapture Agreement as and when prescribed therein; or
- (10) The invalidity, illegality or unenforceability of, or any defect in, this Lease Agreement, any of the Loan Documents, the PILOT Agreement, the Recapture Agreement, the Agency Compliance and Guaranty Agreement, the Sublease or any other document contemplated hereby or thereby; or
- (11) The failure by the Company to observe and perform any other covenant, condition or agreement hereunder that is not referred to in the preceding provisions of this Section 10.1(a) on its part to be observed or performed for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, provided to the Company by the Agency unless the Agency shall agree in writing to an extension of such time prior to its expiration.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Section 4.1 or Section 6.1 of this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Bank, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice, so far as they are affected by such force majeure shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 10.1. The term “force majeure” as used herein shall include, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove

the cause for the same with all reasonable promptness. The settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(1) Declare, by written notice to the Company, all unpaid rent, fees and other charges payable under this Lease Agreement to be immediately due and payable, whereupon the same shall become immediately due and payable; provided, however, that if an Event of Default specified in Section 10.1(a)(4) hereof shall have occurred, such unpaid rent, fees and other charges due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

(2) Terminate this Lease Agreement, reconvey the Facility to the Company and terminate the PILOT Agreement. The Agency shall have the right to execute an appropriate deed with respect to the Facility and to place the same on record in the Suffolk County's Office, at the expense of the Company and in such event the Company waives delivery and acceptance of such deed and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to file on the Company's behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such deed; upon request of the Agency, the Company shall execute, acknowledge and deliver to the Agency such additional or confirming instruments, in form and substance satisfactory to the Agency, to further evidence the Agency's appointment hereunder as the Agency may request from time to time;

(3) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due to the Agency, whether or not under this Lease Agreement, the PILOT Agreement, the Recapture Agreement, or otherwise, to secure possession of the Facility, and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement, the PILOT Agreement or the Recapture Agreement.

(b) No action taken pursuant to this Section 10.2 (including repossession of the Facility) shall relieve the Company from its obligation to make all payments required by Section 5.4 hereof or under the PILOT Agreement or the Recapture Agreement.

Section 10.3 Remedies Cumulative. No remedy herein 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 Lease 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. In order to entitle the Agency to exercise any

remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease Agreement.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Lease Agreement, the PILOT Agreement or the 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 herein contained, the Company shall, on demand therefor, pay to the Agency the fees of such attorneys and such other expenses so incurred.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI
EARLY TERMINATION OF THE LEASE AGREEMENT:
OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of the Lease Agreement.

(a) If any of the following events shall occur, the Company shall have the option, at any time, to purchase the Facility and terminate this Lease Agreement upon compliance with the requirements set forth this Lease Agreement:

(i) The Facility shall have been damaged or destroyed to such extent that, in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Agency within sixty (60) days after such damage or destruction), (a) the Facility cannot reasonably be restored within a period of six (6) consecutive months after such damage or destruction to the condition thereof immediately preceding such damage or destruction, (b) the Company is thereby prevented from carrying on its normal operations within the Facility for a period of six (6) consecutive months after such damage or destruction or (c) the cost of restoration of the Facility would exceed the Net Proceeds of insurance carried thereon, plus the amount for which the Company is self insured as the result of permitted deductible amounts under Sections 6.4 and 6.5 of this Lease Agreement;

(ii) Title to, or the use of, all or any part of the Facility shall have been taken by Condemnation so that in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Agency and the Bank within sixty (60) days after the date of such taking), the Company is thereby prevented from carrying on its normal operations therein for a period of six (6) consecutive months after such taking; or

(iii) As a result of changes in the Constitution of the State or the Constitution of the United States of America or of legislative or administrative action (whether Federal, state or local) or by final decree, judgment or order of any court or administrative body (whether

Federal, state or local) entered after the Company's contest thereof in good faith, this Lease Agreement, in the opinion of an Authorized Representative of the Company expressed in a certificate filed with the Agency and the Bank within sixty (60) days after the happening of the event, becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties or imposes material additional burdens or liabilities on the Company.

(b) The Company shall have the additional option at any time to terminate this Lease Agreement upon filing with the Agency and the Bank a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1(b) and upon compliance with the requirements set forth in section 11.2 hereof.

