



MEETING OF THE TOWN OF ISLIP  
INDUSTRIAL DEVELOPMENT AGENCY  
July 20, 2021  
Agenda

1. Call the meeting of the Town of Islip Industrial Development Agency to order.
2. To consider the adoption of a Resolution on behalf of the Town of Islip Industrial Development Agency to approve the **Minutes** from the meeting on **June 15, 2021**.
3. To consider the adoption of an Inducement Resolution between the Town of Islip Industrial Development Agency and **Qosina Corp., 2021**. (0500-10600-0100-007005). Located at 2002-Q Orville Drive North, Ronkonkoma.
4. To consider the adoption of an Inducement Resolution between the Town of Islip Industrial Development Agency and **5150 Vets Highway, LLC**. (0500-21700-0200-005006). Located at 5150 Vets Highway, Holbrook.
5. To consider the adoption of an Authorizing Resolution between the Town of Islip and **EAG Properties, LLC/Windsor Place Properties**. (0500-10000-020-081005 & 0500-12200-0300-056000). Located at 50 & 120 Windsor Place, Central Islip.
6. To consider the adoption of an Authorizing Resolution between the Town of Islip Industrial Development Agency and **227 4<sup>th</sup> Avenue Bay Shore, LLC**. (0500-39300-0300-008000). Located at 227 4<sup>th</sup> Avenue, Bay Shore.
7. To consider the adoption of an Authorizing Resolution between the Town of Islip Industrial Development Agency and **Steel Campus, LLC/Marcus ISP APTS Holdings, LLC 2021 Facility**. (0500-18700-0100-004000). Located at E/S of Carlton Avenue, Central Islip.
8. To consider the adoption of an Amended Authorizing Resolution between the Town of Islip Industrial Development Agency and **Bay Shore Propco, LLC./TREC Bay Shore, LLC**. Located at 1700 Union Blvd, Bay Shore. (0500-39300-0300-021001).
9. To consider the adoption of an Amended Authorizing Resolution between the Town of Islip Industrial Development Agency and **Wilshire Rental Properties, LLC/Wrap-N-Pack, Corp.** (0500-11200-0300-001020). Located at 120 Wilshire Blvd, Edgewood.
10. To consider **any other business** to come before the Agency.

**TOWN OF ISLIP  
INDUSTRIAL DEVELOPMENT AGENCY  
AGENDA ITEMS FOR JULY 20, 2021**

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**AGENDA ITEM #3**

**TYPE OF RESOLUTION: INDUCEMENT RESOLUTION**

**COMPANY: QOSINA CORP. 2021**

**PROJECT LOCATION: 2002-Q ORVILLE DRIVE  
NORTH, RONKONKOMA**

**JOBS (RETAINED/CREATED): RETAINED - 110 -  
CREATE - 013 -**

**INVESTMENT: \$1,976,000.00**



RESOLUTION OF THE TOWN OF ISLIP INDUSTRIAL  
DEVELOPMENT AGENCY TAKING OFFICIAL ACTION  
TOWARD APPOINTING QOSINA CORP., A CORPORATION,  
ON BEHALF OF ITSELF AND/OR AN ENTITY FORMED OR  
TO BE FORMED ON BEHALF OF THE FOREGOING AS  
AGENT(S) OF THE AGENCY FOR THE PURPOSE OF  
ACQUIRING, RENOVATING AND EQUIPPING THE  
FACILITY AND MAKING CERTAIN FINDINGS AND  
DETERMINATIONS WITH RESPECT TO THE FACILITY.

WHEREAS, the Town of Islip Industrial Development Agency (the “**Agency**”) has previously assisted Qosina Corp., a corporation organized and existing under the laws of the State of New York, on behalf of itself and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) in the acquisition of a leasehold interest of an approximately 95,141 square foot portion of an approximately 206,005 square foot building (the “**Demised Premises**”) located on an approximately 15.84 acre parcel of land located at 2002 Orville Drive North, Ronkonkoma, New York 11779 (the “**Land**”), the renovation of the Demised Premises (the “**Original Improvements**”) and the acquisition and installation therein of certain equipment and personal property (the “**Original Equipment**”; and, together with the Demised Premises, the Land and the Improvements, the “**Original Facility**”), which Original Facility is currently leased and sub-subleased by the Agency to the Company and used by the Company as office and warehouse space in its business as a distributor of medical components and cosmetic disposables; and

WHEREAS, the Company has now applied to the Agency to enter into a transaction in which the Agency will assist in the renovation of the Original Improvements (the “**2021 Improvements**”, and together with the Original Improvements, the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**2021 Equipment**”; and together with the Original Equipment, the “**Equipment**”, and together with the Improvements, the “**Facility**”), which Facility will continue to be leased by the Agency to the Company, and used by the Company as office and warehouse space in its business as a distributor of medical components and cosmetic disposables (the “**Project**”); and

WHEREAS, the Land, the Demised Premises and the Improvements (the “**Ground Leased Facility**”) are currently leased by REP A-2027 LLC, a Delaware limited liability company (the “**Owner**”), to the Company pursuant to an Agreement of Lease, dated as of May 8, 2015, as amended and extended to date (the “**Ground Lease**”), by and between the Owner and the Company; and

WHEREAS, the Agency will acquire a leasehold interest in the Improvements and title to the Equipment and will sublease and lease the Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 47 of the Laws of 1974 of the State of New York, as the same may be amended from time to time (collectively, the “**Act**”); and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes, exemptions from sales and use taxes and abatement of real property taxes on the Facility, consistent with the policies of the Agency, all to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein; and

WHEREAS, as of the date of this resolution, no determination for financial assistance has been made; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, prior to the date of the Hearing (defined below), the Agency will have made a determination for financial assistance; and

WHEREAS, prior to the closing of the transaction described herein, a public hearing (the “**Hearing**”) will be held 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 can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of the transaction described herein, and such notice (together with proof of publication) will be substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as Exhibit B; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed financial assistance is either an inducement to the Company to maintain the Facility in the Town of Islip or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Agency constitutes a “State Agency”; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the “**Questionnaire**”) with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

NOW, THEREFORE, BE IT RESOLVED by the Town of Islip Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the acquisition, renovation, equipping, and operation of the Facility is a Type II Action, as that term is defined in the SEQRA Act. As such, no further SEQRA review is required under the SEQRA Act.

Section 2. The acquisition, renovation, and equipping of the Facility by the Agency, the subleasing and leasing of the Facility to the Company and the provision of financial assistance on the Facility pursuant to the Act will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town of Islip and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act, and the same is, therefore, approved.

Section 3. Subject to the provisions of this resolution, the Agency shall (i) acquire, renovate and equip the Facility, and (ii) lease and sublease the Facility to the Company.

Section 4. The Company is hereby notified that it will be required to comply with Section 875 of the Act. The Company shall be required to agree to the terms of Section 875 pursuant to the Lease and Project Agreement, dated a date to be determined (the "**Lease Agreement**"), by and between the Company and the Agency. The Company is further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 5. Counsel to the Agency is authorized and directed to work with Transaction Counsel (Nixon Peabody LLP) to prepare, for submission to the Agency, all documents necessary to affect the transactions described in the foregoing resolution.

Section 6. The Chairman, the Executive Director, the Deputy Executive Director and all members of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Company, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 7. Any expenses incurred by the Agency with respect to the Facility, including the expenses of Transaction Counsel, shall be paid by the Company. The Company shall agree to pay such expenses and further agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 8. This resolution shall take effect immediately.



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

I, the undersigned Assistant Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY THAT:

I have compared the foregoing copy of a resolution of the Town of Islip Industrial Development Agency (the “**Agency**”) with the original thereof on file in the office of the Agency, and the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.

Such resolution was passed at a meeting of the Agency duly convened in public session on July 20, 2021, at 40 Nassau Avenue, Islip, New York 11751, at which meeting the following members were:

Present:

Absent:

Also Present:

The question of the adoption of the foregoing resolution was duly put to vote on roll call, which resulted as follows:

Voting Aye

and, therefore, the resolution was declared duly adopted.

The Application is in substantially the form presented to and approved at such meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), (ii) said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103a and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of July 20, 2021.

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Assistant Secretary

## EXHIBIT A

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### NOTICE OF PUBLIC HEARING

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NOTICE IS HEREBY GIVEN that a public hearing pursuant to Title 1 of Article 18-A of the New York State General Municipal Law will be held by the Town of Islip Industrial Development Agency on the \_\_\_ day of July, 2021, at \_\_\_ a.m., local time, at the Town of Islip, Offices of Economic Development, 40 Nassau Avenue, Islip, New York 11751 in connection with the following matters:

The Town of Islip Industrial Development Agency (the “**Agency**”) has previously assisted Qosina Corp., a corporation organized and existing under the laws of the State of New York, on behalf of itself and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) in the acquisition of a leasehold interest of an approximately 95,141 square foot portion of an approximately 206,005 square foot building (the “**Demised Premises**”) located on an approximately 15.84 acre parcel of land located at 2002 Orville Drive North, Ronkonkoma, New York 11779 (the “**Land**”), the renovation of the Demised Premises (the “**Original Improvements**”) and the acquisition and installation therein of certain equipment and personal property (the “**Original Equipment**”; and, together with the Demised Premises, the Land and the Improvements, the “**Original Facility**”), which Original Facility is currently leased and sub-subleased by the Agency to the Company and used by the Company as office and warehouse space in its business as a distributor of medical components and cosmetic disposables.

The Company has now applied to the Agency to enter into a transaction in which the Agency will assist in the renovation of the Original Improvements (the “**2021 Improvements**”, and together with the Original Improvements, the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**2021 Equipment**”; and together with the Original Equipment, the “**Equipment**”, and together with the Improvements, the “**Facility**”), which Facility will continue to be leased by the Agency to the Company, and used by the Company as office and warehouse space in its business as a distributor of medical components and cosmetic disposables (the “**Project**”).

The Land, the Demised Premises and the Improvements (the “**Ground Leased Facility**”) are currently leased by REP A-2027 LLC, a Delaware limited liability company (the “**Owner**”), to the Company pursuant to an Agreement of Lease, dated as of May 8, 2015, as amended and extended to date (the “**Ground Lease**”), by and between the Owner and the Company.

The Facility will initially be owned by the Owner, and operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Improvements and title to the Equipment and will lease and sublease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes and sales and use taxes and abatement of real property taxes on the Facility, all consistent with the policies of the Agency.

A representative of the Agency will at the above-stated time and place hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: July \_\_, 2021

TOWN OF ISLIP INDUSTRIAL  
DEVELOPMENT AGENCY

By: John G. Walser  
Title: Executive Director



EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON  
JULY 20, 2021

TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY  
(QOSINA CORP. FACILITY)

- 
1. \_\_\_\_\_ of the Town of Islip Industrial Development Agency (the “**Agency**”) called the hearing to order.
  2. \_\_\_\_\_ then appointed himself the hearing officer of the Agency, to record the minutes of the hearing.
  3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

The Town of Islip Industrial Development Agency (the “**Agency**”) has previously assisted Qosina Corp., a corporation organized and existing under the laws of the State of New York, on behalf of itself and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) in the acquisition of a leasehold interest of an approximately 95,141 square foot portion of an approximately 206,005 square foot building (the “**Demised Premises**”) located on an approximately 15.84 acre parcel of land located at 2002 Orville Drive North, Ronkonkoma, New York 11779 (the “**Land**”), the renovation of the Demised Premises (the “**Original Improvements**”) and the acquisition and installation therein of certain equipment and personal property (the “**Original Equipment**”; and, together with the Demised Premises, the Land and the Improvements, the “**Original Facility**”), which Original Facility is currently leased and sub-subleased by the Agency to the Company and used by the Company as office and warehouse space in its business as a distributor of medical components and cosmetic disposables.

The Company has now applied to the Agency to enter into a transaction in which the Agency will assist in the renovation of the Original Improvements (the “**2021 Improvements**”, and together with the Original Improvements, the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**2021 Equipment**”; and together with the Original Equipment, the “**Equipment**”, and together with the Improvements, the “**Facility**”), which Facility will continue to be leased by the Agency to the Company, and used by the Company as office and warehouse space in its business as

a distributor of medical components and cosmetic disposables (the “**Project**”); and

The Land, the Demised Premises and the Improvements (the “**Ground Leased Facility**”) are currently leased by REP A-2027 LLC, a Delaware limited liability company (the “**Owner**”), to the Company pursuant to an Agreement of Lease, dated as of May 8, 2015, as amended and extended to date (the “**Ground Lease**”), by and between the Owner and the Company.

The Facility will initially be owned by the Owner, and operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Improvements and title to the Equipment and will lease and sublease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes and sales and use taxes and abatement of real property taxes on the Facility, all consistent with the policies of the Agency.

4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at \_\_\_\_\_ a.m./p.m.

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

I, the undersigned Assistant Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held by the Town of Islip Industrial Development Agency (the “**Agency**”) on July \_\_, 2021, at \_\_ a.m., local time, at Town of Islip, Offices of Economic Development, 40 Nassau Avenue, Islip, New York 11751, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of July \_\_, 2021.

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Assistant Secretary



**TOWN OF ISLIP  
INDUSTRIAL DEVELOPMENT AGENCY  
AGENDA ITEMS FOR JULY 20, 2021**

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**AGENDA ITEM #4**

**TYPE OF RESOLUTION: INDUCEMENT RESOLUTION**

**COMPANY: 5150 VETERANS MEMORIAL HIGHWAY,  
LLC**

**PROJECT LOCATION: 5150 VETS HWY, HOLBROOK**

**JOBS (RETAINED/CREATED): RETAINED - 00 -  
CREATE - 60 -**

**INVESTMENT: \$10,883,600.00**

RESOLUTION OF THE TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD APPOINTING 5150 VETERANS LLC, A LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF THE FOREGOING AS AGENT(S) OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND EQUIPPING THE FACILITY AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE FACILITY.

WHEREAS 5150 Veterans LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Town of Islip Industrial Development Agency (the “**Agency**”) to enter into a transaction in which the Agency will assist in the construction of a new building on an approximately 5.07 acre parcel of land located at 5150 Veterans Highway, Holbrook, New York 11741 (the “**Land**”), the construction of an approximately 70,000 square foot building (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company, and subleased by the Company to various future tenants (the “**Tenants**”), for use as warehouse and manufacturing space (the “**Project**”); and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment and will sublease and lease the Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 47 of the Laws of 1974 of the State of New York, as the same may be amended from time to time (collectively, the “**Act**”); and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and the Extension and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes, exemptions from sales and use taxes and abatement of real property taxes on the Facility, consistent with the policies of the Agency, all to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein; and

WHEREAS, as of the date of this resolution, no determination for financial assistance has been made; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, prior to the date of the Hearing (defined below), the Agency will have made a determination for financial assistance; and

WHEREAS, prior to the closing of the transaction described herein, a public hearing (the “**Hearing**”) will be held 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 can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of the transaction described herein, and such notice (together with proof of publication) will be substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as Exhibit B; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed financial assistance is either an inducement to the Company to maintain the Facility in the Town of Islip or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Agency constitutes a “State Agency”; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the “**Questionnaire**”) with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

NOW, THEREFORE, BE IT RESOLVED by the Town of Islip Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the acquisition, renovation, equipping, and operation of the Facility is an “Unlisted” Action, as that term is defined in the SEQR Act. The Agency also determines that the action will not have a “significant effect” on the environment, and, therefore, an environmental impact statement will not be prepared. This determination constitutes a negative declaration for purposes of SEQR. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQR or as may be deemed advisable by the Chairman or Executive Director of the Agency or counsel to the Agency.

Section 2. The construction and equipping of the Facility by the Agency, the subleasing and leasing of the Facility to the Company and the provision of financial assistance on the Facility pursuant to the Act will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town of Islip and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act, and the same is, therefore, approved.

Section 3. Subject to the provisions of this resolution, the Agency shall (i) acquire, construct and equip the Facility, and (ii) lease and sublease the Facility to the Company.

Section 4. The Company is hereby notified that it will be required to comply with Section 875 of the Act. The Company shall be required to agree to the terms of Section 875 pursuant to the Lease and Project Agreement, dated a date to be determined (the “**Lease Agreement**”), by and between the Company and the Agency. The Company is further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 5. Counsel to the Agency is authorized and directed to work with Transaction Counsel (Nixon Peabody LLP) to prepare, for submission to the Agency, all documents necessary to affect the transactions described in the foregoing resolution.

Section 6. The Chairman, the Executive Director, the Deputy Executive Director and all members of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Company, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 7. Any expenses incurred by the Agency with respect to the Facility, including the expenses of Transaction Counsel, shall be paid by the Company. The Company shall agree to pay such expenses and further agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 8. This resolution shall take effect immediately.



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

I, the undersigned Assistant Secretary of the Town of Islip Industrial Development Agency, DO  
HEREBY CERTIFY THAT:

I have compared the foregoing copy of a resolution of the Town of Islip Industrial Development  
Agency (the “**Agency**”) with the original thereof on file in the office of the Agency, and the  
same is a true and correct copy of such resolution and of the proceedings of the Agency in  
connection with such matter.

Such resolution was passed at a meeting of the Agency duly convened in public session  
on July 20, 2021, at Islip Town Hall, 655 Main Street, Islip, New York, at which meeting the  
following members were:

Present:

Absent:

Also Present:

The question of the adoption of the foregoing resolution was duly put to vote on roll call,  
which resulted as follows:

Voting Aye

and, therefore, the resolution was declared duly adopted.

The Application is in substantially the form presented to and approved at such meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), (ii) said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103a and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of July 20, 2021.

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Assistant Secretary

EXHIBIT A

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**NOTICE OF PUBLIC HEARING**

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**NOTICE IS HEREBY GIVEN** that a public hearing pursuant to Title 1 of Article 18-A of the New York State General Municipal Law will be held by the Town of Islip Industrial Development Agency on the \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_.m., local time, at 40 Nassau Avenue, Islip, New York 11751 in connection with the following matters:

5150 Veterans LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”) has applied to the Town of Islip Industrial Development Agency (the “**Agency**”) to enter into a transaction in which the Agency will assist in the construction of a new building on an approximately 5.07 acre parcel of land located at 5150 Veterans Highway, Holbrook, New York 11741 (the “**Land**”), the construction of an approximately 70,000 square foot building (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company, and subleased by the Company to various future tenants (the “**Tenants**”), for use as warehouse and manufacturing space (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency contemplates that it will provide financial assistance to the Company in connection with the Project and consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Project’s exemptions from sales and use taxes and abatement of real property taxes.

A representative of the Agency will, at the above-stated time and place, hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: \_\_\_\_\_, 2021

TOWN OF ISLIP INDUSTRIAL  
DEVELOPMENT AGENCY

By: John G. Walser  
Title: Executive Director  
Director

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON  
JULY 20, 2021

TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY  
(5150 VETERANS LLC FACILITY)

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1. \_\_\_\_\_, \_\_\_\_\_ of the Town of Islip Industrial Development Agency (the “**Agency**”) called the hearing to order.

2. The \_\_\_\_\_ then appointed \_\_\_\_\_, the \_\_\_\_\_ of the Agency, the hearing officer of the Agency, to record the minutes of the hearing.

3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the project as follows:

5150 Veterans LLC, a limited liability company organized and existing under the laws of the State of New York has applied to the Town of Islip Industrial Development Agency (the “**Agency**”) to enter into a transaction in which the Agency will assist in the construction of a new building on an approximately 5.07 acre parcel of land located at 5150 Veterans Highway, Holbrook, New York 11741 (the “**Land**”), the construction of an approximately 70,000 square foot building (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company, and subleased by the Company to various future tenants (the “**Tenants**”), for use as warehouse and manufacturing space (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment and will lease and sublease the Facility to the Company. The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes and sales and use taxes and abatement of real property taxes on the Facility, all consistent with the policies of the Agency.

4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the \_\_\_\_\_. The following is a listing of the persons heard and a summary of their views:

5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at \_\_\_\_\_ a.m./p.m.

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

I, the undersigned Assistant Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held by the Town of Islip Industrial Development Agency (the “**Agency**”) on the \_\_\_\_ day of July, 2021, at \_\_\_\_\_ a.m., local time, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of July \_\_\_, 2021.

\_\_\_\_\_  
Assistant Secretary

**TOWN OF ISLIP  
INDUSTRIAL DEVELOPMENT AGENCY  
AGENDA ITEMS FOR JULY 20, 2021**

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**AGENDA ITEM #5**

**TYPE OF RESOLUTION: AUTHORIZING RESOLUTION**

**COMPANY: EAG PROPERTIES/WINDSOR PLACE  
PROPERTIES, LLC**

**PROJECT LOCATION: 50 & 120 WINDSOR PLACE,  
CENTRAL ISLIP**

**JOBS (RETAINED/CREATED): RETAINED - 156 -  
CREATE - 030 -**

**INVESTMENT: \$3,050,000.00**



Date: July 20, 2021

At a meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), held at 40 Nassau Avenue, Islip, New York 11751 on the 20th day of July, 2021, the following members of the Agency were:

Present:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest to a certain industrial development facility more particularly described below (Windsor Place Properties, LLC 2021 Facility).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

RESOLUTION OF THE TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD APPOINTING EAG PROPERTIES, LLC, A NEW YORK LIMITED LIABILITY COMPANY ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF EAG PROPERTIES, LLC, WINDSOR PLACE PROPERTIES, LLC, A NEW YORK LIMITED LIABILITY COMPANY ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF WINDSOR PLACE PROPERTIES, LLC, AVCO INDUSTRIES INC., A NEW YORK BUSINESS CORPORATION ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF AVCO INDUSTRIES INC., AND FREEPORT PAPER INDUSTRIES, INC., A NEW YORK BUSINESS CORPORATION ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF FREEPORT PAPER INDUSTRIES, INC., ON BEHALF OF ANY OF THE FOREGOING AS AGENT(S) OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING AND EQUIPPING THEIR FACILITIES AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 47 of the Laws of 1974 of the State of New York, as amended from time to time (collectively, the “**Act**”), the Town of Islip Industrial Development Agency (the “**Agency**”) was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Agency previously provided its assistance to (A) Windsor Place Properties, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Windsor Place Properties, LLC (the “**50 Windsor Company**”) and Avco Industries Inc., a business corporation, organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Avco Industries Inc. (“**Avco Industries**”) and Freeport Paper Industries, Inc., a business corporation, organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Freeport Paper Industries, Inc (“**Freeport Paper**”; and, together with Avco Industries, collectively, the “**Sublessee**”), in connection with (i) the acquisition of an approximately 2.0 acre parcel of land located at 50 Windsor Place, Central Islip, New York 11722 (the “**50 Windsor Land**”), the renovation of an approximately 10,000 square foot building located thereon (the “**Original 50 Windsor Improvements**”), and the equipping thereof, including, but not limited to the purchase of fork lifts, racks, pallet jacks and paper cup converting and printing equipment (the “**Original 50 Windsor Equipment**”;

and, together with the 50 Windsor Land and the Original 50 Windsor Improvements, the **“Original 50 Windsor Facility”**), which Original 50 Windsor Facility is leased by the Agency to the 50 Windsor Company and subleased by the 50 Windsor Company to, and used by, the Sublessee for its primary use as a manufacturing facility in its business of manufacturing, branding and printing of paper products, including paper plates, cups and bags for the fast food industry (the **“Original 50 Windsor Project”**); and to (B) EAG Properties, LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of EAG Properties, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the **“120 Windsor Company”**) and the Sublessee in connection with the acquisition of an approximately 30,000 square foot building located on a 1.81 acre parcel of land located at 120 Windsor Place, Central Islip, New York 11722 (the **“120 Windsor Land”** and the **“Original 120 Windsor Improvements”**), and the equipping thereof (the **“Original 120 Windsor Equipment”**); and, together with the 120 Windsor Land and the Original 120 Windsor Improvements, the **“Original 120 Windsor Facility”**; collectively, with the Original 50 Windsor Facility, the **“Original Facility”**), which Original 120 Windsor Facility is leased by the Agency to the 120 Windsor Company and subleased by the 120 Windsor Company to, and used by, the Sublessee for its primary use as a manufacturing facility in its business of manufacturing, branding and printing of paper products, including paper plates, cups and bags for the fast food industry (the **“Original 120 Windsor Project”**); and, together with the Original 50 Windsor Project, the **“Original Project”**); and

WHEREAS, the Agency acquired a leasehold interest in the 50 Windsor Land and the 50 Windsor Improvements pursuant to a certain Company Lease Agreement, dated as of October 1, 2016 (the **“Original 50 Windsor Company Lease”**), by and between the 50 Windsor Company and the Agency; and

WHEREAS, the Agency leased and subleased the 50 Windsor Facility to the 50 Windsor Company pursuant to a certain Lease and Project Agreement, dated as of October 1, 2016 (the **“Original 50 Windsor Lease Agreement”**), between the Agency and the 50 Windsor Company; and

WHEREAS, the Agency acquired a leasehold interest in the 120 Windsor Land and the 120 Windsor Improvements pursuant to a certain Company Lease Agreement, dated as of October 1, 2016 (the **“Original 120 Windsor Company Lease”**), by and between the 120 Windsor Company and the Agency; and

WHEREAS, the Agency leased and subleased the 120 Windsor Facility to the 120 Windsor Company pursuant to a certain Lease and Project Agreement, dated as of October 1, 2016 (the **“Original 120 Windsor Lease Agreement”**), between the Agency and the 120 Windsor Company; and

WHEREAS, the 50 Windsor Company and the Sublessee have now requested the Agency’s assistance in connection with the construction and equipping of an approximately 14,000 square foot addition to the existing Original 50 Windsor Facility (the **“2021 50 Windsor Improvements”**), and together with the Original 50 Windsor Improvements, the

**“50 Windsor Improvements”**) including, but not limited to, the acquisition and installation of new “converting” and packaging equipment (the **“2021 50 Windsor Equipment”**, and together with the 2021 50 Windsor Improvements, the **“2021 50 Windsor Facility”**) to be used by the Sublessee in the manufacture and distribution of new lines of products (collectively, the **“2021 50 Windsor Project”**; and, together with the Original 50 Windsor Project, the **“50 Windsor Project”**); and

WHEREAS, the 120 Windsor Company and the Sublessee have now requested the Agency’s assistance in connection with a mortgage refinancing of the Original 120 Windsor Facility and an equipment expansion of the Original 120 Windsor Facility including, but not limited to, the acquisition and installation of additional specialty printing and related manufacturing equipment (the **“2021 120 Windsor Equipment”**; and together with the Original 120 Windsor Equipment, the **“120 Windsor Equipment”**, and together with the Original 120 Windsor Facility, the **“120 Windsor Facility”**), for the continued use by the Sublessee in the manufacture and distribution of new lines of products (the **“2021 120 Windsor Project”**, and together with the Original 120 Windsor Project, the **“120 Windsor Project”**, and together with the Original Project and the 2021 50 Windsor Project, the **“Project”**). The 120 Windsor Facility will continue to be owned by the Company and operated and/or managed by the Sublessee; and

WHEREAS, the Agency will (a) continue and extend its leasehold interest in the Original 50 Windsor Facility, acquire the 2021 50 Windsor Facility and will lease and sublease the 2021 50 Windsor Facility to the 50 Windsor Company for further sublease by the 50 Windsor Company to the Sublessee; and (b) continue and extend its leasehold interest in the Original 120 Windsor Facility, acquire the 2021 120 Windsor Facility, and will lease and sublease the 2021 120 Windsor Facility to the 120 Windsor Company, and lease the 2021 120 Windsor Equipment to the Sublessee; and

WHEREAS, the Agency, by resolution duly adopted on June 15, 2021 (the **“Inducement Resolution”**), decided to proceed under the provisions of the Act; and

WHEREAS, the Agency and the 50 Windsor Company will extend the leasehold interest in the Original 50 Windsor Company Lease and in the Original 50 Windsor Lease Agreement pursuant to an Amendment Agreement, dated as July 1, 2021, or such other date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the **“50 Windsor Amendment Agreement”**), by and between Agency and the 50 Windsor Company; and

WHEREAS, the Agency will acquire title to the 2021 50 Windsor Equipment pursuant to a certain 2021 50 Windsor Bill of Sale, dated the Closing Date (as defined in the Original 500 Windsor Lease Agreement, as extended and amended) (the **“2021 50 Windsor Bill of Sale”**), from the 50 Windsor Company to the Agency; and

WHEREAS, the 50 Windsor Company will continue to sub-sublease the Original 50 Windsor Facility, as amended and extended, to the Sublessee pursuant to an extension of

sublease agreement, dated a date not yet determined (the “**50 Windsor Amendment of Sublease Agreement**”), between the 50 Windsor Company and the Sublessee; and

WHEREAS, the Sublessee and the Agency will enter into a certain Agency Compliance Agreement, dated as of July 1, 2021, or such other date as may be determined by the Chairman or Executive Director of the Agency and counsel to the Agency (the “**50 Windsor Agency Compliance Agreement**”), whereby each Sublessee will provide certain assurances to the Agency with respect to the 2021 50 Windsor Facility; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the 50 Windsor Company and the Sublessee in the form of (i) exemptions from sales and use taxes in an approximate amount not to exceed \$51,750, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the 2021 50 Windsor Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A-1 hereof); and

WHEREAS, the Agency and the 120 Windsor Company will extend the leasehold interest in the Original 120 Windsor Company Lease and in the Original 120 Windsor Lease Agreement pursuant to an Amendment Agreement, dated as July 1, 2021, or such other date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the “**120 Windsor Amendment Agreement**”), by and between Agency and the 120 Windsor Company; and

WHEREAS, the Agency will acquire title to the 2021 120 Windsor Equipment pursuant to a certain 2021 120 Windsor Equipment Bill of Sale, dated the Closing Date (as defined in the Original 120 Windsor Lease Agreement, as amended) (the “**2021 120 Windsor Equipment Bill of Sale**”), from the Sublessee to the Agency; and

WHEREAS, the Agency will lease the 2021 120 Windsor Equipment to the Sublessee pursuant to a certain 120 Windsor Equipment Lease Agreement, dated as of July 1, 2021, or such other date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the “**120 Windsor Equipment Lease Agreement**”), by and between the Agency and the Sublessee; and

WHEREAS, the 120 Windsor Company will continue to sub-sublease the Original 120 Windsor Facility, as amended and extended, to the Sublessee pursuant to an extension of sublease agreement, dated a date not yet determined (the “**120 Windsor Amendment of Sublease Agreement**”), between the 120 Windsor Company and the Sublessee; and

WHEREAS, the Sublessee and the Agency will enter into a certain Agency Compliance Agreement, dated as of July 1, 2021, or such other date as may be determined by the Chairman or Executive Director of the Agency and counsel to the Agency (the “**120 Windsor Agency Compliance Agreement**”), whereby each Sublessee will provide certain assurances to the Agency with respect to the 2021 120 Windsor Facility; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the 120 Windsor Company and the Sublessee in the form of (i) exemptions from mortgage



recording taxes for one or more mortgages securing an amount presently estimated to be \$2,500,000 but not to exceed \$3,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$18,750 but not to exceed \$22,500, in connection with the financing of the acquisition, renovation and equipping of the 120 Windsor Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping of the 120 Windsor Facility, (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$43,125, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the 2021 120 Windsor Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A-2 hereof); and

WHEREAS, as security for a Loan or Loans (as such term is defined in the Lease Agreement), the Agency and the 120 Windsor Company will execute and deliver to a lender or lenders not yet determined (collectively, the “**Lender**”), a mortgage or mortgages, and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined, in connection with the financing, any refinancing or permanent financing of the costs of the acquisition, renovation and equipping of the 120 Windsor Facility (collectively, the “**120 Windsor Loan Documents**”); and

WHEREAS, the Agency has given due consideration to the application of the 50 Windsor Company, the 120 Windsor Company and the Sublessee and to representations by the 50 Windsor Company, the 120 Windsor Company and the Sublessee that the proposed transaction is necessary to maintain the competitive position of the 50 Windsor Company, the 120 Windsor Company and the Sublessee in their respective industries; and

WHEREAS, the 50 Windsor Company, the 120 Windsor Company and the Sublessee have agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the 50 Windsor Company, the 120 Windsor Company and the Sublessee for further sublease by the 50 Windsor Company and the 120 Windsor Company to the Sublessee respectively.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The 50 Windsor Facility and the 120 Windsor Facility each continue to constitute a “project”, as such term is defined in the Act; and

(c) The 50 Windsor Facility and the 120 Windsor Facility preserves the public purposes of the Act by preserving or increasing the number of permanent private sector jobs

in the Town of Islip. The 50 Windsor Facility and the 120 Windsor Facility and the Sublessee have represented to the Agency that they intend to create collectively, approximately thirty (30) new full-time employees within the second year after completion of each of the 50 Windsor Facility and the 120 Windsor Facility; and

(d) The acquisition, renovation and equipping of each of the 50 Windsor Facility and the 120 Windsor Facility, the continued leasing of the 50 Windsor Facility and the 120 Windsor Facility to the 50 Windsor Company and the 120 Windsor Company respectively, for further subleasing to the Sublessee, and the leasing of the 120 Windsor Equipment to the Sublessee, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Islip, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) The acquisition, renovation and equipping of each of the 50 Windsor Facility and the 120 Windsor Facility by the Agency is reasonably necessary to induce the 50 Windsor Company, the 120 Windsor Company and the Sublessee to maintain and expand their respective business operations in the Town of Islip; and

(f) Based upon representations of the 50 Windsor Company, the 120 Windsor Company and the Sublessee and counsel to the 50 Windsor Company, the 120 Windsor Company and the Sublessee, each of the 50 Windsor Facility and the 120 Windsor Facility continues to conform with the local zoning laws and planning regulations of the Town of Islip and all regional and local land use plans for the area in which the 50 Windsor Facility and the 120 Windsor Facility are located; and

(g) It is desirable and in the public interest for the Agency to continue to sublease the 50 Windsor Facility, the 120 Windsor Facility and the 2021 120 Windsor Equipment to the 50 Windsor Company, the 120 Windsor Company, respectively, and to lease the 2021 120 Windsor Equipment to the Sublessee; and

(h) The 50 Windsor Amendment Agreement will be an effective instrument whereby (i) the Agency extends the term of the Original 50 Windsor Lease Agreement, continues to lease and sublease the 50 Windsor Facility to the 50 Windsor Company, (ii) the Agency and the 50 Windsor Company set forth the terms and conditions of their agreement regarding payments-in-lieu of taxes, (iii) the Agency provides for the increased sales tax benefits, and (iv) will describe the circumstances in which the 50 Windsor Amendment Agreement may recapture some or all of the benefits granted to the 50 Windsor Company; and

(i) The 50 Windsor Agency Compliance Agreement will be an effective instrument whereby the Sublessee will provide certain assurances to the Agency with respect to the 50 Windsor Facility; and

(j) The 120 Windsor Amendment Agreement will be an effective instrument whereby (i) the Agency extends the term of the Original 120 Windsor Lease Agreement, continues to lease and sublease the 120 Windsor Facility to the 120 Windsor Company, (ii)



the Agency and the 120 Windsor Company set forth the terms and conditions of their agreement regarding payments-in-lieu of taxes, (iii) the Agency provides for the increased sales tax benefits, mortgage exemptions, and (iv) will describe the circumstances in which the 120 Windsor Amendment Agreement may recapture some or all of the benefits granted to the 120 Windsor Company; and

(k) The 120 Windsor Agency Compliance Agreement will be an effective instrument whereby the Sublessee will provide certain assurances to the Agency with respect to the 120 Windsor Facility; and

(l) The 2021 120 Windsor Equipment Lease Agreement will be an effective instrument whereby the Agency leases the 2021 120 Windsor Equipment to the Sublessee; and

(m) The 120 Windsor Loan Documents to which the Agency is a party will be effective instruments whereby the Agency and the 120 Windsor Company agree to secure the loan made to the 120 Windsor Company by the Lender.

Section 2. The Agency has assessed all material information included in connection with the 50 Windsor Company, the 120 Windsor Company and the Sublessee's application for financial assistance, including but not limited to, the cost-benefit analysis prepared by the Agency and such information has provided the Agency a reasonable basis for its decision to provide the financial assistance described herein to the 50 Windsor, the 120 Windsor Company and the Sublessee.

Section 3. In consequence of the foregoing, the Agency hereby determines to: (i) extend and continue to lease from the 50 Windsor Company the 50 Windsor Facility pursuant to the 50 Windsor Amendment Agreement, (ii) execute, deliver and perform the 50 Windsor Amendment Agreement, (iii) extend and continue to lease from the 120 Windsor Company the 120 Windsor Facility pursuant to the 120 Windsor Amendment Agreement, (iv) execute, deliver and perform the 120 Windsor Amendment Agreement, (v) lease the 2021 120 Windsor Equipment to the Sublessee pursuant to the 120 Windsor Equipment Lease Agreement, (vi) execute, deliver and perform the 120 Windsor Equipment Lease Agreement, (vii) execute and deliver the 50 Windsor Agency Compliance Agreement and the 120 Windsor Agency Compliance Agreement, (viii) grant a mortgage on and security interests in and to the 120 Windsor Facility pursuant to the 120 Windsor Loan Documents, and (ix) execute and deliver the 120 Windsor Loan Documents to which the Agency is a party.

Section 4. The Agency is hereby authorized to extend and continue to lease the real property and personal property described in Exhibit A and Exhibit B, respectively, to the 50 Windsor Lease Agreement, as amended and extended, and the 120 Windsor Lease Agreement, as amended and extended and the personal property described in Exhibit A to the 120 Windsor Equipment Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 5. The Agency is hereby authorized to execute and deliver the 120 Windsor Loan Documents in connection with the financing of the costs of acquiring, renovating and equipping the 120 Windsor Facility and any future 120 Windsor Loan Documents in connection with any future refinancing or permanent financing of such costs of acquiring, renovating and equipping of the 120 Windsor Facility without the need for any further or future approvals of the Agency.