Section 11.2 Conditions to Early Termination of the Lease Agreement. In the event the Company exercises its option to terminate this Lease Agreement in accordance with the provisions of Section 11.1 hereof, the Company shall comply with the requirements set forth in the following two subsections (in addition to the requirements set forth in Section 11.3):

(a) Payments shall be made to the Agency, in an amount determined by the Agency sufficient to pay all unpaid fees and expenses of the Agency incurred under this Lease Agreement, including the amounts set forth at Section 11.3 below, the PILOT Agreement and the Recapture Agreement;

(b) The certificate required to be filed pursuant to Section 11.1 permitting early termination of this Lease Agreement shall also specify the date upon which the payments pursuant to subdivision (a) of this Section 11.2 shall be made, which date shall be not fewer than ten (10) nor more than ninety (90) days from the date such certificate is filed with the Agency and the Bank and shall be prior to or at the time of the closing referred to below at Section 11.4.

Section 11.3 Obligation to Purchase Facility. Upon termination of the Lease Term or upon the expiration of the Lease Term, in accordance with Section 11.2 or Section 5.3 hereof, the Company shall purchase the Facility from the Agency for the purchase price of One Dollar (\$1.00), and pay to the Agency (a) all unpaid sums due the Agency under this Lease Agreement, and (b) all unpaid sums due under the PILOT Agreement or the Recapture Agreement through the date upon which this Lease Agreement terminates or expires, or is conveyed by the Agency to the Company, whichever is later. The Company shall purchase the Facility by giving written notice to the Agency and the Bank (which may be contained in the certificate referred to in Section 11.2(b) hereof) (i) declaring the Company's election to purchase and (ii) fixing the date of closing such purchase, which shall be the date on which this Lease Agreement is to be terminated.

Section 11.4 Conveyance on Purchase. At the closing of any purchase of the Facility pursuant to Sections 11.1 or 11.3 hereof, the Agency shall, upon receipt of the purchase price, and such other fees, charges and other amounts as shall be due the Agency, deliver a quit claim deed and all other necessary documents (a) to convey to the Company title to the Property being purchased, as such Property exists, subject only to the following: (i) any Liens to which title to such Property were subject when conveyed to the Agency, (ii) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the

Company acquiesced, (iii) any Permitted Encumbrances and (iv) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default, and (b) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance (excluding, however, any rights of indemnification or defense thereunder) or Condemnation award with respect to the Facility. Upon conveyance of the Facility by the Agency to the Company, the PILOT Agreement shall terminate.

ARTICLE XII ENVIRONMENTAL MATTERS

Section 12.1 Environmental Definitions. As used in this Lease Agreement,

(a) "Disposal" has the same meaning as given to that term in the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.);

(b) "Environmental" means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources;

(c) "Environmental Audit" means the Phase I Environmental Audit, dated May 7, 2013, by EnviroTrac Ltd., 5 Old Dock Road, Yaphank, New York 11980, and the EnviroTrac letter, dated January 15, 2014, with respect to the Facility, delivered by the Company to the Agency.

(d) "Environmental Condition" means any violation of Federal, state or local law, ordinance, rule or regulation which are based upon or in any way related to Hazardous Substances;

(e) "Environmental Laws" mean all federal, state, and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto;

(f) "Environmental Permits" mean all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, construction, renovation, equipping, use and/or operation of the Facility, for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Facility;

(g) "Hazardous Substance" means, without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of

1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), the Federal Waters Pollution Control Act, as amended (33 U.S.C. Section 1251 et seq.) Articles 17 and 27 of the New York State Environmental Conservation Law or any other applicable Environmental Law and the regulations promulgated thereunder;

(h) “Release” has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

Section 12.2 Company Representations. The Company represents and warrants to the Agency that:

(a) The Facility is not being nor has the Facility been used in violation of any applicable Environmental Law or for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a land fill or other waste management or disposal site or for the military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) The soil, subsoil, bedrock, surface water and groundwater of the Facility are free of Hazardous Substances, other than such substances that occur naturally.

(c) There has been no Release or threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on or at the Facility, and the Company has not received any form of notice or inquiry from any federal, state or local government agency or authority, any operator, tenant, subtenant, licensee or occupant of the Facility or any property adjacent to or within the immediate vicinity of the Facility or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility.

(d) All Environmental Permits necessary for the acquisition, construction, renovation, equipping, ownership, use or operation of the Facility have been obtained or shall be timely obtained, as the case may be, and are, or shall timely be, in full force and effect.