Section 6. The Agency hereby authorizes and approves the following economic benefits to be granted to the 50 Windsor Company and the Sublessee in connection with the acquisition, renovation and equipping of the 50 Windsor Facility in the form of (i) exemptions from sales and use taxes in an approximate amount not to exceed \$51,750, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the 50 Windsor Facility, and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A-1 hereof).

Section 7. The Agency hereby authorizes and approves the following economic benefits to be granted to the 120 Windsor Company and the Sublessee in connection with the acquisition, renovation and equipping of the 120 Windsor Facility in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$2,500,000 but not to exceed \$3,000,000 corresponding to mortgage recording tax exemptions presently estimated to be \$18,750, but not to exceed \$22,500, in connection with the financing of the acquisition, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, renovating and equipping of the Facility (ii) exemptions from sales and use taxes in an approximate amount not to exceed \$43,125, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the 120 Windsor Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A -2 hereof).

Section 8. Subject to the provisions of this resolution, the 50 Windsor Company, The 120 Windsor Company and the Sublessee are herewith and hereby appointed the agents of the Agency to acquire, renovate and equip the 50 Windsor Facility and the 120 Windsor Facility, respectively. The 50 Windsor Company, the 120 Windsor Company and the Sublessee are hereby empowered to delegate their respective status as agents of the Agency to their respective agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the 50 Windsor Company, the 120 Windsor Company and the Sublessee may choose in order to acquire, renovate and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the 50 Windsor Company, the 120 Windsor Company and the Sublessee as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the 50 Windsor Company, the 120 Windsor Company and the Sublessee, as agents of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the 50 Windsor Company, the 120 Windsor Company or the Sublessee of any motor vehicles, including any cars, trucks, vans or buses which are licensed

by the Department of Motor Vehicles for use on public highways or streets. The 50 Windsor Company, the 120 Windsor Company and the Sublessee indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the 50 Windsor Company, the 120 Windsor Company and the Sublessee, as agents of the Agency. The aforesaid appointment of the 50 Windsor Company, the 120 Windsor Company and the Sublessee as agents of the Agency to acquire, renovate and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company and the Sublessee have received exemptions from sales and use taxes in an amount not to exceed \$51,750,000 (50 Windsor Company) \$43,125 (Sublessee and/or 120 Windsor Company), in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the 50 Windsor Company, the 120 Windsor Company and the Sublessee, if such activities and improvements are not completed by such time. The aforesaid appointment of the 50 Windsor Company, the 120 Windsor Company and the Sublessee is subject to the execution of the documents contemplated by this resolution.

Section 9. The 50 Windsor Company, the 120 Windsor Company and the Sublessee are hereby notified that they will be required to continue to comply with Section 875 of the Act. The 50 Windsor Company, the 120 Windsor Company and the Sublessee shall be required to agree to the terms of Section 875 pursuant to the respective 50 Windsor Lease Agreement, as extended and amended, the 50 Windsor Agency Compliance Agreement, the 120 Windsor Lease Agreement, as extended and amended, the 120 Windsor Agency Compliance Agreement. The 50 Windsor Company, the 120 Windsor Company and the Sublessee are further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the 50 Windsor Company, the 120 Windsor Company and the Sublessee, as agents of the Agency pursuant to this Authorizing Resolution, are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the respective 50 Windsor Company, the 120 Windsor Company.

Section 10. The form and substance of the 50 Windsor Amendment Agreement, the 50 Windsor Agency Compliance Agreement (collectively, the “**50 Windsor Documents**”) (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 11. The form and substance of the 120 Windsor Amendment Agreement, the 120 Windsor Agency Compliance Agreement, the 120 Windsor Equipment Lease Agreement, and the 120 Windsor Loan Documents (collectively, the “**120 Windsor Documents**”), to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 12. The Chairman, Vice Chairman, Executive Director, or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the 50

Windsor Documents and the 120 Windsor Documents, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (the 50 Windsor Documents and the 120 Windsor Documents hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.

Section 13. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the respective 50 Windsor Lease Agreement, as extended and amended, and the 120 Windsor Lease Agreement, as extended and amended).

Section 14. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 15. This resolution shall take effect immediately.

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

I, the undersigned Assistant Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 20th day of July, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that, the Agency’s Board Meeting on July 20, 2021 was held as a public meeting open for the public to attend in person, and that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of July 20, 2021.

By: \_\_\_\_\_  
Assistant Secretary



## EXHIBIT A-1

### Proposed PILOT Benefits

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

Address – 50 Windsor Place, Central Islip, Town of Islip,  
Suffolk County, New York

Formula: 14-year abatement starting at 50% of assessed value for 5 years then decreasing 5% annually

#### Year

- |               |  |
|---------------|--|
| 1             | 100% normal tax on 50% of the taxable assessed value |
| 2             | 100% normal tax on 50% of the taxable assessed value |
| 3             | 100% normal tax on 50% of the taxable assessed value |
| 4             | 100% normal tax on 50% of the taxable assessed value |
| 5             | 100% normal tax on 50% of the taxable assessed value |
| 6             | 100% normal tax on 55% of the taxable assessed value |
| 7             | 100% normal tax on 60% of the taxable assessed value |
| 8             | 100% normal tax on 65% of the taxable assessed value |
| 9             | 100% normal tax on 70% of the taxable assessed value |
| 10            | 100% normal tax on 75% of the taxable assessed value |
| 11            | 100% normal tax on 80% of the taxable assessed value |
| 12            | 100% normal tax on 85% of the taxable assessed value |
| 13            | 100% normal tax on 90% of the taxable assessed value |
| 14            | 100% normal tax on 95% of the taxable assessed value |
| 15 and beyond | 100% normal tax on 100% of full assessed value       |

## EXHIBIT A-1

### Proposed PILOT Benefits

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

Address – 120 Windsor Place, Central Islip, Town of Islip,  
Suffolk County, New York

Formula: 14-year abatement starting at 50% of assessed value for 5 years then decreasing 5% annually

#### Year

- |               |  |
|---------------|--|
| 1             | 100% normal tax on 50% of the taxable assessed value |
| 2             | 100% normal tax on 50% of the taxable assessed value |
| 3             | 100% normal tax on 50% of the taxable assessed value |
| 4             | 100% normal tax on 50% of the taxable assessed value |
| 5             | 100% normal tax on 50% of the taxable assessed value |
| 6             | 100% normal tax on 55% of the taxable assessed value |
| 7             | 100% normal tax on 60% of the taxable assessed value |
| 8             | 100% normal tax on 65% of the taxable assessed value |
| 9             | 100% normal tax on 70% of the taxable assessed value |
| 10            | 100% normal tax on 75% of the taxable assessed value |
| 11            | 100% normal tax on 80% of the taxable assessed value |
| 12            | 100% normal tax on 85% of the taxable assessed value |
| 13            | 100% normal tax on 90% of the taxable assessed value |
| 14            | 100% normal tax on 95% of the taxable assessed value |
| 15 and beyond | 100% normal tax on 100% of full assessed value       |



**TOWN OF ISLIP  
INDUSTRIAL DEVELOPMENT AGENCY  
AGENDA ITEMS FOR JULY 20, 2021**

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**AGENDA ITEM #6**

**TYPE OF RESOLUTION: AUTHORIZING RESOLUTION**

**COMPANY: 227 4<sup>TH</sup> AVE, BAY SHORE, LLC**

**PROJECT LOCATION: 227 4<sup>TH</sup> AVE, BAY SHORE**

**JOBS (RETAINED/CREATED): RETAINED - 00 -  
CREATE - 02 -**

**INVESTMENT: \$6,060,600.00**

Date: July 20, 2021

At a meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), held at 40 Nassau Street, Islip, New York 11751 on the 20th day of July, 2021 the following members of the Agency were:

Present:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in a certain industrial development facility more particularly described below (227 4<sup>th</sup> Ave. Bay Shore LLC Facility) and the leasing of the facility to 227 4<sup>th</sup> Ave. Bay Shore LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

RESOLUTION OF THE TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE APPOINTMENT OF 227 4<sup>TH</sup> AVE. BAY SHORE LLC, A LIMITED LIABILITY COMPANY ON BEHALF OF ITSELF AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AS AGENT OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, DEMOLISHING, CONSTRUCTING AND EQUIPPING AN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 47 of the Laws of 1974 of the State of New York, as amended from time to time (collectively, the “**Act**”), the Town of Islip Industrial Development Agency (the “**Agency**”) was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, 227 4th Ave. Bay Shore LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of 227 4th Ave. Bay Shore LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Town of Islip Industrial Development Agency (the “**Agency**”), to enter into a transaction in which the Agency will assist in the acquisition of an approximately 0.65 acre parcel of land located at 227 4<sup>th</sup> Avenue, Bay Shore, New York (SCTM# 0500-393.00-01.00-008.000) (the “**Land**”), the demolition of an approximately 4,352 square foot building located thereon, and the construction of an approximately 22,178 square foot building thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company and is to be used as a mixed-used rental apartment complex containing approximately twenty-two (22) residential units and approximately 2,000 square feet of medical office and retail space (the “**Project**”); and

WHEREAS, the Agency, by resolution duly adopted on May 18, 2021 (the “**Inducement Resolution**”), decided to proceed under the provisions of the Act; and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of July 1, 2021 or such other date as the Chairman, Executive Director or Deputy Executive Director of the

Agency and counsel to the Agency shall agree (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency will acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency will sublease and lease the Company Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of July 1, 2021 or such other date as the Chairman, Executive Director or Deputy Executive Director of the Agency and counsel to the Agency shall agree (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$3,000,000 but not to exceed \$5,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$22,500 but not to exceed \$37,500, in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$146,375, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof); and

WHEREAS, as security for a loan or loans (as such term is defined in the Lease Agreement), the Agency and the Company will execute and deliver to a lender or lenders not yet determined (collectively, the “**Lender**”), a mortgage or mortgages, and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined, in connection with the financing, any refinancing or permanent financing of the costs of the acquisition, construction and equipping of the Facility (collectively, the “**Loan Documents**”); and

WHEREAS, the Agency has required the Company to provide to the Agency a feasibility report (the “**Feasibility Study**”), together with such letters or reports from interested parties and governmental agencies or officials (the “**Letters of Support**”; and together with the Feasibility Study, the “**Requisite Materials**”) to enable the Agency to make findings and determinations that the Facility qualifies as a “project” under the Act and that the Facility satisfies all other requirements of the Act, and such Requisite Materials are listed below and attached as Exhibit C to the Inducement Resolution:

1. Benefits Analysis for the Town of Islip Industrial Development Agency, 227 4<sup>th</sup> Avenue Bay Shore LLC, dated April 2021;
2. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
3. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

WHEREAS, the Agency's Uniform Tax Exemption Policy ("UTEP"), which such UTEP is annexed to the Inducement Resolution as Exhibit D, provides for the granting of financial assistance by the Agency for housing projects pursuant to Section I.A.4.; and

WHEREAS, the Agency has given due consideration to the application of the Company to the Agency for financial assistance (the "**Application**"), and to representations of the Company therein; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the "**SEQR Act**" or "**SEQR**"), the Agency constitutes a "State Agency"; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the "**Questionnaire**") with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the acquisition, renovation, equipping, and operation of the Facility is an "Unlisted" Action, as that term is defined in the SEQR Act. The Agency also determines that the action will not have a "significant effect" on the environment, and, therefore, an environmental impact statement will not be prepared. This determination constitutes a negative declaration for purposes of SEQR. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQR or as may be deemed advisable by the Chairman or Executive Director of the Agency or counsel to the Agency.

Section 2. In connection with the acquisition, construction and equipping of the Facility the Agency hereby makes the following determinations and findings based upon the Agency's review of the information provided by the Company with respect to the Facility, including, the Company's Application, the Requisite Materials and other public information:

(a) There is a lack of affordable, safe, clean and modern rental housing in the Town of Islip;

(b) Such lack of rental housing has resulted in individuals leaving the Town of Islip and therefore adversely affecting employers, businesses, retailers, banks, financial institutions, insurance companies, health and legal services providers and other merchants in the Town of Islip and otherwise adversely impacting the economic health and well-being of the residents of the Town of Islip, employers, and the tax base of the Town of Islip;

(c) The Facility, by providing such rental housing will enable persons to remain in the Town of Islip and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in the Town of Islip which will increase the economic health and well-being of the residents of the Town of Islip, help preserve and increase permanent private sector jobs in furtherance of the Agency's public purposes as set forth in the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act;

(d) The Facility will provide services, i.e., rental housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of the Town of Islip.

Section 3. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The Facility preserves the public purposes of the Act by preserving or increasing the number of permanent private sector jobs in the Town of Islip. The Company has represented to the Agency that they intend to provide an additional thirty (30) full-time employees within the first year after completion of the Facility; and

(d) The acquisition, construction and equipping of the Facility and the leasing and subleasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Islip, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) The acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(f) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of the Town of Islip, Suffolk County, and all regional and local land use plans for the area in which the Facility is located; and



(g) The Facility and the operations conducted therein do not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder; and

(h) It is desirable and in the public interest for the Agency to sublease the Land and the Improvements and to lease the Equipment to the Company; and

(i) The Company Lease will be an effective instrument whereby the Agency leases the Land and the Improvements from the Company; and

(j) The Lease Agreement will be an effective instrument whereby the Agency leases and subleases the Facility to the Company, the Agency and the Company set forth the terms and conditions of their agreement regarding payments-in-lieu of taxes, the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will describe the circumstances in which the Agreement may recapture some or all of the benefits granted to the Company; and

(k) The Loan Documents to which the Agency is a party will be effective instruments whereby the Agency and the Company agree to secure the loan made to the Company by the Lender.

Section 4. The Agency has assessed all material information included in connection with the Company's application for financial assistance, including but not limited to, the cost-benefit analysis prepared by the Agency and such information has provided the Agency a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 5. In consequence of the foregoing, the Agency hereby determines to: (i) lease the Land and the Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) sublease and lease the Company Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interests in and to the Facility pursuant to the Loan Documents, and (vi) execute and deliver the Loan Documents to which the Agency is a party.

Section 6. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 7. The Agency is hereby further authorized to execute and deliver the Loan Documents in connection with the financing of the costs of acquiring, constructing and equipping the Facility and any future Loan Documents in connection with any future refinancing or permanent financing of such costs of acquiring, constructing and equipping of the Facility without the need for any further or future approvals of the Agency.



Section 8. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the acquisition, construction and equipping of the Facility in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$3,000,000 but not to exceed \$5,000,000 corresponding to mortgage recording tax exemptions presently estimated to be \$22,500 but not to exceed \$37,500, in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$146,375, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), consistent with the policies of the Agency.

Section 9. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, renovate, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, renovate, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agent of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, renovate, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$146,375 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the execution of the documents contemplated by this resolution.

Section 10. The Company is hereby notified that it will be required to comply with Section 875 of the Act. The Company shall be required to agree to the terms of Section 875 pursuant to the Lease Agreement. The Company is further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 11. The form and substance of the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 12.

(a) The Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Executive Director, Deputy Executive Director or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 13. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 14. This resolution shall take effect immediately.

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

I, the undersigned Secretary of the Town of Islip Industrial Development Agency, DO  
HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town  
of Islip Industrial Development Agency (the “**Agency**”), including the resolutions contained  
therein, held on the 20th day of July, 2021, with the original thereof on file in my office, and  
that the same is a true and correct copy of the proceedings of the Agency and of such  
resolutions set forth therein and of the whole of said original insofar as the same related to  
the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in  
substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was  
duly given to the public and the news media in accordance with the New York Open  
Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that  
all members of said Agency had due notice of said meeting and that the meeting was all  
respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 20<sup>th</sup> day of July,  
2020.

By: \_\_\_\_\_  
Assistant Secretary

## EXHIBIT A

### Proposed PILOT Benefits

Formula for In-Lieu-of-Taxes Payment: Town of Islip (including any existing incorporated village and any village which may be incorporated after the date thereof, within which the facility is wholly or partially located), Bay Shore School District, Suffolk County and appropriate Special Districts.

#### Definitions

X = \$34,400

Y = increase in assessment above X resulting from the acquisition, construction and equipping of the Facility

Normal Tax Due = Those payments for taxes and assessments, and other special ad valorem levies, special assessments and service charges against real property located in the Town of Islip (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

#### Formula

##### Year

1	100% Normal Tax Due on X and 0% Normal Tax Due on Y
2	100% Normal Tax Due on X and 10% Normal Tax Due on Y
3	100% Normal Tax Due on X and 20% Normal Tax Due on Y
4	100% Normal Tax Due on X and 30% Normal Tax Due on Y
5	100% Normal Tax Due on X and 40% Normal Tax Due on Y
6	100% Normal Tax Due on X and 50% Normal Tax Due on Y
7	100% Normal Tax Due on X and 60% Normal Tax Due on Y
8	100% Normal Tax Due on X and 70% Normal Tax Due on Y
9	100% Normal Tax Due on X and 80% Normal Tax Due on Y
10	100% Normal Tax Due on X and 90% Normal Tax Due on Y
11	100% Normal Tax Due on X and 100% Normal Tax Due on Y

and thereafter

Company to pay X during Construction Period. PILOT Payments to commence in Tax Year following Company's receipt of Certificate of Occupancy.

**TOWN OF ISLIP  
INDUSTRIAL DEVELOPMENT AGENCY  
AGENDA ITEMS FOR JULY 20, 2021**

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**AGENDA ITEM #7**

**TYPE OF RESOLUTION: AUTHORIZING RESOLUTION**

**COMPANY: STEEL CAMPUS, LLC/MARCUS ISP APTS  
HOLDINGS, LLC 2021 FACILITY**

**PROJECT LOCATION: E/S OF CARLETON AVE,  
CENTRAL ISLIP**

**JOBS (RETAINED/CREATED): RETAINED - 01 -  
CREATE - 20 -**

**INVESTMENT: \$126,466,504.00**

Date: July 20, 2021

At a meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), held at 40 Nassau Avenue, Islip, New York 11751 on the 20th day of July, 2021, the following members of the Agency were:

Present:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest to a certain industrial development facility more particularly described below (Steel Campus, LLC/Marcus ISP APTS Holdings, LLC 2021 Facility).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay



RESOLUTION OF THE TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD APPOINTING STEEL CAMPUS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF STEEL CAMPUS, LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AND MARCUS ISP APTS HOLDINGS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF MARCUS ISP APTS HOLDINGS, LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING, AS AGENT(S) OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, RENOVATING AND EQUIPPING THE FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 47 of the Laws of 1974 of the State of New York, as amended from time to time (collectively, the “**Act**”), the Town of Islip Industrial Development Agency (the “**Agency**”) was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, Steel Campus, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Steel Campus, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (“**Steel Campus**”) and Marcus ISP APTS Holdings, LLC, a Delaware limited liability company, on behalf of itself and/or the principals of Marcus ISP APTS Holdings, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (“**Marcus ISP**”; and, together with Steel Campus, as tenants in common, the “**Company**”) have submitted an application, for financial assistance (the “**Application**”) to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of an approximately 83.40 acre parcel of land located on the East side of Carleton Avenue (C.R. 17), approximately 1,215 feet north of Courthouse Drive, Central Islip (0 Carleton Avenue), Town of Islip, Suffolk County, New York (the “**Land**”), and the acquisition of fifteen (15) vacant buildings totaling approximately 682,268 square feet) located on the Land and the construction of an approximately 20,000 square foot building on the Land to be used as a community center together with other on-site amenities including, but not limited to, a pool, fitness room, outdoor cooking facilities, sports courts (tennis, basketball), playground, community garden and dog parks (collectively, the “**Improvements**”) and the installation and equipping including, but not limited to, a sprinkler system, HVAC, electrical equipment, plumbing, and lighting, and the furnishing of the apartments including, but not limited to, electrical appliances, flooring and lighting (collectively, the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), all to be leased by the Agency to, and used by the Company for residential

rental units for to include approximately three-hundred sixty-four (364) total apartments (at least ten percent (10%) of the units shall be set aside as affordable units (defined as 80% of the current median family income for the Nassau-Suffolk Fair Market Rent Area as published annually by the United States Department of Housing and Urban Development) and twenty percent (20%) of the units will be designated for senior housing age 55 and older (the "**Project**"); and

WHEREAS, the Agency, by resolution duly adopted on May 18, 2021 (the "**Inducement Resolution**"), decided to proceed under the provisions of the Act; and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of July 1, 2021 or such other date as the Chairman, the Executive Director or the Deputy Executive Director of the Agency and counsel to the Agency shall agree (the "**Company Lease**"), by and between the Company and the Agency; and

WHEREAS, the Agency will acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the "**Bill of Sale**"), from the Company to the Agency; and

WHEREAS, the Agency will sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of July 1, 2021 or such other date as the Chairman, the Executive Director or the Deputy Executive Director of the Agency and counsel to the Agency shall agree (the "**Lease Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of abatements of real property taxes, which abatement shall be for a term in excess of ten (10) years, consistent with the policies of the Agency, including provisions of the policies providing for deviation therefrom; and

WHEREAS, the requested financial assistance with respect to the abatement of real property taxes deviates from the Agency's Uniform Tax Exemption Policy (the "**Policy**") originally adopted in or around December, 1993, as previously amended, because the abatement of real property taxes granted pursuant to the proposed Lease Agreement will be for a term in excess of ten (10) years and the Project is considered extremely significant and vital to the economic health and well-being of the Town of Islip (the "**Town**"), therefore deviation from the Policy is appropriate; and

WHEREAS, as security for a Loan or Loans (as such term is defined in the Lease Agreement), the Agency and the Company will execute and deliver to a lender or lenders not yet determined (collectively, the "**Lender**"), a mortgage or mortgages, and such other loan documents satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably required by the Lender, to be dated a date to be determined, in connection with the financing, any refinancing or permanent financing of the costs of the acquisition, renovation, and equipping of the Facility (collectively, the "**Loan Documents**"); and



WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$102,000,000 but not to exceed \$120,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$765,000 but not to exceed \$900,000, in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$3,318,379, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), all consistent with the policies of the Agency; and

WHEREAS, the Agency has required the Company to provide to the Agency a feasibility report (the “**Feasibility Study**”), together with such letters or reports from interested parties and governmental agencies or officials (the “**Letters of Support**”; and together with the Feasibility Study, the “**Requisite Materials**”) to enable the Agency to make findings and determinations that the Facility qualifies as a “project” under the Act and that the Facility satisfies all other requirements of the Act, and such Requisite Materials are listed below and attached as Exhibit C to the Inducement Resolution:

1. Cost Benefit Analysis/Substantiation of Need for Town of Islip IDA: Steel Campus LLC and Marcus ISP Apts Holdings LLC, dated July 1, 2021 by The National Development Council;
2. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
3. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and]

WHEREAS, the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which such UTEP is annexed to the Inducement Resolution as Exhibit D, provides for the granting of financial assistance by the Agency for housing projects pursuant to Section I.A.4.; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed transaction is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. In connection with the acquisition, construction and equipping of the Facility the Agency hereby makes the following determinations and findings based upon the Agency’s review of the information provided by the Company with respect to the Facility, including, the Company’s Application, the Requisite Materials and other public information:

(a) There is a lack of affordable, safe, clean and modern rental housing in the Town of Islip;

(b) Such lack of rental housing has resulted in individuals leaving the Town of Islip and therefore adversely affecting employers, businesses, retailers, banks, financial institutions, insurance companies, health and legal services providers and other merchants in the Town of Islip and otherwise adversely impacting the economic health and well-being of the residents of the Town of Islip, employers, and the tax base of the Town of Islip;

(c) The Facility, by providing such rental housing will enable persons to remain in the Town of Islip and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in the Town of Islip which will increase the economic health and well-being of the residents of the Town of Islip, help preserve and increase permanent private sector jobs in furtherance of the Agency's public purposes as set forth in the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act;

(d) The Facility will provide services, i.e., rental housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of the Town of Islip.

Section 2. The Agency hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.

(b) The Facility constitutes a "project", as such term is defined in the Act.

(c) The Facility preserves the public purposes of the Act by preserving or increasing the number of permanent private sector jobs in the Town of Islip. The Company has represented to the Agency that they intend to provide an additional twenty (20) full-time equivalent employees within the second year after completion of the Facility; and

(d) The acquisition, construction and equipping of the Facility, and the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Town of Islip, and the State of New York and improve their standard of living and thereby serve the public purposes of the Act.

(e) The acquisition, construction and equipping of the Facility by the Agency is reasonably necessary to induce the Company to maintain and expand its business operations in the Town of Islip.

(f) The requested financial assistance with respect to the abatement of real property taxes deviates from the Policy because the abatement of real property taxes granted pursuant to the proposed Lease Agreement will be for a term in excess of ten (10) years and the Project is considered extremely significant and vital to the economic health and well-being of the Town, therefore deviation from the Policy is appropriate; and

(g) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of the Town of Islip and all regional and local land use plans for the area in which the Facility is located.

(h) It is desirable and in the public interest for the Agency to lease the Facility to the Company.

(i) The Agency previously determined, pursuant to the Inducement Resolution, that the Facility and the operations conducted therein do not have a significant effect on the environment, as determined in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder ("SEQR"), thus completing its review of the Facility under SEQR. No changes have been proposed to the Facility since the time the Agency adopted its Negative Declaration, and therefore, the Agency's obligations under SEQR have been completed.

(j) The Company Lease will be an effective instrument whereby the Agency leases the Land and the Improvements from the Company.

(k) The Lease Agreement will be an effective instrument whereby the Agency leases and subleases the Facility to the Company, the Agency and the Company set forth the terms and conditions of their agreement regarding payments-in-lieu of taxes, the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will describe the circumstances in which the Agency may recapture some or all of the benefits granted to the Company.

(l) The Loan Documents to which the Agency is a party will be effective instruments whereby the Agency and the Company agree to secure the loan made to the Company by the Lender.

Section 3. The Agency has assessed all material information included in connection with the Company's application for financial assistance, including but not limited to, the cost-benefit analysis prepared by the Agency and such information has provided the Agency a reasonable basis for its decision to provide the financial assistance described herein to the Company.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (i) lease the Land and the Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) sublease and lease the Facility to the Company pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) grant a mortgage on and security interests in and to the Facility pursuant to the Loan Documents, and (vi) execute and deliver the Loan Documents to which the Agency is a party.

Section 5. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to execute and deliver the Loan Documents in connection with the financing of the costs of acquiring, constructing and equipping the Facility and any future Loan Documents in connection with any future refinancing or permanent financing of such costs of acquiring, constructing and equipping of the Facility without the need for any further or future approvals of the Agency.

Section 7. The Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the acquisition, construction and equipping of the Facility in the form of (i) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$102,000,000 but not to exceed \$120,000,000, corresponding to mortgage recording tax exemptions presently estimated to be \$765,000 but not to exceed \$900,000, in connection with the financing of the acquisition, construction and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing and equipping of the Facility, (ii) exemptions from sales and use taxes in an amount not to exceed \$3,318,379, in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, and (iii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), all consistent with the policies of the Agency.

Section 8. Subject to the provisions of this resolution, the Company is herewith and hereby appointed the agent of the Agency to acquire, construct and equip the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to acquire, construct and equip the Facility. The Agency hereby appoints the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency, shall be deemed to be on behalf of the Agency and for the benefit of the Facility. This agency appointment expressly excludes the purchase by the Company of any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency. The aforesaid appointment of the Company as agent of the Agency to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, (b) a date which the Agency designates, or (c) the date on which the Company has received exemptions from sales and use taxes in an amount not to exceed \$3,309,305 in connection with the purchase or lease of equipment, building materials, services or other personal property; provided however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company if such activities and improvements are not completed by such time. The aforesaid appointment of the Company is subject to the execution of the documents contemplated by this resolution.

Section 9. The Company is hereby notified that it will be required to comply with Section 875 of the Act. The Company shall be required to agree to the terms of Section 875 pursuant to the Lease Agreement. The Company is further notified that the tax exemptions and

abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this Authorizing Resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 10. The form and substance of the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party (each in substantially the forms presented to or approved by the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 11. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease, the Lease Agreement and the Loan Documents to which the Agency is a party, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.

Section 12. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 13. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 14. This resolution shall take effect immediately.



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

I, the undersigned Assistant Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 20th day of July, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that, the Agency’s Board Meeting on July 20, 2021 was held as a public meeting open for the public to attend in person, and that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of July 20, 2021.

By: \_\_\_\_\_  
Assistant Secretary

## EXHIBIT A

### Proposed PILOT Benefits

Formula for Payments-In-Lieu-of-Taxes: Town of Islip (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Bay Shore Union Free School District, Suffolk County and Appropriate Special Districts

<u>Year</u>	<u>PILOT Payment</u>
1	\$364,000.00
2	\$364,000.00
3	\$364,000.00
4	\$475,222.00
5	\$586,444.00
6	\$697,667.00
7	\$808,889.00
8	\$920,111.00
9	\$1,031,333.00
10	\$1,142,556.00
11	\$1,253,778.00
12	\$1,365,000.00
13	\$1,476,222.00
14	\$1,587,444.00
15	\$1,698,667.00
16	\$1,809,889.00
17	\$1,921,111.00
18	\$2,032,333.00
19	\$2,143,556.00
20	\$2,254,778.00

Company to pay \$364,000.00 during construction period. Year 1 of PILOT schedule set forth herein to commence in tax year following company receipt of certificate of Occupancy.



**TOWN OF ISLIP  
INDUSTRIAL DEVELOPMENT AGENCY  
AGENDA ITEMS FOR JULY 20, 2021**

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**AGENDA ITEM #8**

**TYPE OF RESOLUTION:** AMENDED AUTHORIZING  
RESOLUTION

**COMPANY:** BAY SHORE PROPCO, LLC. /TREC BAY  
SHORE, LLC.

**PROJECT LOCATION:** 1700 UNION BLVD, BAY  
SHORE

**JOBS (RETAINED/CREATED):** RETAINED - 00 -  
CREATE - 09 -

**INVESTMENT:** \$165,629,800.00

Date: July 20, 2021

At a meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), held at 40 Nassau Avenue, Islip, New York 11751 on the 20th day of July, 2021, the following members of the Agency were:

Present:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to an amendment to an authorizing resolution to a certain industrial development facility more particularly described below (Bay Shore Propco LLC 2021 Facility) and the leasing of the facility to Bay Shore Propco LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

AMENDED RESOLUTION OF THE TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, RENOVATION AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE APPOINTMENT OF BAY SHORE PROPCO LLC, A DELAWARE LIMITED LIABILITY COMPANY, ON BEHALF OF ITSELF AND/OR THE PRINCIPALS OF BAY SHORE PROPCO LLC AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AS AGENT(S) OF THE AGENCY FOR THE PURPOSE OF ACQUIRING, RENOVATING AND EQUIPPING AN INDUSTRIAL DEVELOPMENT FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 47 of the Laws of 1974 of the State of New York, as may be amended from time to time (collectively, the “**Act**”), the Town of Islip Industrial Development Agency (the “**Agency**”), was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, by Authorizing Resolution, dated December 15, 2020 (the “**Original Authorizing Resolution**”), the Agency previously approved a project for TREC Bay Shore, LLC, a limited liability company organized and existing under the laws of the State of Delaware, on behalf of itself and/or the principals of TREC Bay Shore, LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Original Company**”), has applied to the Town of Islip Industrial Development Agency (the “**Agency**”), to enter into a transaction in which the Agency will assist in the acquisition of an approximately 10.34 acre parcel of land located at 1700 Union Boulevard, Bay Shore, New York 11706 (SCTM# 0500-393.00-03.00-021.001) (the “**Land**”), the demolition of an approximately 83,556 square foot building located thereon, the construction of an approximately 474,923 square foot building thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility will be leased by the Agency to the Company and to be used as a mixed-use multifamily apartment complex containing approximately 418 studio, one-bedroom, two-bedroom and three-bedroom rental apartments and approximately 1,643 square feet of food-service space (the “**Project**”); and

WHEREAS, the Original Company submitted an amended application on June 18, 2021 (the “**Amended Application**”), notified the Agency of a change in corporate structure of the Company subsequent to the Authorizing Resolution, and further that Bay Shore Propco

LLC, a Delaware limited liability company on behalf of itself and/or the principals of Bay Shore Propco LLC and/or an entity formed or to be formed on behalf of any of the foregoing (the “**Company**”), will replace the Original Company as the owner and operator of the Project; and

WHEREAS, the Company has requested the Agency to accept its Amended Application and permit the Company to enter into the straight-lease transaction for the Project, as contemplated by the Original Authorizing Resolution; and

WHEREAS, prior to this Resolution, a public hearing (the “**Hearing**”) was held and notice of the Hearing was given and such notice (together with proof of publication) together with the minutes of the Hearing are in substantially in the form annexed hereto as Exhibits A and B respectively; and

WHEREAS, the Agency has given due consideration to the request of the Company and to representations by the Company that the proposed transfer of a leasehold interest or a fee title interest is either an inducement to the Company to maintain and expand the Facility in the Town of Islip or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, the Agency ratifies and confirms all terms contemplated under the Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents (as defined therein); and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company; and

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. Based upon the representations of the Company, the Project and the related financial assistance is reasonable necessary to preserve the competitive position of the Company in its industry.

Section 2. The Agency hereby amends the Original Authorizing Resolution to amend the definition of Company therein based on the Amended Application submitted to the Agency by Bay Shore Propco LLC.

Section 3. The Agency hereby ratifies and confirms all terms contemplated by the Original Authorizing Resolution, as amended by this Amended Authorizing Resolution, including the Agency Documents.

Section 4. This amended resolution shall take effect immediately.

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

I, the undersigned Assistant Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 20th day of July, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that, the Agency’s Board Meeting on July 20, 2021 was held as a public meeting open for the public to attend in person, and that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of July 20, 2021.

By: \_\_\_\_\_  
Assistant Secretary

EXHIBIT A

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**NOTICE OF SUPPLEMENTAL PUBLIC HEARING ON PROPOSED PROJECT  
AND FINANCIAL ASSISTANCE RELATING THERETO**

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**A Supplemental Public Hearing will be held to amend the name of the Company in connection with the Facility. The complete Notice of Supplemental Public Hearing is printed below as follows:**

**NOTICE IS HEREBY GIVEN** that a public hearing pursuant to Title 1 of Article 18-A of the New York State General Municipal Law will be held by the Town of Islip Industrial Development Agency (the “**Agency**”) on the \_\_\_\_ day of July, 2021, at \_\_\_\_\_.m., local time, at 40 Nassau Avenue, Islip, New York 11751 in connection with the following matters:

Bay Shore Propco LLC, a limited liability company organized and existing under the laws of the State of Delaware, on behalf of itself and/or the principals of Bay Shore Propco LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of an approximately 10.34 acre parcel of land located at 1700 Union Boulevard, Bay Shore, New York 11706 (SCTM# 0500-393.00-03.00-021.001) (the “**Land**”), the demolition of an approximately 83,556 square foot building located thereon, the construction of an approximately 474,923 square foot building thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility was to be leased by the Agency to the Company and to be used as a mixed-use multifamily apartment complex containing approximately 418 studio, one-bedroom, two-bedroom and three-bedroom rental apartments and approximately 1,643 square feet of food-service space (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies of the Agency.

A representative of the Agency will, at the above-stated time and place, hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance to the Company or the location or nature of the Facility. At the hearing, all persons will have the opportunity to review the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the proposed Facility.

Dated: \_\_\_\_\_, 2021

TOWN OF ISLIP INDUSTRIAL  
DEVELOPMENT AGENCY

By: John G. Walser  
Title: Executive Director



EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON  
JULY \_\_, 2021 at \_\_\_\_\_ A.M.

TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY  
(BAY SHORE PROPCO LLC 2021 FACILITY)

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1. \_\_\_\_\_, \_\_\_\_\_ of the Town of Islip Industrial Development Agency (the “**Agency**”) called the hearing to order.

2. The \_\_\_\_\_ then appointed \_\_\_\_\_, the \_\_\_\_\_ of the Agency, the hearing officer of the Agency, to record the minutes of the hearing.

3. The hearing officer then described the proposed transfer of the real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility as follows:

Bay Shore Propco LLC, a limited liability company organized and existing under the laws of the State of Delaware, on behalf of itself and/or the principals of Bay Shore Propco LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), has applied to the Agency, to enter into a transaction in which the Agency will assist in the acquisition of an approximately 10.34 acre parcel of land located at 1700 Union Boulevard, Bay Shore, New York 11706 (SCTM# 0500-393.00-03.00-021.001) (the “**Land**”), the demolition of an approximately 83,556 square foot building located thereon, the construction of an approximately 474,923 square foot building thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility was to be leased by the Agency to the Company and to be used as a mixed-use multifamily apartment complex containing approximately 418 studio, one-bedroom, two-bedroom and three-bedroom rental apartments and approximately 1,643 square feet of food-service space (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes in connection with the acquisition, demolition, renovation and equipping of the Facility and exemption of real property taxes consistent with the policies of the Agency.

4. The hearing officer then opened the hearing for comments from the floor for or against the proposed transfer of real estate, the other financial assistance proposed by the Agency and the location and nature of the Facility. The following is a listing of the persons heard and a summary of their views:

5. The hearing officer then asked if there were any further comments, and, there being none, the hearing was closed at \_\_\_\_\_.

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

I, the undersigned Assistant Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held by the Town of Islip Industrial Development Agency (the “**Agency**”) on the \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ .m., local time, at 40 Nassau Avenue, Islip, New York, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the minutes in connection with such matter.

IN WITNESS WHEREOF, I have hereunto set my hand as of July \_\_\_\_, 2021.