(e) No event has occurred with respect to the Facility which, immediately or with the passage of time or the giving of notice, or both, would constitute a violation of or noncompliance with any applicable Environmental Law or Environmental Permit.

(f) There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state, or local court, governmental agency or authority relating to the past, present or future construction, renovation, equipping, ownership, use, operation, sale, transfer or conveyance of the Facility which require any change in the condition of the Facility or any containment, clean up, investigations, studies, removal or

remedial action in order for the Facility to be in compliance with any applicable Environmental Law or Environmental Permit.

(g) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) environmental conditions at, on or in the vicinity of the property, (ii) a violation or alleged violation of any applicable Environmental Law or noncompliance or alleged noncompliance with any Environmental Permit, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility or (iv) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility or the acquisition, construction, renovation, equipping, ownership, use, operation, sale, transfer or conveyance thereof.

(h) The Environmental Audit is true, accurate and complete and no other report or discussion with respect to the Facility has been prepared by or for the Company, or which is within the control or possession of the Company, with respect to the environmental circumstances and conditions at, below and about the Facility.

Section 12.3 Company Undertakings.

(a) The Company shall construct, renovate, equip, use, operate and manage the Facility in accordance with all applicable Environmental Laws and Environmental Permits, and the Company shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to construct, renovate, equip, use, operate and manage the Facility in accordance with any and all applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility or any part thereof to be operated or used for the storage, treatment, generation, transportation, processing, handling, production, management or disposal of any Hazardous Substances other than in accordance with all applicable Environmental Laws and Environmental Permits.

(b) The Company shall, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to obtain, comply with, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to obtain and comply with, all applicable Environmental Permits.

(c) The Company shall not cause or permit any changes to be made in the present or intended construction, renovation, equipping, use or operation of the Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the construction, renovation, equipping, use or operation of the Facility as a landfill or waste management or disposal site or for manufacturing or industrial purposes or for the storage of petroleum or petroleum based products other than in accordance with any applicable Environmental law, (ii) violate any applicable Environmental Law, (iii) constitute a violation or noncompliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Company shall promptly provide the Agency with a copy of all notifications which it gives or receives with respect to Environmental Conditions at or in the vicinity) of the Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility. If the Company receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing.

(e) The Company shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are present at the Facility and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits.

(f) The Company shall allow the Agency and its officers, members, employees, agents, representatives, contractors and subcontractors reasonable access to the Facility during regular business hours of the Company for the purposes of ascertaining the Environmental Conditions at, on or in the vicinity of the Facility, including, but not limited to, subsurface conditions.

(g) If at any time the Agency obtains any notice or information that the Company or the Facility or the construction, renovation, equipping, use or operation of the Facility may be in violation of an Environmental Law or in noncompliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Facility, personnel interviews, review of all Environmental Permits and the conduct of a scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Facility, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate, investigative, containment, removal, clean up and other remedial actions required by any Environmental Law, using methods recommended by the professional engineer or other environmental scientist who prepared said audit report and acceptable to the appropriate federal, state and local agencies or authorities.

(h) Without limiting the generality of the Company's obligations under this Lease Agreement, the Company hereby covenants and agrees, at its sole cost and expense, to indemnify, protect, defend, save and hold harmless the Agency, its officers, directors, members, employees, agents and representatives acting in their official capacity, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including attorneys' and experts' fees, expenses and disbursements, and attorneys fees incurred to enforce the terms,

conditions and provisions of this agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Agency relating to, resulting from or arising out of (i) the Environmental Conditions at, on or in the vicinity of the Facility, (ii) the construction, renovation, equipping, operation or use of the Facility in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, (iii) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Facility, (iv) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (v) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility or the construction, renovation, equipping, ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (vi) violation of any applicable Environmental Law, (vii) noncompliance with any Environmental Permit, or (viii) material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Environmental Compliance and Indemnification Agreement (collectively, the "Indemnified Matters"). Notwithstanding any provisions of this Article XII, the Agency retains the right to defend itself and in any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses shall be paid by the Company.