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Assistant Secretary

**TOWN OF ISLIP  
INDUSTRIAL DEVELOPMENT AGENCY  
AGENDA ITEMS FOR JULY 20, 2021**

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**AGENDA ITEM #9**

**TYPE OF RESOLUTION:** AMENDED AUTHORIZING  
RESOLUTION

**COMPANY:** WRAP-N-PACK, INC./UNIWARE  
HOUSEWARE CORP

**PROJECT LOCATION:** 120 WILSHIRE BLVD,  
EDGEWOOD

**JOBS (RETAINED/CREATED):** RETAINED - 35 -  
CREATE - 00 -

**INVESTMENT:** \$250,000.00

Date: July 20, 2021

At a meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), held at 40 Nassau Avenue, Islip, New York 11751 on the 20th day of July, 2021, the following members of the Agency were:

Present:

Absent:

Also Present:

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to an amendment to an authorizing resolution to a certain industrial development facility more particularly described below (Wilshire Rental Properties LLC/Wrap-N-Pack, Inc. 2021 Facility).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

AMENDED RESOLUTION OF THE TOWN OF ISLIP INDUSTRIAL  
DEVELOPMENT AGENCY PERTAINING TO THE CONSENT TO THE  
SUBLEASING OF A PORTION OF THE WILSHIRE RENTAL  
PROPERTIES LLC FACILITY AND APPROVING THE FORM,  
SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 47 of the Laws of 1974 of the State of New York, as may be amended from time to time (collectively, the “**Act**”), the Town of Islip Industrial Development Agency (the “**Agency**”), was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, by Authorizing Resolution, dated April 20, 2021 (the “**Original Authorizing Resolution**”), the Agency previously approved a project for Wilshire Rental Properties LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Wilshire Rental Properties LLC and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Company**”), and Wrap-N-Pack, Inc., a business corporation organized and existing under the laws of the State of Delaware, on behalf of itself and/or the principals of Wrap-N-Pack, Inc. and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “**Sublessee**”), have applied to the Town of Islip Industrial Development Agency (the “**Agency**”), to enter into a transaction in which the Agency will assist in: (a) the acquisition of an approximately 10 acre parcel of land located at 120 Wilshire Boulevard, Brentwood, New York 11717 (the “**Land**”), and the existing approximately 150,000 square foot building located thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property, not part of the Equipment (as defined below) (the “**Facility Equipment**”; and together with the Land and the Improvements, the “**Company Facility**”), which Company Facility is to be subleased and leased by the Agency to the Company and further subleased by the Company to the Sublessee and a tenant or tenants to be determined; and (b) the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Company Facility, the “**Facility**”), which Equipment is to be leased by the Agency to the Sublessee, and which Facility is to be used by the Sublessee as warehouse and distribution space in its business as a distributor of packaging and janitorial sanitation products (the “**Project**”); and

WHEREAS, the Company entered into negotiations with Uniware Houseware Corp., a New York business corporation (the “**Tenant**”), to sublease a 75,000 square foot portion of the Facility (the “**Demised Premises**”), pursuant to a Lease, as amended, dated April 9, 2021 (the “**Tenant Lease**”); and

WHEREAS, the Company has requested that the Agency consent to the Tenant Lease between the Company and the Tenant; and



WHEREAS, such consent may be manifested by the execution and delivery of a Tenant Agency Compliance Agreement, to be dated a date to be determined, between the Agency and the Tenant (the “**Tenant Agency Compliance Agreement**”); and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company; and

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. Based upon the representations of the Company, the Project, the Tenant Lease and the related financial assistance is reasonable necessary to preserve the competitive position of the Company in its industry.

Section 2. In consequence of the foregoing, the Agency hereby determines to enter into the Tenant Agency Compliance Agreement.

Section 3. The form and substance of the Tenant Agency Compliance Agreement (in substantially the form presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 4.

(a) The Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Tenant Agency Compliance Agreement in the form the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Executive Director, Deputy Executive Director or any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 5. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 6. This amended resolution shall take effect immediately.

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

I, the undersigned Assistant Secretary of the Town of Islip Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Town of Islip Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on the 20th day of July, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that, the Agency’s Board Meeting on July 20, 2021 was held as a public meeting open for the public to attend in person, and that all members of said Agency had due notice of said meeting and that the meeting was in all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of July 20, 2021.

By: \_\_\_\_\_  
Assistant Secretary

SECOND LEASE AMENDMENT

AGREEMENT, made the 9th day of April, 2021, by and between WILSHIRE RENTAL PROPERTIES LLC., 1 Executive Drive, Edgewood, New York, 11717, (hereafter "Landlord") and UNIWARE HOUSEWARE CORP., a corporation duly organized and existing under the law of the state of New York, with an office at 120 Wilshire Blvd., Edgewood, New York 11717 (hereafter "Tenant").

W I T N E S S E T H :

WHEREAS, Landlord and Tenant entered into a written Indenture of Lease, dated 2013, for the leasing by Landlord and the hiring by Tenant, of those certain premises in the building known as 120 Wilshire Boulevard, Edgewood, New York, as more particularly described in Exhibit "A" thereto, for the term, for the rent and on all terms and conditions as set forth in the Indenture of Lease;

WHEREAS, Landlord and Tenant entered into that certain written Lease Amendment, dated April, 2020, whereby, among other things, the term of the lease was extended until June 30, 2021, for the rent and on all of the terms of the Agreement of Lease as amended by the written Lease Amendment, dated April, 2020 (the Indenture of Lease as amended by the Lease Amendment, the "Lease"); and

WHEREAS, the Lease is currently in full force and effect and Tenant is occupying the premises; and

WHEREAS, the term of the Lease is to end on June 30, 2021; and

WHEREAS, Tenant desires to extend the term of the Lease for one additional period of nine (9) months from June 30, 2021, so that the term of the Lease shall end on March 31, 2022, for the rent, and on all of the terms and conditions of the Lease, as modified herein; and

WHEREAS, Landlord is agreeable to extending the term of the Lease for one additional period of nine (9) months from June 30, 2021, so that the term of the Lease shall end on March 31, 2022, for the rent, and on all of the terms and conditions of the Lease, as modified herein;

NOW, THEREFORE, in consideration of the Lease, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agrees as follows:

1. Landlord and Tenant hereby ratify and confirm the

recitals.

2. Notwithstanding anything contained in the Lease, the Lease is hereby amended to extend the term thereof for one additional period of nine (9) months from the present expiration date thereof, so that the term of the Lease shall end on March 31, 2022, instead of June 30, 2021, unless such term shall sooner cease and expire as in the Lease provided.

3. Section 3(A)(1) of the Lease is amended by adding the following subparagraph thereto:

(x) For the period July 1, 2021 through March 31, 2022, base rent shall be seventy-seven thousand two hundred fifty and 00/100 (\$77,250.00) Dollars monthly.

4. Upon request by Landlord, Tenant agrees to execute and deliver to Landlord an Agency Compliance Agreement for the Town of Islip Industrial Development Agency, and provide evidence of insurance and employment data as required thereby.

5. Tenant acknowledges that Landlord has not offered to do and has no obligation to do any work or make any repairs, alterations, modifications, improvements, changes or additions in connection with this Second Lease Amendment.

6. Tenant warrants and represents to Landlord that there was no broker instrumental in bringing about or consummating this Second Lease Amendment and Tenant has had no conversations with any brokers in connection with this Second Lease Amendment. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all costs, commissions, expenses, claims, suits, actions, judgments, etc., including Landlord's attorneys' fees, of or by any broker for a commission or fee in connection with this Second Lease Amendment.

7. At all times during the term Landlord shall have the right to enter the premises during business hours to show the same to prospective mortgagees and tenants of the premises.

8. Tenant warrants and represents to Landlord that it has no cause of action, whether at law or in equity, including without limitation, any offset(s), counterclaim(s), or defense(s), against and/or with respect to the Lease and/or Landlord.

9. The Lease, as amended herein, may only be modified by a writing executed by the parties hereto.

10. The covenants, conditions and agreements of the Lease, as amended herein, shall bind and inure to the benefit of Landlord

and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in the Lease, their assigns.

11. The Lease, as modified by this Second Lease Amendment, contains the entire understanding and agreement between Landlord and Tenant; all prior agreements, both oral and written, are merged herein and therein and are superseded hereby and thereby.

12. Digital, electronic or scanned copies of original handwritten signatures shall be considered valid.

13. As hereinabove amended, changed or modified, the Lease is, and shall remain, in full force and effect in accordance with its terms, and each and every agreement, term, covenant and condition thereof is hereby ratified, confirmed and continued.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto set their respective hands as of the day and year first above written.

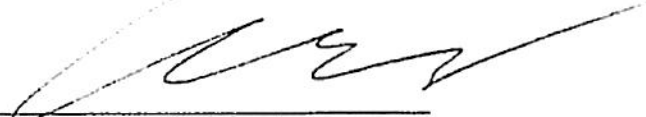
LANDLORD: WILSHIRE RENTAL PROPERTIES LLC.

By: Edgewood Land L.P., its member

By: Edgewood Land Corp., general partner

By:   
David Workoff, President

TENANT: UNIWARE HOUSEWARE CORP.

By:   
Lily Hsu, President

uniware@wilshire2001.com



LEASE AMENDMENT

AGREEMENT, made the \_\_\_\_\_ day of April, 2020, by and between WILSHIRE RENTAL PROPERTIES LLC., 1 Executive Drive, Edgewood, New York, 11717, (hereafter "Landlord") and UNIWARE HOUSEWARE CORP., a corporation duly organized and existing under the law of the state of New York, with an office at 120 Wilshire Blvd., Edgewood, New York 11717 (hereafter "Tenant").

W I T N E S S E T H :

WHEREAS, Landlord and Tenant entered into a written Indenture of Lease, dated 2013, for the leasing by Landlord and the hiring by Tenant, of those certain premises in the building known as 120 Wilshire Boulevard, Edgewood, New York, as more particularly described in Exhibit "A" thereto, for the term, for the rent and on all terms and conditions as set forth in the Indenture of Lease (the "Lease"); and

WHEREAS, the Lease is currently in full force and effect and Tenant is occupying the premises; and

WHEREAS, the term of the Lease is to end on June 30, 2020; and

WHEREAS, Tenant desires to extend the term of the Lease for one additional period of one (1) year from June 30, 2020, so that the term of the Lease shall end on June 30, 2021, for the rent, and on all of the terms and conditions of the Lease, as modified herein; and

WHEREAS, Landlord is agreeable to extending the term of the Lease for one additional period of one (1) year from June 30, 2020, so that the term of the Lease shall end on June 30, 2021, for the rent, and on all of the terms and conditions of the Lease, as modified herein;

NOW, THEREFORE, in consideration of the Lease, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agrees as follows:

1. Landlord and Tenant hereby ratify and confirm the recitals.

2. Notwithstanding anything contained in the Lease, the Lease is hereby amended to extend the term thereof for one additional period of one (1) year from the present expiration date thereof, so that the term of the Lease shall end on June 30, 2021, instead of June 30, 2020, unless such term shall sooner cease and expire as in the Lease provided.

3. Section 3(A)(1) of the Lease is amended by deleting subparagraph (viii) thereof and adding the following subparagraph thereto:

(ix) For the Lease Year July 1, 2020 through June 30, 2021, Base Rent shall be nine hundred thousand and 00/100 (\$900,000.00) dollars, payable seventy-five thousand and 00/100 (\$75,000.00) Dollars monthly.

4. Tenant may terminate the Lease at any time for any reason on six (6) months prior written notice.

5. Tenant acknowledges that Landlord has not offered to do and has no obligation to do any work or make any repairs, alterations, modifications, improvements, changes or additions in connection with this Lease Amendment.

6. Tenant warrants and represents to Landlord that there was no broker instrumental in bringing about or consummating this Lease Amendment and Tenant has had no conversations with any brokers in connection with this Lease Amendment. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all costs, commissions, expenses, claims, suits, actions, judgments, etc., including Landlord's attorneys' fees, of or by any broker for a commission or fee in connection with this Lease Amendment.

7. Tenant warrants and represents to Landlord that it has no cause of action, whether at law or in equity, including without limitation, any offset(s), counterclaim(s), or defense(s), against and/or with respect to the Lease and/or Landlord.

8. The Lease, as amended herein, may only be modified by a writing executed by the parties hereto.

9. The covenants, conditions and agreements of the Lease, as amended herein, shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in the Lease, their assigns.

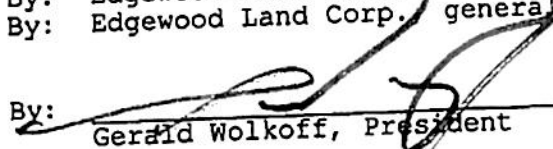
10. The Lease, as modified by this Lease Amendment, contains the entire understanding and agreement between Landlord and Tenant; all prior agreements, both oral and written, are merged herein and therein and are superseded hereby and thereby.

11. Digital, electronic or scanned copies of original handwritten signatures shall be considered valid.

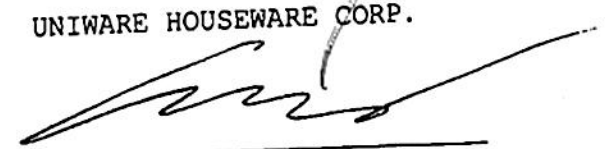
12. As hereinabove amended, changed or modified, the Lease is, and shall remain, in full force and effect in accordance with its terms, and each and every agreement, term, covenant and condition thereof is hereby ratified, confirmed and continued.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto set their respective hands as of the day and year first above written.

LANDLORD: WILSHIRE RENTAL PROPERTIES LLC.  
By: Edgewood Land L.P., its member  
By: Edgewood Land Corp. general partner

By:   
Gerald Wolkoff, President

TENANT: UNIWARE HOUSEWARE CORP.

By:   
Lily Hsu, President

Uniware120wilshire320.and

LEASE

BY AND BETWEEN

WILSHIRE RENTAL PROPERTIES LLC, LANDLORD

AND

UNIWARE HOUSEWARE CORP., TENANT

FOR PREMISES IN THE BUILDING KNOWN AS

120 WILSHIRE BOULEVARD

EDGEWOOD, NEW YORK

THIS INDENTURE OF LEASE (the "Lease"), dated as of the \_\_\_\_ day of \_\_\_\_, 2013, between WILSHIRE RENTAL PROPERTIES LLC, a New York limited liability company having an office at 1 Executive Drive, Edgewood, New York 11717 (hereafter referred to as "Landlord") and UNIWARE HOUSEWARE CORP., a corporation duly organized and existing under the laws of the state of New York, with an office at 120 Wilshire Boulevard, Edgewood, New York 11717 (hereafter referred to as "Tenant").

W I T N E S S E T H:

Landlord and Tenant agree with each other as follows:

SECTION 1. PREMISES:

Landlord hereby leases unto Tenant and Tenant hereby hires from Landlord the premises approximately as more particularly cross-hatched in red on Exhibit "A", in the building known as 120 Wilshire Boulevard, Edgewood, New York. (Said premises sometimes referred to as the "Premises" or "Demised Premises").

SECTION 2. TERM:

- A. To have and to hold the Premises for a term of approximately seven (7) years, commencing on the "Commencement Date" (as hereinafter defined) and ending on the last day of the month first occurring after the seventh (7<sup>th</sup>) anniversary of the Commencement Date, provided, however, if such expiration date would occur prior to March 31, 2020, the expiration date shall be March 31, 2020, both dates inclusive, unless such term shall cease or sooner expire as hereinafter provided. For the purposes hereof, the Commencement Date shall be that date which is the date which is the earlier to occur of: (i) ~~the date that Landlord's work at the Premises, in accordance with Section 5 hereof, is substantially complete, whether or not Tenant occupies the Premises,~~ and (ii) the date Tenant occupies the Premises, or any part thereof, for business purposes. Landlord anticipates that Landlord's work at the Premises, in accordance with Section 5 hereof, shall be substantially complete on or about March 1, 2013. Notwithstanding the foregoing, in the event Landlord is unable to substantially complete the Premises by reason of Tenant's acts, or omissions, or those of Tenant's agents, contractors, servants, officers, employees and the like the Premises shall be deemed to be substantially complete on the day they would have been substantially complete but for Tenant's acts, or omissions, or those of Tenant's agents, contractors, servants, officers, employees and the like. Landlord and Tenant agree to confirm in writing the actual commencement and termination dates of the term of this

May 1, 2013

the  
5/1/13

Lease within five (5) days of a request from Landlord. Tenant's failure to so confirm the term of this Lease as required shall be deemed an agreement by Tenant that the term of this Lease is as set forth in Landlord's request.

B. Nothing contained in this Lease shall be construed to prohibit Landlord from placing any mortgage or mortgages against the Premises to which this Lease shall be subject and subordinate to, in accordance with the provisions herein set forth.

C. This Lease is subject to:

(1) the same estates, interests, matters and defects in title, if any, and such covenants, declarations, easements, restrictions, and utility easements as are of record, or which the Landlord may reasonably impose, either prior to, or subsequent to, the commencement date of this Lease, including Declaration of Property which is annexed hereto as Exhibit "C", dated November 20, 2003, and recorded on December 29, 2003 in Liber 12292, cp 397.

(2) the right of Landlord to grant easements to utility and other companies for service to the Premises. Landlord agrees that the location of any easement granted by Landlord shall not unreasonably interfere with Tenant's use of the Premises.

D. This Lease, and/or any memorandum thereof, shall not be recorded by Tenant, or any person(s) or entity(s) claiming under or through Tenant.

### SECTION 3: ANNUAL FIXED RENTAL RATE:

A. (1) Annual Fixed Rate: Tenant covenants and agrees to pay Landlord, in lawful money of the United States, at the office of Landlord, or at such place as Landlord may designate, without previous demand therefor, and without any setoff or deduction whatsoever, annual base rental ("Base Rent"), payable in equal monthly installments, in advance, on the first day of each and every calendar month for each and every year of the term of this Lease, or any extension thereof, as follows:

(i) For the first Lease Year (for the purposes hereof, "Lease Year" shall be defined as twelve (12) consecutive calendar months, the first Lease Year commencing on the Commencement Date), Base Rent shall be five hundred eighty-one thousand two hundred fifty and 00/100 (\$581,250.00) Dollars, payable forty-eight thousand four hundred thirty-seven and 50/100 (\$48,437.50) Dollars monthly.



- (ii) For the second Lease Year, Base Rent shall be five hundred eighty-one thousand two hundred fifty and 00/100 (\$581,250.00) Dollars, payable forty-eight thousand four hundred thirty-seven and 50/100 (\$48,437.50) Dollars monthly.
- (iii) For the third Lease Year, Base Rent shall be five hundred ninety-eight thousand six hundred eighty-seven and 50/100 (\$598,687.50) Dollars, payable forty-nine thousand eight hundred ninety and 63/100 (\$49,890.63) Dollars monthly.
- (iv) For the fourth Lease Year, Base Rent shall be six hundred sixteen thousand six hundred forty-eight and 13/100 (\$616,648.13) Dollars, payable fifty-one thousand three hundred eighty-seven and 34/100 (\$51,387.34) Dollars monthly.
- (v) For the fifth Lease Year, Base Rent shall be six hundred thirty-five thousand one hundred forty-seven and 57/100 (\$635,147.57) Dollars, payable fifty-two thousand nine hundred twenty-eight and 96/100 (\$52,928.96) Dollars monthly.
- (vi) For the sixth Lease Year, Base Rent shall be six hundred fifty-four thousand two hundred two and 00/100 (\$654,202.00) Dollars, payable fifty-four thousand five hundred sixteen and 83/100 (\$54,516.83) Dollars monthly.
- (vii) For the seventh Lease Year, Base Rent shall be six hundred seventy-three thousand eight hundred twenty-eight and 06/100 (\$673,828.06) Dollars, payable fifty-six thousand one hundred fifty-two and 34/100 (\$56,152.34) Dollars monthly.
- (viii) For any period from the first day after the last day of the seventh Lease Year through the expiration date of the Lease, base rent shall be fifty-six thousand one hundred fifty-two and 34/100 (\$56,152.34) Dollars monthly.

All Base Rent and additional rent shall be payable to Edgewood Land L.P. as agent for Wilshire Rental Properties LLC until Tenant is notified otherwise.

Tenant agrees that Base Rent for the first month of the Lease shall be due and payable to Landlord upon the Commencement Date. Said annual base rental shall be in

addition to all other payments to be made by Tenant as hereinafter provided.

- (2) All monthly rental payments shall be paid in advance on the first day of each and every calendar month included within said periods. Any monthly installments of Base Rent not paid within five (5) days of the due date shall be subject to a late payment and administrative charge of five (5%) percent of the total amount due for each instance that a monthly installment of Base Rent is not timely made. Tenant agrees that the late payment and administrative charge imposed is fair and reasonable, complies with all laws, regulations and statutes, and constitutes an agreement between Landlord and Tenant as to the estimated compensation for costs and administrative expenses incurred by Landlord due to the late payment of rent to Landlord by Tenant. Tenant further agrees that the late payment and administrative charge assessed pursuant to this Lease is not interest, and the late payment and administrative charge assessed does not constitute a lender or borrower/creditor relationship between Landlord and Tenant. All other payments becoming due hereunder shall bear interest, as defined in Section 16 hereof, from and after the first calendar day when the same shall be due and payable. Such late payment and administrative charge shall be due as additional rent, and shall be in addition to all of Landlord's other rights and remedies hereunder, in the event of Tenant's default. Acceptance of such late payment and administrative charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. In the event that a late payment and administrative charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then Base Rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding any other provision of this Lease to the contrary. In the event any check delivered by Tenant to Landlord is returned uncollected, for non-sufficient funds, or for any like reason, then, in addition to any and all other rights and remedies available to Landlord hereunder, Tenant shall pay to Landlord, as additional rent, a fee of \$20.00 per check to compensate Landlord for the additional administrative cost and expense incurred by Landlord by reason of such check. In the event Tenant shall be

served with a demand for the payment of any past due amount under this Lease, any payments tendered thereafter to cure any default by Tenant shall be made only by cashier's or certified check.

- 3) All costs and expenses which Tenant assumes or agrees to pay pursuant to this Lease shall at Landlord's election be treated as additional rent and, in the event of nonpayment, Landlord shall have all the rights and remedies herein provided for in the case of nonpayment of rent or of a breach of condition. If Tenant shall default in making any payment required to be made by Tenant (other than the payment of Base Rent required by Section "3" of this Lease) or shall default in performing any term, covenant or condition of this Lease on the part of Tenant to be performed which shall involve the expenditure of money by Tenant, Landlord, at Landlord's option may, but shall not be obligated to, make such payment on behalf of Tenant, or expend such sum as may be necessary to perform and fulfill such term, covenant or condition and any and all sums so expended by Landlord, with interest thereon as defined in Section 16, from the date of such expenditure, shall be deemed to be additional rent, in addition to the Base Rent, and shall be repaid by Tenant to Landlord, on demand, but no such payment or expenditure by Landlord shall be deemed a waiver of Tenant's default or shall it affect any other remedy of Landlord by reason of such default.
- (4) Except as otherwise stated herein, it is fully understood and Landlord and Tenant agree that this is a "net, net, net lease", and Tenant is to fully responsible, liable and is to pay for all taxes, fees, expenses, assessments, insurance, repairs, both interior and exterior, ordinary or extraordinary, foreseen and unforeseen and any other charges for the Premises, except to the extent otherwise set forth in this Lease and Landlord shall be indemnified and saved harmless by Tenant from and against all costs and expenses arising from nonpayment of or noncompliance with the same. During the first year only of the term of this Lease, Landlord shall make repairs to the roof not caused by the negligent, grossly negligent or willful acts of Tenant, its employees, officers, agents, servants, and the like. Thereafter, Tenant shall be fully responsible, at its sole cost and expense, for all roof repairs.

- B. Tenant also covenants and agrees to pay, as additional rent, prior to the date the same shall be due without penalty, any sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed, or a lien upon the Premises pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage connection or system.

Tenant shall be responsible for the charges set forth in this paragraph B assessed during the term of this Lease, or any extension thereof, whether or not the same are billed during the term. Tenant's obligations hereunder shall survive the expiration or sooner termination of this Lease.

Tenant covenants and agrees that THE WASTE ENTERING THE SANITARY SYSTEM SHALL BE LIMITED ONLY TO NORMAL LAVATORY WATER AND WASTE BUT SHALL EXPRESSLY EXCLUDE ALL INDUSTRIAL WATER AND WASTE. Tenant's failure to abide by this covenant shall be a default under this Lease.

- C. For the purposes of this Lease, "Tenant's Share" shall be fifty (50%) percent, which is the ratio of the number of square feet demised herein (approximately 75,000 square feet) to the number of square feet in the building 120 Wilshire Boulevard (approximately 150,000 square feet).

#### SECTION 4. TAXES:

1. In addition to Tenant's obligation to pay Base Rent, commencing as of the first day of the fifth (5<sup>th</sup>) Lease Year, and during each and every year thereafter during the term of this Lease, and for so long as Tenant's occupancy of the Premises continues, Tenant agrees to pay and shall pay, as additional rent, Tenant's Share of any and all increases in Real Estate Taxes (as defined below), and increased assessments, above two dollars and 00/100 (\$2.00) per square foot imposed, assessed or levied against 120 Wilshire Boulevard, both land and building, during the term of this Lease, or any extension thereof, whether or not billed prior to the end of the term of this Lease. Tenant's obligation hereunder shall survive the expiration or sooner termination of this Lease.

All increases in Real Estate Taxes shall be due and payable, as additional rent, on a semiannual basis, forty-five (45) days prior to the date Landlord is required to make said tax

payment(s) to the taxing authority, without penalty, or at Landlord's election, on a monthly basis, along with each payment of Base Rent, in accordance with the procedure set forth below.

Landlord shall estimate the annual Real Estate Taxes and one-twelfth (1/12th) of the amount so estimated shall be due with each payment of Base Rent. Within one hundred twenty days after the end of the fiscal year, Landlord shall furnish Tenant with a statement which provides the actual Real Estate Taxes for the prior fiscal year. Thereupon an adjustment shall be made between Landlord and Tenant, with payment to Landlord, as additional rent, of any amounts due Landlord but not yet paid. Estimated payments for each succeeding year shall be based upon the prior year's payments. It is agreed that the intent of this paragraph is that Tenant shall have made tax payments to Landlord totaling the full amount due, prior to the date Real Estate Taxes are payable to the taxing authority.

Real Estate Taxes for partial Lease Years shall be pro-rated.

Tenant's failure to make any Real Estate Tax payment as in this Lease provided shall be a default under this Lease. In the event Tenant fails to make the payment(s) as required above, Landlord shall be entitled to interest, at the rate set forth in Section 16 hereof, on all sums due, from the date payment was due, until payment in full to Landlord, in addition to all other remedies available to Landlord for nonpayment of Base Rent. Tenant shall also be responsible for the payment of all interest, fines, late fees and penalties by reason of said non-payment.

- (2) "Real Estate Taxes" shall mean the sum of all taxes, real estate and real property taxes, assessments, special assessments, impositions, levies, including, but not limited to, town taxes, village taxes, school taxes, county taxes, etc., whether general, special, ordinary or extraordinary, foreseen or unforeseen, imposed, assessed or levied against or upon 120 Wilshire Boulevard, land and building, and any rights or interests appurtenant to either, by Federal, State or local governmental authority, or any other taxing authority having jurisdiction thereover. Real Estate Taxes shall also include any taxes which may be assessed, levied or imposed in lieu of, in substitution for, or in addition or supplementary to such taxes. Real Estate Taxes shall also include all fees and expenses associated with the institution, prosecution, conduct and maintenance of any negotiations, protests, certioraris, settlements, actions



or proceedings with respect to Real Estate Taxes or assessments and any taxes attributable to improvements of whatever kind and to whom belonging, situated or installed in or upon 120 Wilshire Boulevard, whether or not affixed to the realty. Landlord agrees that any attorney hired by Landlord for institution or prosecution of any tax protest, certioraris, actions, or proceedings shall be hired on a contingency basis.

If at any time during the term of this Lease the methods of taxation prevailing at the commencement of the term hereof shall be altered so that in lieu of, as an addition to, or as a substitute for the whole or any part of the taxes, assessments, levies, impositions, or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed, or imposed (i) a tax, assessment, levy, imposition or charge wholly or partially as capital levy or otherwise on the rents received therefrom, or (ii) a tax, assessment, levy, imposition or charge measured by or based in whole or in part upon the Premises and imposed upon Landlord, or (iii) a license fee or charge measured by the rents payable by Tenant to Landlord, then all such taxes, assessments, levies, impositions or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Real Estate Taxes" for the purposes hereof.

- (3) Landlord shall have the sole, absolute and unrestricted right, but not the obligation, at any time and from time to time to contest, dispute or protest any Real Estate Taxes, assessment or tentative assessment against or affecting 120 Wilshire Blvd, or the tax lot(s) of which the Premises are or become a part, whether by means of negotiation, agreement, legal proceedings or otherwise. In the event Landlord shall institute any contest, dispute or protest it shall have the sole, absolute and unrestricted right to settle any negotiations, contests, proceedings or actions upon whatever terms Landlord may in its sole discretion determine. Provided Tenant is not in default under this Lease, Landlord shall pay over to Tenant Tenant's Share any such Real Estate Tax refunds, less counsel fees and/or other expenses relating to such proceeding, to the extent that such refunds relate to increases in Real Estate Taxes theretofore paid by Tenant to Landlord, pursuant to this Section 4.

#### SECTION 5. WORK:



- A. As a one-time non-recurring obligation Landlord shall: (i) construct approximately 4,500-5,000 square feet of office/showroom as per plan attached hereto as Exhibit "B".

Landlord shall be responsible for the installation of lighting in the warehouse portion of the Premises. Tenant agrees to pay one-half of the cost of such warehouse lighting to Landlord on the Commencement Date.

Except as set forth in the preceding sentences of this Section 5 (A), Tenant acknowledges and agrees that Landlord has not offered to do, and shall not do or have any obligation to do, any work, alterations, improvements, decorations, additions, repairs, changes, etc., at, or to the Premises to make the same ready for Tenant's occupancy. Tenant further acknowledges that, prior into entering into this Lease, Tenant has had a full and fair opportunity to inspect the Premises, or Tenant has expressly waived the right to do so. Except for the work provided in this Section 5A, Tenant hereby accepts the Premises in "as-is" condition. Landlord agrees that the aforesaid work will be done in a workmanlike manner. During the first year of the term of this Lease only, after request from Tenant, provided the same was not caused by the act(s) or omission(s) of Tenant, its employees, agents, contractors, licensees, invitees or the like, Landlord agrees to repair any latent defect that would not be discovered by reasonable inspection, provided, notwithstanding the foregoing Landlord shall have no obligation for any light bulbs or lamp ballasts. To the extent assignable, Landlord agrees to extend to Tenant the benefit of any warranties Landlord receives from its contractors in connection with the construction of the Premises.

- B. If Landlord is unable to give possession of the Premises on the date of commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants or if the Premises has not been sufficiently completed to make the Premises ready for occupancy or if Landlord has not completed any work required to be performed by Landlord, or for any other reason, Landlord shall not be subject to any liability for failure to give possession on said date and the validity of the Lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this Lease (except as may be agreed), but the rent payable hereunder shall be abated (provided Tenant is not responsible for Landlord's inability to obtain possession or complete any work required) until after Landlord shall have

given Tenant notice that the Premises are substantially ready for Tenant's occupancy. The provisions of this Section are intended to constitute "an express provision to the contrary" within the meaning of Section 223-a of the New York Real Property Law.

#### SECTION 6. DELIVERY OF POSSESSION:

A. Possession of the Premises shall be deemed delivered to Tenant on the Commencement Date.

B. Except as otherwise provided herein, after Tenant occupies the Premises, Tenant shall have no right to cancel this Lease, seek a diminution of rent, sue for damages or assert any contractual, legal or equitable remedy based either on a claim that Landlord failed to deliver possession in accordance with the terms of this Lease or based on a claim that the size, location, layout, dimensions or construction of the building or service area(s) (if any), sidewalks, parking or other areas (if any), or any other facilities to be furnished by Landlord, were not completed or furnished in accordance with the terms of this Lease. Notwithstanding the foregoing, if after Tenant occupies the Premises and during the term hereof Landlord is in default under any of its Lease obligations, Tenant shall have such rights at law or in equity to which it may be entitled except that Tenant hereby waives any right to cancel or terminate this Lease or to seek a diminution of rent. Tenant's occupancy of the Premises shall be deemed a certification to Landlord and any mortgagee (present or future), that the Premises have been delivered to it in accordance with the terms of this Lease and that possession thereof has been fully and completely accepted by Tenant who is then in possession of the same, and that the term of this Lease and the use of the Premises for business and the date for the payment of rent hereunder have all theretofore commenced and that the building, the parking area, and all other portions of the Premises have been completed in accordance with the requirements and terms of this Lease, and that there is not then any offset of any rental(s) nor any violation of any of the Lease terms on the part of the Landlord. The foregoing provisions shall be self-operative and no further instrument, letter or certificate shall be required by Landlord or any such mortgagee unless either Landlord or mortgagee shall deem same appropriate in which event, Tenant shall, without cost to Landlord, promptly execute, in writing, any instrument, letter and/or certificate containing the certification of this paragraph B of this Section 6 of the Lease and such other like provisions in regard to the terms and

performance of the Lease, the condition and use of the Premises, and Tenant's possession of the Premises, the rental(s), and term of the Lease as shall be reasonably requested by Landlord and/or said mortgagee. For the limited purposes of this paragraph B of this Section 6 of the Lease, and only for that purpose, Tenant hereby appoints Landlord as the Tenant's attorney-in-fact to execute any such instrument(s), letter(s), and/or certificate(s) for and on behalf of Tenant to comply with this paragraph.

#### SECTION 7. TENANT'S USES:

Tenant covenants that it shall use the Premises subject to and in accordance with all present and future rules, regulations, laws, ordinances, statutes, directions and requirements of all governmental and quasi-governmental authorities and the Fire Insurance Rating Organization and Board of Fire Insurance Underwriters and insurance companies issuing policies for the Premises, and any similar bodies, having jurisdiction thereof, and subject to the restrictions contained in Exhibit "C" annexed hereto, and provided the same complies with the certificate of occupancy for the Premises, solely for warehousing and distribution of packaged houseware products, and office use in connection therewith, and for no other purpose. Tenant may not conduct any dangerous, hazardous, noxious or offensive use. Without limiting the foregoing, Tenant agrees that no part of the Premises will be used for the treatment, storage, disposal, generation, refining, transporting, handling, production, processing, burial, dispersal or placement of any Hazardous Substance (as defined in Section 37), pollutants or contaminants, and that Tenant shall not release or permit the release of any Hazardous Substance, petroleum products, pollutants, or contaminants onto the Premises or unto the subsurface thereof or onto any property whatsoever, including, without limitation, surface water and ground waters unless in compliance with all applicable law(s), permit(s), order(s) or other valid governmental approval(s). Tenant shall first obtain all governmental permits and licenses as may be required for Tenant's use and occupancy of the Premises, and Tenant at all times shall promptly comply with all present and future laws, ordinances, requirements, orders, directions, rules and regulations of the federal, state, interstate, county, local and municipal governments and all other governmental authorities, agencies or regulatory bodies having a claim or jurisdiction over or affecting the Premises, or any part thereof, or the activities of Tenant, and all of their respective departments, bureaus and officials, and of the Board of Fire Underwriters, and all of the insurance companies writing policies affecting the Premises or any part thereof, whether such laws, ordinances, requirements, orders, directions, rules or regulations relate to structural alterations, changes, additions,

improvements, replacements, restorations or repairs, either inside or outside, extraordinary or ordinary, foreseen or unforeseen, or otherwise, to or in and about the Premises, or any part thereof, or connected with the use, occupation and enjoyment thereof, or to alterations, changes, additions, improvements, replacements, restorations or repairs incident to or as a result of any use or occupation thereof, or otherwise, or any obligation arising from any restriction on title to the Premises, and whether the same are in force at the commencement of the term or may in the future be passed, enacted or directed. Tenant shall not do or permit anything to be done in or about the Premises, or bring or keep anything in the Premises that will in any way increase the normal premium rates or cause suspension or termination of the fire or other insurance upon the building. Should Tenant's occupation of the premises jeopardize the Landlord's insurance coverage, create additional risks or cause an increase in Landlord's insurance premiums, Tenant shall be solely responsible for all costs associated therewith, including prompt payment, as additional rent with the with the next monthly installment of Base Rent due, of all increased premiums, including those of any other occupants affected thereby. Tenant will not perform any act or carry on any practices that may injure the building or be a nuisance or menace to tenants of adjoining premises. Tenant shall not permit open storage on the Premises detrimental to the appearance of a garden-type industrial development; and shall require loading and unloading and parking of cars for employees, customers and visitors, in connection with Tenant's business to be done in the designated areas on the premises and not on any street. Tenant represents that throughout the term of this Lease Tenant shall have no more than forty employees working at the Premises.

In connection with Tenant's proposed use of the Premises, upon request by Landlord Tenant shall deliver to Landlord:

- (i) a letter, on Tenant's business stationery, for the Town of Islip Building Department, indicating the nature of Tenant's business and the utilization of the Premises in square foot terms (for example: how many square feet will be used for warehouse, plant and/or office purposes). This letter shall be addressed to Landlord.
- (ii) a letter on Tenant's business stationery, for the Suffolk County Department of Health Services, responsive to the questions set forth on the specimen letter attached hereto as Exhibit "E".
- (iii) a completed application (on the form submitted by Landlord) to the Long Island Power Authority for

service to the Premises.