(i) The liability of the Company to the Agency hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of this Lease Agreement by or for the benefit of the Agency, the Company or any subsequent owners or users of the Facility, (ii) any extensions of time for payment or performance required by this Lease Agreement, (iii) the release of the Company or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in this Lease Agreement, or the Agency Compliance and Guaranty Agreement, the Mortgage or the Assignment of Rents and Leases or by operation of law, the Agency's voluntary acts or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of this Lease Agreement, the Agency Compliance and Guaranty Agreement, the Mortgage, the Assignment of Rents and Leases, the PILOT Agreement, or the Recapture Agreement, (v) any exculpatory provision contained in this Lease Agreement limiting the Agency's recourse to property encumbered by the Mortgage or to any other security or limiting the Agency's rights to a deficiency judgment against Company, (vi) any applicable statute of limitations, (vii) any investigation or inquiry conducted by or on the behalf of the Agency or any information which the Agency may have or obtain with respect to the environmental or ecological condition of the Facility, (viii) the sale, assignment or foreclosure of the Mortgage, (ix) the sale, assignment, subleasing, transfer or conveyance of all or part of the Facility or the Company's interests and rights into, and under the Lease Agreement or the termination of the Lease Agreement, (x) the death or legal incapacity of a Guarantor, (xi) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment,

composition, liquidation or similar proceeding, (xii) the redemption, acceleration or maturity, of the Note, or (xiii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under the this Lease Agreement.

(j) The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement heretofore given to the Agency as part of the application process, and/or contained elsewhere in this Lease Agreement or in any other instrument.

ARTICLE XIII MISCELLANEOUS

Section 13.1 No Liability.

(a) Neither the Agency, nor any agent, servant or employee of the Agency, nor a successor in interest to any of the foregoing, shall be under any personal liability with respect to any of the provisions of this Lease Agreement or any matter arising out of or in connection with this Lease Agreement or the Company's occupancy or use of the Facility, and in the event of any breach or default with respect to the Agency's obligations under this Lease Agreement or any claim arising out of or in connection with this Lease Agreement or the Company's occupancy or use of the Facility, the Company's sole remedy shall be an action or proceeding to enforce such obligation, or for specific performance, injunction or declaratory judgment, and the Company hereby waives any right to recover from, and releases, the Agency, its members, Chief Executive Officer, officers, agents and employees from any and all monetary damages, whether known, unknown, foreseeable, unforeseeable, ordinary, extraordinary, compensatory or punitive, and in no event shall the Company attempt to secure any personal judgment against the Agency's Chief Executive Officer, any members, officers, agents or employees, or successors thereto.

(b) The approval, consent, determination, opinion or judgment of the Agency or any agent or employee of the Agency shall not be construed as such person's endorsement, warranty or guarantee of the matter at issue or the manner or means of accomplishing same or the benefit thereof; in no event shall actions of such party replace, or act as or on behalf of, the requesting parties, its agents, servants or employees.

Section 13.2 Notices. All notices and other communications required or permitted to be given pursuant to this Lease Agreement shall be in writing and shall be deemed to have been given, if delivered by hand with acknowledgement of receipt therefor, on the day of delivery, or if mailed by registered or certified mail, return receipt requested, postage prepaid, on the third business day after mailing, or if sent by recognized national overnight courier for next business day delivery for the account of the sender, on the next business day following the deposit of such notice into the custody of the overnight courier, to the parties at the following addresses:

To the Agency:
Town of Brookhaven Industrial Development Agency
1 Independence Hill
Farmingville, New York 11738
Attn: Chief Executive Officer

To the Company:
Thanx M.S. Zorn Blvd., LLC
50-1 Industrial Way
Rocky Point, New York 11778
Attn: Michael Savino, Member

To the Bank:
Suffolk Federal Credit Union
3681 Horseblock Road
Medford, New York 11763
Attn: Joseph Ancona
Vice President, Commercial Lending

A duplicate copy of each notice, certificate and other written communication given hereunder by either the Agency or the Company shall also be given to the Bank and a duplicate copy of each notice, certificate and any other written communication given hereunder by either the Bank or the Agency shall also be given to the Company at the address or herein set forth or provided. Any of the persons mentioned above, and any additional persons constituting a Bank under this Lease Agreement, to whom notice may be given may, by notice given hereunder, designate in writing any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 13.3 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 13.4 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.5 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or terminated except in writing and in accordance with the provisions of this Lease Agreement. Any waiver of the provisions hereof shall be in writing and executed by each party hereto.

Section 13.6 Execution of Counterparts. This 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.

Section 13.7 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State. Any actions, suits or proceedings arising under or by virtue of this Lease Agreement shall be commenced, prosecuted or maintained by the Company solely in the State of New York, County of Suffolk and the Company consents 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 Lease Agreement.

Section 13.8 Recording and Filing.

(a) This Lease Agreement (or a memorandum thereof), may be recorded by the Agency or the Company in the Office of the Clerk of Suffolk County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

(b) Upon the Completion Date with respect to the Facility and upon the installation of all of the Equipment therein, the Company shall prepare a schedule listing all of the Equipment not previously described in this Lease Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein.

(c) The Agency and the Company shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Lease Agreement.

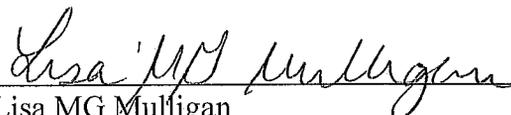
(d) The Company shall cause the Recapture Agreement to be recorded promptly after its execution in the Office of the Clerk of Suffolk County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof

Section 13.9 Survival of Obligations. The obligations of the Company to or for the benefit of the Agency shall survive any termination or expiration of this Lease Agreement.

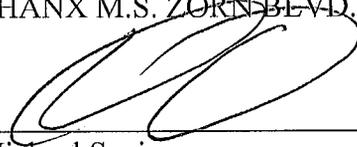
Section 13.10 Table of Contents and Section Headings not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

IN WITNESS WHEREOF, the Agency and the Company have each caused this Lease Agreement to be executed in their respective names by a duly authorized individual, all as of March 1, 2014.

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Lisa MG Mulligan
Its Chief Executive Officer

THANX M.S. ZORN BLVD., LLC

By: 
Michael Savino
Its Member

STATE OF NEW YORK)

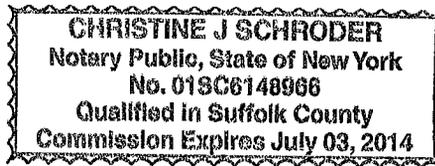
COUNTY OF Suffolk) ss:

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.

Christine J Schroder
Notary Public

STATE OF NEW YORK)

COUNTY OF SUFFOLK) ss:



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.

[Signature]
Notary Public

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

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.

EXHIBIT B

EQUIPMENT

All equipment, fixtures, machinery and items of personal property, and all replacements, modifications and additions thereto acquired and installed and/or to be acquired and installed in, and intended to constitute part of, the Facility.

EXHIBIT C

COMPLIANCE WITH LABOR LAW, EXECUTIVE LAW AND CIVIL RIGHTS LAW

The purpose of the Town of Brookhaven Industrial Development Agency (the "Agency") is to provide benefits that reduce costs and financial barriers to the creation and to the expansion of business and enhance the number of jobs in the Town of Brookhaven.

The Agency has consistently sought to ensure that skilled and fair paying construction jobs be encouraged in straight-lease transactions with the Agency.

Now therefor, the parties to the attached Lease Agreement (the "Agreement") further agree to be bound by the following, which are hereby made a part of the Agreement.

I. The Company agrees that:

(a) no laborer, workman or mechanic, in the employ of the Company or any contractor, subcontractor or other person doing or contracting to construct and equip the Facility shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law;

(b) to the extent applicable and required by law, the Company shall comply with the provisions of the Labor Law of the State of New York (the "Labor Law"), including Section 220 thereof. While such Labor Law does not presently require or obligate the Company to pay the prevailing rate of wages as such term is defined in Section 220-d thereof, the Company acknowledges that it has been advised that it is the policy of the Agency to encourage the Company to voluntarily comply with such provisions.

II. To the extent required by law, the Company agrees that:

(a) in the hiring of employees for the performance of work in acquiring, constructing and equipping the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the construction, renovation and equipping of the Facility, neither the Company nor any contractor, subcontractor nor any person acting on behalf of the Company shall by reason of race, creed, color, disability, sex, or national origin, marital status or Vietnam veteran era status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) neither the Company nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the construction, renovation and equipping of the Facility, discriminate against or intimidate any employee hired for the performance of work involved in constructing, renovating and equipping the

Facility on account of race, creed, color, disability, sex, national origin, marital status or Vietnam era veteran status; and

(c) the aforesaid provisions of this section covering every contract for the manufacture, sale or distribution of materials, equipment or supplies in connection with the construction, renovation and equipping of the Facility shall be limited to operations performed within the territorial limits of the State of New York.

III. To the extent required by law, the Company will comply with the applicable provisions of Sections 291-299 of the Executive Law, and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights, and will permit access to its books, records and accounts by the State Division of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and the Civil Rights Law.