SECTION 8. INSURANCE:

Throughout the term of this Lease and any extensions and renewals thereof, Tenant, at its own cost and expense, shall:

- A. (1) Provide and keep in force a comprehensive policy of liability insurance in the name of and for the benefit of Tenant, Landlord and any designee(s) of Landlord against any liability for injury to person(s) and/or property and death of any person(s) occurring in, at, on, or about the Premises, or any appurtenances thereto. Each such policy is to be written by one or more responsible insurance companies satisfactory to Landlord, licensed and admitted to do business in the State of New York, with a Best's rating of A, or greater, and a financial size category of 10, or greater, and the limits of liability thereunder shall not be less than \$1,000,000 combined single limit bodily injury, death and/or property damage per occurrence, and a \$2,000,000 aggregate limit and a \$2,000,000 umbrella liability policy, or a combined single limit of \$3,000,000 per occurrence for bodily injury, death and/or property damage, and against claims arising from contractual obligations.
- (2) If a sprinkler system shall be located in the Building Tenant shall obtain, at its sole cost and expense, a sprinkler supervisory, maintenance and alarm service contract for the sprinkler system at the Premises.
- (3) Provide and keep in force insurance coverage on all plate and other glass in the building.
- (4) Except as set forth herein, provide and keep in force such other insurance covering such risks and in such amounts as may from time to time be reasonably required by Landlord or any mortgagee against any other insurable hazards as Landlord can show at the time are commonly insured against in cases of premises similarly situated and/or such other insurance and in such amount and form as may from time to time be required by the holder of any mortgage(s) to which this Lease is subject and/or subordinate.
- (5) Tenant shall maintain insurance for the full replacement value of its own contents, inventory and trade fixtures.



B. Landlord shall:

- (1) Keep the building and all other buildings and improvements and all furnishings and equipment (specifically excluding Tenant's contents, trade fixtures and equipment) on, at, in or appurtenant to the Premises at the commencement of the term, and/or thereafter erected thereon or therein (including all alterations, rebuildings, replacements, changes, additions and improvements) insured in an amount equal to the full replacement cost thereof against loss or damage from All Risk as included in ISO all risk perils including but not limited to sprinkler leakage, wind and hurricane, collapse, and other perils reasonably required by Landlord and loss of rents (see B.2). Such policy shall also include building ordinance coverage, including increased cost of construction and demolition cost with a minimum limit of \$\_\_\_\_\_.
- (2) The loss of rents coverage may be provided by rental coverage or business interruption insurance, including extra expense insurance, in an amount not less than the annual base rental plus the annual estimated Real Estate Taxes and insurance premiums.
- (3) Provide and keep in force a boiler and machinery policy for all machinery and HVAC equipment and miscellaneous electrical apparatus at the Premises including loss of rents coverage as well as electrical arcing breakdown and mechanical breakdown.

In addition to Tenant's obligation to pay Base Rent, and all other amounts due under this Lease, during the term of this Lease, and for as long as Tenant occupies the Premises, Tenant agrees to and shall pay to Landlord, as additional rent, Tenant's Share of the cost for the foregoing insurance (or the entire cost thereof should Tenant's occupation of the Premises jeopardize the Landlord's insurance coverage, create additional risks or cause an increase in Landlord's insurance premiums). If said insurance is carried as part of a blanket policy or policies, Landlord's estimate as to the share of these costs applicable to the Premises shall be sufficient evidence for Tenant's payment hereunder.

- i. Tenant shall pay Landlord for the cost of such insurance, as additional rent, within 10 days of being



billed for the same, whether or not the same is billed after the expiration or sooner termination of the term of this Lease.

- ii. Landlord shall have the sole option, at any time and from time to time, to require Tenant to make estimated payments on behalf of insurance on a monthly basis along with each payment of monthly Base Rent so that prior to the date the next premium for such insurance is due, Landlord shall have on hand funds sufficient to pay the cost of the insurance.
  - iii. In the event Tenant's estimated payments are insufficient to pay the total cost of the insurance, Tenant shall pay the balance of the amount due Landlord within ten (10) days of being billed for the same, whether or not the same is billed after the expiration or sooner termination of the term of this Lease.
  - iv. Landlord shall be entitled to all remedies available for nonpayment of Base Rent, including a late payment and administrative charge of five (5%) percent of the total amount due in each instance, on all sums due but not timely paid, should Tenant fail to make the payments as in this paragraph provided. The late payment and administrative charge shall be due as additional rent and shall be payable with the additional rent to which it pertains.
- C. Each party hereby releases the other party (which term as used in this subdivision includes the employees, agents, officers and directors of the other party) from all liability, whether for negligence or otherwise, in connection with loss covered by any insurance policy which the releasor carries with respect to the Premises or any interest or property therein or thereon (whether or not such insurance is required to be carried under this Lease), but only to the extent that such loss is collected under said insurance policies. Such release is also conditioned upon the inclusion in the policy or policies of a provision whereby any such release shall not adversely affect said policies or prejudice any right of the releasor to recover thereunder. Each party agrees that its insurance policies, aforesaid, will include such a provision, if obtainable. If the inclusion of such provision requires an additional premium, the party for whose benefit the provision is obtained shall, on demand, pay such extra premium to the party carrying the insurance.

D. Unless otherwise requested by Landlord all insurance provided by Tenant under this Section 8, except Tenant's contents and inventory insurance, shall be carried in favor of Landlord and the holder of any mortgage(s) affecting the Premises as additional named insured and loss payee, as their respective interests may appear. Such policies shall be in companies licensed and admitted to do business in the State of New York, as Landlord and/or any mortgagee shall approve, with a Best's Rating of A or greater, and a financial size category of 10, or greater, and such policies shall provide that proceeds shall be payable to Landlord and, at Landlord's request, any such mortgagee as their respective interests may appear. Tenant shall not carry separate insurance, concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Tenant under the provisions of this Section 8 if the effect of such insurance would be to reduce the protection or the payment to be made under said insurance required to be furnished by Tenant, unless Landlord and any mortgagee as aforesaid are included as insured with loss payees as hereinabove provided. Tenant shall promptly notify Landlord of the issuance of any such separate insurance and shall cause such policies to be delivered to Landlord, as hereinafter provided.

Each policy of insurance to be carried by Tenant under this Lease shall be satisfactory to Landlord. Each policy evidencing the insurance to be carried by Tenant under this Lease shall contain a clause that such policy and the coverage evidenced thereby shall be primary with respect to any policies carried by Landlord, and that any coverage carried by Landlord shall be excess insurance.

E. All insurance that Tenant is required to carry by this Lease shall be effective from the Commencement Date. Tenant shall deliver to Landlord and/or any designee of Landlord proof of insurance in the form of:

- (1) either a duplicate original of such policy or a certificate of all policies procured by Tenant in compliance with this Lease;
- (2) evidence of payment therefor; and
- (3) the proof of insurance shall include an endorsement which states that such insurance may not be canceled except upon thirty (30) days written notice to Landlord and/or designee of Landlord.

i. Tenant shall provide proof of insurance as soon

as possible, but in no event later than the Commencement Date; for any insurance policy not required to be in effect at the Commencement Date, Tenant shall provide proof of insurance within ten (10) days after due notification from Landlord.

- (4) At least twenty (20) days prior to the expiration of each policy, Tenant shall procure renewal insurance and within such period shall deliver to Landlord and/or any designee of Landlord the original renewal policy.

F. Property Loss or Damage and Indemnity: Tenant shall forever indemnify and save Landlord harmless from and against (i) any and all liability, loss, damage, cost and expense, including counsel fees, arising from any injury to person or property of third persons occurring during the term of this Lease wholly or in part by reason of any act or omission of Tenant or of its employees, guests, invitees, agents, assigns or undertenants; and (ii) any other duty arising from occupation of the Premises by Tenant.

- i. At Landlord's election, Tenant shall at its cost and expense defend any suit or proceeding instituted against Landlord by reason of any claimed injury to person or property or any other claimed duty arising from Tenant's occupation of the Premises.
- ii. Landlord shall not be liable for any loss or damage which may be sustained by Tenant or any other person from any act or omission on the part of the Landlord or of any other tenant or agent or employee of any tenant or of Landlord unless caused by the negligence or willful misconduct of Landlord.

G. Tenant shall pay all premiums and charges for all such policies it is required to procure pursuant to this Lease, and if Tenant shall fail to make any such payment when due, or to carry any such policy, Landlord, at its option, may but shall not be obligated to, make such payment or carry such policy, and the amounts paid by Landlord, with interest thereon from the date of payment, shall become due and payable by Tenant as additional rent with the next succeeding installment of Base Rent. Payment by Landlord of any such

premiums or the carrying by Landlord of any such policies shall not be deemed to waive or release the default of Tenant with respect thereto, or the right of Landlord to take such action as may be permissible hereunder as in the case of default in the payment of Base Rent.

- H. Tenant shall not violate or permit to be violated, any of the conditions or provisions of any insurance policy covering the Premises, and Tenant shall perform and satisfy the requirements of the companies writing such policies.
- I. Tenant and Landlord shall cooperate in connection with the collection of any insurance monies that may be due in the event of a loss and Tenant shall execute and deliver to Landlord such proofs of loss and other instruments which may be required for the purpose of obtaining the recovery of any insurance monies.
- J. Tenant agrees that during the term of the Lease, or any extension thereof, the limits of the insurance required by this Section shall be increased if necessary to afford Landlord the same protection as provided to Landlord at the commencement of the term of this Lease. In no event shall the limits of insurance be reduced below what they were at the commencement of the term.
- K. Each policy evidencing the insurance to be carried by Tenant under this Lease shall contain a clause that such policy and the coverage evidenced thereby shall be primary with respect to any policies carried by Landlord, and that any coverage carried by Landlord shall be excess insurance.

#### SECTION 9. DESTRUCTION:

- A. If during the term of this Lease, or any extension thereof, any portion of the Premises or any building, structure or improvement thereof, thereon or therein, or appurtenant thereto, is damaged or destroyed by fire or other casualty as a result of a peril insured against pursuant to this Lease, Tenant shall forthwith give notice thereof to Landlord and then Landlord shall thereafter commence promptly, after adjustments of insurance, and building weather permitting, at its own cost, to repair, replace and rebuild the Premises, but to the extent only of proceeds received by Landlord from insurance and to the extent only of Landlord's work prior to occupancy of the Premises by Tenant. In no event shall Landlord be obligated to expend a greater sum for the restoration of the Premises than the sum Landlord received as insurance proceeds due to said damage or destruction.

Nothing in this paragraph shall require Landlord to restore, replace or repair any inventory, furniture, chattels, signs, contents, fixtures, (including trade fixtures) or personal property of Tenant located, on, in, or about the Premises, or which serve the Premises or rebuild the Premises in the condition and state that existed before any such damage or destruction. In the event that the Premises is restored to less than seventy-five thousand square feet, from and after said restoration the Base Rent payable hereunder shall be reduced to the amount calculated by multiplying the Base Rent then due and payable by a fraction, the numerator of which shall be the number of square feet in the Premises as restored and the denominator shall be seventy-five thousand square feet.

- B. Notwithstanding anything to the contrary contained in this Lease, in the event of any destruction of the building to the extent of more than forty (40%) percent of the cost of total replacement thereof, at a time when less than three (3) years remain in the term hereof, Landlord may elect to terminate this lease on thirty (30) days notice to Tenant, given at any time within sixty (60) days after such damage or destruction, and in such case all proceeds from insurance procured to cover the Premises shall be paid and belong to Landlord and upon such termination neither party shall be thereafter under any obligation to the other for any liability under this Lease which shall thereafter accrue. If the Landlord does not elect to terminate this Lease according to this paragraph, but Landlord does not commence making the required repairs within ninety (90) days of such damage and destruction, thereafter until the repair is substantially completed Tenant's Base Rent shall be reduced ratably by the number of square feet of the building floor area destroyed and not being used by Tenant or, if more than sixty (60%) percent of the building is destroyed and the Tenant vacates the Premises, Tenant's Base Rent shall be abated in full until Landlord substantially completes restoration of the Premises.

- C. In the event that Landlord actually does not substantially complete Landlord's required repairs of the damage caused by fire or other casualty within one hundred twenty (120) days of the occurrence thereof (such date being subject to extension in accordance with Section 29 of this Lease), then, provided Tenant is not in default under this Lease, Tenant may elect to terminate this Lease by giving Landlord written notice thereof which notice shall contain a date upon which this Lease shall terminate, which date shall not be less than thirty (30) days from the date of Tenant's notice. If after thirty (30) days of receipt by Landlord of



Tenant's notice for the termination of this Lease by reason of Landlord's failure to timely complete such repairs Landlord shall not have substantially completed such repairs, this Lease shall terminate on such date set forth in Tenant's notice as if such date was the date originally set forth in this Lease for the expiration of the term thereof. If after thirty (30) days of receipt by Landlord of Tenant's notice Landlord has substantially completed such repairs, this Lease shall remain in full force and effect and Tenant's notice shall be null and void. The right herein granted to Tenant shall be Tenant's sole and exclusive remedy in the event of an event covered by Section 9 of this Lease and Tenant hereby expressly waives any other rights and remedies it may have against Landlord. All obligations which were to survive the expiration or termination of the term of this Lease shall survive the termination of this Lease in accordance with this paragraph.

- D. Unless the Landlord receives rent insurance, or the terms of paragraphs A, B, or C of this Section of the Lease are applicable, neither the rent payable by Tenant nor any of Tenant's other obligations under the other provisions of this Lease shall be affected by any damage to or destruction of the Premises, and Tenant expressly waives such additional rights as it might otherwise have under any law or statute by reason of damage or destruction of the Premises by fire or any other cause.

- D. Landlord agrees that in the event the Premises are destroyed by fire or other casualty and this Lease is not cancelled, upon request by Tenant, Landlord will use good faith efforts to rent space Landlord has available for rent to Tenant on mutually agreeable terms on a temporary basis until the repairs at the Premises are completed so that Tenant may re-occupy the Premises.

#### SECTION 10. REPAIRS, MAINTENANCE AND ALTERATIONS:

- A. Tenant shall at all times, during the term, or any extension term, and at its own cost and expense put, keep, repair, restore, replace and maintain in thorough repair and good, safe, clean and working order and condition, the Premises, all buildings and other portions thereof, all glass therein, all equipment therein, and all appurtenances thereto, both inside and outside, extraordinary and ordinary, foreseen or unforeseen, at the commencement of the term or thereafter erected thereon or therein and howsoever the necessity or desirability thereof may occur, normal wear, tear and obsolescence excepted. Tenant shall use all reasonable



precaution to prevent waste, damage or injury to the Premises, or any part thereof. Tenant shall also, at its own cost and expense, put, keep, repair, restore, replace and maintain in thorough repair and good order and safe condition and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, any sidewalks, parking fields and curbs which are part of, in front of, and of or adjacent to the Premises, normal wear, tear and obsolescence excepted.

With regard to replacements and restorations only, notwithstanding the foregoing, in the event any single replacement or restoration (to other than the heating, ventilation and air conditioning system which shall be governed by the next paragraph of this Section 10) is required which is not necessitated by the willful, grossly negligent or negligent acts of omission or commission of Tenant, its employees, agents, invitees, licensees, contractors and the like and the cost of said replacement or restoration exceeds \$4,000.00, Tenant shall be responsible for the first \$4,000.00 of said replacement or restoration, and Landlord shall be responsible for the amount of the replacement or restoration which exceeds \$4,000.00, provided Tenant forwards to Landlord a check in the amount of \$4,000.00 along with a true, complete and correct estimate for the replacement or restoration which evidences a replacement or restoration the cost of which exceeds \$4,000.00, with a request to make such replacement or restoration. Landlord shall then have the option of authorizing the replacement or restoration to be done by Tenant's contractor, or otherwise making such replacement or restoration, in either instance at Landlord's expense.

With regard to replacements and restorations only, provided the maintenance contract as required by Section 18 is in full force and effect, in the event a replacement or restoration to the heating, ventilation and air conditioning system is required which is not necessitated by the willful, grossly negligent or negligent acts of omission or commission of Tenant, its employees, agents, invitees, licensees, contractors and the like and such replacement or restoration is not covered by said maintenance contract, Tenant shall be responsible for the first \$4,000.00 of said replacement or restoration, and Landlord shall be responsible for the amount of the replacement or restoration which exceeds \$4,000.00, provided Tenant forwards to Landlord a check in the amount of \$4,000.00, along with a true, complete and correct estimate for the replacement or restoration which evidences a replacement or restoration to the heating, ventilation and air conditioning system the cost of which exceeds \$4,000.00, with a request to make such replacement or restoration. Landlord

shall then have the option of authorizing the replacement or restoration to be done by Tenant's contractor, or otherwise making such replacement or restoration, in either instance at Landlord's expense.

- B. Tenant shall refrain from committing, or suffering any waste upon the Premises, or any nuisance, or any other act or thing which shall disturb the quiet enjoyment of any other tenant in the Heartland Business Center. Tenant shall make all ordinary repairs, replacements and restorations, as needed (except as provided in Section 9A or this Section 10), including without limitation by their inclusion, interior and exterior repainting, replacement of glass injured or broken; and of floor and wall covering worn or damaged; keeping roofs and exterior windows and doors water tight, and all plumbing, lighting, heating, air-conditioning, and other utility systems in good operating condition. Tenant shall keep the Premises properly painted and decorated; Tenant shall paint all exterior trim and all exposed metal beams and girders as reasonably required. Tenant shall notify Landlord in writing for Landlord's written approval should any penetrations or additional loads to the roof be contemplated, which approval may be withheld for any reason notwithstanding anything in this Lease.
- C. Tenant shall maintain all landscaped and planted areas including but not limited to lawns, trees, and shrubs, on and around the Premises, and keep in good repair all parking and loading areas in use, clean and free of snow and ice, and the exterior of the Premises neat and clean. In the event fails to maintain the landscaping and plantings, or fails to promptly remove snow and ice from the parking and drive areas around the Premises, Landlord shall have the right (but not the obligation) to notify Tenant that Landlord shall maintain the landscaping and planting and plowing of snow around the Premises (after two inches of snowfall), the cost of which shall be paid for by Tenant, as additional rent under this Lease, within ten (10) days of receipt of an invoice therefor, or on a monthly basis, along with the payment of Base Rent, in the event Landlord estimates said charges.

Tenant shall indemnify and save harmless Landlord against and from all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims and demands, including reasonable counsel fees, because of Tenant's failure to comply with its obligations under this Lease and Tenant shall not call upon Landlord for any disbursement or outlay whatsoever in connection therewith and hereby expressly releases and discharges Landlord of and from any liability therefor.

- B. Except as otherwise specifically set forth in this Lease, Tenant shall not make any alterations, improvements, and/or additions to the Premises or any part thereof without Landlord's prior written consent.
- C. If any repair or alteration which are not Structural Repairs and which are required or permitted to be performed by Tenant under any provision of this Lease shall cost in excess of three thousand five hundred and 00/100 (\$3,500.00) dollars during the Lease term, same shall not be commenced until Tenant, at least fifteen (15) days prior to commencement of such repairs or alterations, shall have submitted plans and specifications therefor to Landlord for Landlord's approval. If Landlord does not provide objections in writing within twenty (20) business days Tenant's submission of plans and specifications, such plans and specifications shall be deemed to have been approved. After such approval, such work may be performed in accordance with the approved plans and specifications. Any work performed by Tenant shall, irrespective of cost, be subject to Landlord's inspection and approval after completion to determine whether the same complies with the requirements set forth in this Lease; provided, however, Tenant shall remove any such alterations upon Landlord's written request prior to the termination of this Lease.

#### SECTION 11. COVENANT AGAINST LIEN:

Tenant shall not do any act, or make any contract which may create or be the foundation for any lien or other encumbrance upon any interest of Landlord in any portion of the Premises. If, because of any act or omission (or alleged act or omission) of Tenant, any mechanic's or other lien, charge or order for the payment of money or other encumbrance shall be filed against Landlord and/or any portion of the Premises (whether or not such lien, charge or encumbrance is valid or enforceable as such), Tenant shall, at its own cost and expense, cause same to be discharged of record or bonded within ten (10) days after notice to Tenant of the filing thereof; and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees resulting therefrom. If Tenant fails to comply with the foregoing provisions, Landlord shall have the option of discharging or bonding any such lien, charge, order or encumbrance, and Tenant agrees to reimburse Landlord for all costs, expenses, reasonable attorneys fees, and other sums of money in connection therewith (as additional rental) with interest thereon, at the rate specified in Section 16, promptly upon

demand. All materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter contracted with Tenant for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises at any time from the date hereof until the end of the term of this Lease, or any extension thereof, are hereby charged with notice that they must look exclusively to Tenant to obtain payment for same. Nothing in this Lease contained shall be construed in any way as constituting the consent or request of the Landlord, expressed or implied, to any contractor, subcontractor, laborer or materialmen for the performance of any labor or the furnishing of any materials for any improvement, alteration or repair of the Premises, nor as giving any right or authority to contract for the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's liens against the Premises.

#### SECTION 12. CONDEMNATION:

- A. If the whole of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof, then this Lease shall automatically terminate as of the date that title shall be taken. If fifty (50%) percent or more of the Premises shall be so taken, then Landlord and Tenant shall each have the right to terminate this Lease on thirty (30) days written notice to the other given within sixty (60) days after the date of such taking.
- B. If any part of the Premises shall be so taken and this Lease shall not terminate or be terminated under the provisions of Paragraph "A" hereof, then the Base Rent shall be equitably apportioned according to the building floor space so taken and Landlord shall make all necessary repairs or alterations to the Premises so as to constitute that portion of the building and other improvements on the Premises not taken as a complete architectural unit and/or as nearly similar in character as practicable to what they were before the taking.
- C. All compensation awarded or paid upon such a total or partial taking of the Premises shall belong to and be the property of Landlord without any participation by Tenant; provided, however, that nothing contained herein shall be construed to preclude Tenant from prosecuting any claim, directly against the condemning authority in such condemnation proceedings for loss of business, and/or depreciation to, damage to and/or cost of removal of, and/or for the value of stock and/or trade fixtures, furniture and other personal property belonging to Tenant; provided, however, that no such claim shall diminish



or otherwise adversely affect Landlord's award nor any award(s) of the holder(s) of any and all mortgages affecting the Premises. In no event shall Tenant make any claim for the value of the unexpired term of the Lease. Subject to the foregoing provisions, Landlord shall not be entitled to reimbursement or indemnification of any costs or expenses, including attorney's fees, provision of legal counsel or defense by Tenant related to and concerning any condemnation proceeding, taking or exercise of eminent domain or private sale or purchase in lieu thereof.

SECTION 13. ACCESS TO PREMISES:

- A. Landlord and its designees shall have the right, but shall not be obligated to, upon twenty-four hours prior notice (which may be by telephone), or upon reasonable suspicion of Tenant's default without notice, to enter upon the Premises at all reasonable business hours (and in emergencies at all times without notice): (1) to inspect the same, (2) to make repairs, additions or alterations to the Premises or the building or any property owned or controlled by Landlord, and (3) for any lawful purpose that does not unreasonably interfere with Tenant's quiet use and enjoyment of the Premises.
- B. If, at reasonable business hours, admission to the Premises for the purpose aforesaid cannot be obtained, or if at any time an entry shall be deemed necessary for the inspection or protection of the property or for making any repairs, whether for the benefit of Tenant or not, Landlord or Landlord's agents or representatives may enter the Premises by reasonable force, without rendering Landlord or Landlord's agent or representative liable to any claim or cause of action for damages by reason thereof, and accomplish such purpose and Landlord shall use reasonable efforts to prevent damage to Tenant's property. The provisions contained in this Section 13 are not to be construed as an increase of Landlord's obligations under this Lease; it being expressly agreed that the right and authority hereby reserved does not impose nor does Landlord assume by reason thereof, any responsibility or liability whatsoever for the repair, care or supervision of the Premises, or any building, equipment or appurtenance on the Premises.
- C. For a period commencing six (6) months prior to the end of the term, or any extension thereof, Landlord may have reasonable access to the Premises upon twenty-four hours prior notice (which notice may be by telephone) for the purpose of exhibiting the same to prospective tenants and to post any

"To Lease" signs upon the Premises.

SECTION 14. ASSIGNMENT AND SUBLETTING:

- A. Without the Landlord's prior written consent, and subject to this Section 14, neither the Tenant nor the Tenant's legal representatives or successors in interest by operation of law or otherwise (except as set forth in Paragraph "C" of this Section 14) shall directly or indirectly assign, mortgage, pledge, transfer, hypothecate or encumber this Lease. Without the Landlord's prior written consent, and subject to this Section 14, neither Tenant nor Tenant's legal representatives shall directly or indirectly sublet the Premises, in whole or in part, or permit the same or any portion thereof to be used or occupied by others (except as set forth in Paragraph "C" of this Section 14). Tenant shall not have the right to sublet less than the entire Premises. In addition, subject to obtaining Landlord's prior consent, Tenant shall not have the right to sublet the Premises more than once during the term of this Lease.
- B. (1) In the event of a subletting pursuant to this Section 14, and the rental income under such sublease exceeds the rental payable by Tenant under this Lease, such rent differential shall be for the account of the Landlord, and Tenant covenants to pay Landlord such differential in equal monthly installments, together with the rental payable under this Lease. The aforesaid payments shall be collectible as additional rent.
- (2) Anything to the contrary notwithstanding, should Tenant desire to assign this Lease or sublet the Premises it shall give written notice of its intention to do so to Landlord forty (40) days or more before the effective date of such proposed subletting or assignment, which notice shall include fully executed copies of all proposed documentation in connection with the proposed assignment or subletting. Landlord may, at any time within thirty (30) days after the receipt of such notice and documentation from Tenant, cancel this Lease by giving Tenant written notice of its intention to do so, in which event such cancellation shall become effective twenty (20) days after its receipt by Tenant, with the same force and effect as if such cancellation date were the date originally set forth as the expiration date of the term of this Lease, provided, however, upon request by Tenant given prior to the expiration of said twenty days to extend the effective date of cancellation to longer than



said twenty days, if Landlord does not require possession of the space within said twenty days, the effective date of cancellation shall be extended, at Landlord's option, until the earlier of the date Landlord requires possession and ninety days, and during said time Tenant shall abide by all of the terms and conditions of this Lease. In the event Landlord cancels this Lease Landlord may assign this Lease or sublet the Premises to Tenant's proposed assignee or sublessee without any liability whatsoever to Tenant.

C. Subparagraphs "A" and "B" of this Section 14 to the contrary notwithstanding, Tenant shall have the right to assign this Lease or sublet the entire Premises without Landlord's consent, provided that the assignee or sublessee is an entity which is a wholly owned Affiliate of Tenant which may, as a result of a reorganization, merger or consolidation succeed to the entire business carried on by Tenant at such time, provided the following conditions are strictly and fully complied with:

- (1) The assignment must be, respectively, of all of Tenant's leasehold interest and of the entire Premises and shall also transfer to the assignee all of the Tenant's rights in and interest under this Lease including the security deposited hereunder.
- (2) At the time of such assignment or subletting this lease must be in full force and effect without any breach or default thereunder on the part of Tenant, continuing beyond the period provided for curing same.
- (3) The assignment or subletting must be solely for the same purposes and uses permitted by this Lease.
- (4) The assignee (or sublessee, if sublease is for a term less than the then remaining term of this Lease) shall assume, by written recordable instrument, in form and content satisfactory to Landlord, the due performance of all Tenant's obligations under the Lease including any accrued obligations at the time of the assignment or subletting.
- (5) A copy of the assignment or sublease and the original assumption agreement (both in form and content satisfactory to Landlord) fully executed and acknowledged by the assignee together (if a corporation) with a copy of a properly executed corporate resolution authorizing such assumption agreement, shall be delivered to Landlord within ten (10) days from the effective date of such

assignment or subletting.

- (6) Such assignment and/or subletting shall be upon and subject to all the provisions, terms, covenants and conditions of this Lease and Tenant (and any assignee(s) and sublease(s)) shall continue to be and remain liable thereunder.
- (7) Tenant shall reimburse Landlord for Landlord's reasonable attorney's fees for examination of and/or preparation of any documents in connection with such assignment.
- (8) Subject to the foregoing, Tenant may not effect a transaction the result of which is that this Lease becomes an asset of a person, firm or corporation having no bona fide and ongoing business relationship to Tenant.

D. The transfer of any class of capital stock or the voting stock, or an increase in the amount of issued and/or outstanding shares of stock of any corporate tenant, whether in connection with a corporate merger or consolidation or by operation of law, or otherwise, whether in a single transaction or a series of transactions, with the result thereof that Lilly Hsu does not own a controlling interest in Tenant shall be deemed an assignment within the meaning of this Section 14 of the Lease and shall require Landlord's prior written consent.

E. Any consent by Landlord to any act of assignment or subletting shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of Tenant, or the legal representatives or assigns of Tenant, to obtain from Landlord consent to any other or subsequent assignment or subletting, or as modifying or limiting the rights of Landlord under the foregoing covenant by Tenant not to assign or sublet without such consent.

F. If Landlord does not deny Tenant's request for an assignment or sublet, such consent shall be given subject to and provided Tenant strictly complies with items (1) - (8) of subsection "C" of this Section 14.

#### SECTION 15. TENANT'S ADDITIONAL AGREEMENT:

A. Affirmative Obligations: Tenant agrees, at its own cost and expense, to:

- (1) Keep Premises Clean: keep the Premises (including without

limitation, exterior and interior portions of all windows, doors and all other glass) in a neat and clean condition;

- (2) Keep Premises Attractive: maintain the Premises and Tenant's personal property therein as an attractive area in accordance with the general character of the Premises as they were delivered to Tenant;
- (3) Comply With Laws: promptly comply with all present and future laws, ordinances, rules, directions and regulations of governmental or quasi-governmental authorities (including zoning laws and building codes) and Insurance Underwriters and insurance companies writing policies for the Premises, and any other organization exercising similar functions, affecting the Premises, whether same require changes or alterations to the Premises of a structural or nonstructural, foreseen or unforeseen, exterior or interior, or ordinary or extraordinary, nature or otherwise;
- (4) deleted
- (5) Garbage: handle and dispose of all rubbish, garbage and waste from Tenant's operations in accordance with all rules and regulations established by Landlord and not permit the accumulation (unless in concealed metal containers), or burning, or any rubbish or garbage in, on or about any part of the Premises.

Tenant shall be fully responsible, at its cost and expense, for removal of all rubbish and garbage at the Premises.

- (6) Outside Areas: maintain and keep in a clean and presentable manner all lawns, shrubbery and plant areas including weeding and cutting of lawns at least once a week between April 15 and November 15 in each year of the term.

B. Negative Obligations: Tenant agrees that it shall not at any time without first obtaining Landlord's consent:

- (1) Not Change Exterior Architecture: change (whether by alteration, replacement, rebuilding or otherwise) the exterior color and/or architectural treatment of the building or any part thereof;
- (2) Not Use Sidewalks: use, or permit to be used, the sidewalk adjacent to, or any other space outside the

building for display, sale or any other similar undertaking;

- (3) No Loud Speakers: use or permit to be used, any advertising medium and/or loud speaker, and/or sound amplifier, and/or radio or television broadcast which may be heard outside the building;
- (4) Not Misuse Plumbing Facilities: use the plumbing facilities for any purpose other than for which they were constructed, or dispose of any garbage or other foreign substance therein, whether through the utilization of so-called "disposal" or similar units, or otherwise;
- (5) No Liens: subject any of Tenant's fixtures, furnishings or equipment in the Premises to any mortgages, liens, conditional sales agreement, security interests or encumbrances which require a UCC fixture filing to be filed in, or against, the real property records for the Premises;
- (6) Not Damage the Premises: perform any act or carry on any practice which may damage, mar or deface the Premises, normal wear and tear excepted;
- (7) Not Exceed Floor Loads: place a load on any floor of the building exceeding the floor load per square foot which such floor was designed to carry, or install, operate or maintain therein any heavy item or equipment except in such manner as to achieve a proper distribution of weight;
- (8) Not Exceed Electrical Load: install, operate or maintain in the Premises any electrical equipment which will overload the electrical system therein, or any part thereof, beyond its reasonable capacity for proper and safe operation as reasonably determined by Landlord in light of the overall system and requirements thereof, or which does not bear underwriters' approval;
- (9) Not Permit Odors, Etc.: suffer, allow or permit any offensive or obnoxious vibration, noise, odor or other undesirable effect to emanate from the building and/or Premises;
- (10) Not Cause Injury, Etc.: use or occupy the building or do or permit anything to be done thereon in any manner which will cause structural injury to the same, or which would constitute a public or private nuisance or which will violate any present or future laws, rules, regulations,

ordinances, directions or requirements (ordinary or extraordinary, foreseen or unforeseen) of the federal, state, county, local or municipal governments, or of any department, subdivisions, bureaus or offices thereof, or of any other governmental, public or quasi-public authorities, including insurance companies writing policies for the Premises, now existing or hereafter created, having jurisdiction in the Premises.

#### SECTION 16. INTEREST RATE:

Whenever this Lease refers to "interest" or Interest Rate, same shall be computed at a rate equal to twenty-four (24%) percent or the highest legal rate. If, however, payment of interest at such rate by Tenant (or by the Tenant then in possession having succeeded to the Tenant's interest in accordance with the terms of this Lease) should be unlawful, i.e., violative of the usury statutes or otherwise, then "interest" shall, as against such party, be computed at the maximum lawful rate payable by such party, and any payments received which may be in excess of the legal rate shall be applied towards a reduction of the principal amount owing so as to reduce the interest payments to a rate not violative of the usury laws.

#### SECTION 17. EASEMENT FOR PIPES:

Tenant shall permit Landlord or its designees to erect, use, maintain and repair pipes, cables, plumbing, vents and wires, in, to and through the building and/or Premises, as and to the extent that Landlord may now or hereafter deem to be necessary or appropriate for the proper operation and maintenance of the building or any other portion of the Premises. All such work shall be done, so far as practicable, in such manner as to avoid unreasonable interference with Tenant's use of the Premises but shall not be considered a constructive eviction. Landlord warrants that such erection, use, maintenance and repair of pipes, cables, plumbing, vents and wires in and through the building and/or the Premises shall be done in a workmanlike and reasonable manner.

#### SECTION 18. UTILITIES:

Landlord shall make utilities available to the Premises but Landlord shall not be required to furnish any utilities, facilities or services to the Premises, including but not limited to management and janitorial services, heat, water, sewer, power, telephone or other communication service, gas or



electric, and shall not be liable for any failure of supply of any such utility service. Tenant shall pay promptly, as and when the same become due and payable, all water rents, rates and charges, all sewer rents and all charges for electricity, gas, heat, steam, hot and/or chilled water and other utilities directly to the utility company and shall indemnify Landlord against any liability or damages on such account.

During the full term of the Lease, Tenant shall have the full responsibility of repairing, replacing, restoring (as to replacing and restoring as set forth in Section 10 above) and maintaining the heating and air conditioning systems, including maintaining a full service maintenance contract, in form and content satisfactory to Landlord, for the life of the Lease, covering labor and preventative maintenance to be done on at least a quarterly basis for the heating and air conditioning system.

Tenant shall deliver a copy of said maintenance contract to Landlord within ten (10) days after the Commencement Date. In the event Tenant fails to obtain said maintenance contract, Landlord may, but shall not be obligated to and without relieving Tenant of its obligation to do so, obtain said contract on behalf of Tenant. The total cost thereof shall be payable by Tenant with the next monthly installment of Base Rent and shall be payable as additional rent. Landlord shall be entitled to all remedies available in the event of nonpayment of Base Rent in the event Tenant fails to make the payments as in this paragraph provided.

#### SECTION 19. SIGNS:

- A. Tenant shall not, without Landlord's prior written consent, place or install any sign on the roof nor on any exterior wall of the building (including, without limitation, both the interior and exterior surfaces of windows and doors) nor on any part of the land except that Tenant may install and maintain, at its own cost and expense, including payments for permits and the sign, a single, flat faced sign on the front of the building subject to the approval of Landlord as to dimensions, content, material, location and design. The sign shall be substantially similar to the type of sign presently permitted in the Heartland Business Center. Tenant agrees the sign shall not be installed on the Premises or the building until all approvals and permits are first obtained and copies thereof delivered to Landlord together with evidence of payment for any fees pertaining to Tenant's sign. Tenant shall secure, either directly or indirectly, all



necessary Workmens' Compensation and liability insurance policies covering the installation and maintenance of any sign, and all such policies or certificates of such policies shall be delivered to Landlord prior to the commencement of any work and shall provide that such policies are not cancelable, except upon ten (10) days written notice to Landlord.

In the event Landlord or Landlord's representative shall deem it necessary to remove such sign in order to make any repairs, alterations or improvements in and upon the Premises, or the building, Landlord shall have the right to do so, provided the same be removed and replaced at Tenant's expense if the repairs, alterations or improvements are necessary and for the benefit of Tenant, or to cure a default of the Tenant, otherwise Landlord shall assume the cost, whenever the said repairs, alterations or improvements shall be completed. At the expiration or sooner termination of this Lease, unless notified to the contrary by Landlord, Tenant shall, at its sole cost and expense, remove its sign from the building and repair, replace and restore the Premises to the condition existing prior to the placement of the sign.

- B. As used in this Section 19, the word "sign" shall be construed to include any placard, light or other advertising symbol or object irrespective of whether same be temporary or permanent. The single identification sign erected on the front of the building shall not project above the bottom of the building parapet wall. Such type signs as "Help Wanted", "For Sale", "To Let" or any advertising signs are specifically excluded from being displayed on any part of the Premises or its adjacent land on a temporary or permanent basis.

#### SECTION 20. Deleted

#### SECTION 21. NON-LIABILITY OF LANDLORD:

Landlord and Landlord's agents and employees shall not be responsible or liable for, and Tenant waives all claims for, loss or damage that may be occasioned to Tenant's business or damage to person or property sustained by Tenant resulting from any accident or occurrence in or upon the Premises or the building, including, but not limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) injury done or occasioned by wind; (iii) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water,

fire, and steam pipes, stairs, porches, railing or walks; (iv) broken glass; (v) the backing up of any sewer pipe or downspout; (vi) the bursting, stoppage, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or other pipe or tank in, upon or about the building or the Premises; (vii) the escape of steam or hot water; (viii) water, snow or ice being upon or coming through the roof, skylight, trapdoor, stairs, doorways, show windows, walks or any other place upon or near the building or the Premises or otherwise; (ix) the falling of any fixture, plaster, tile or stucco; and (x) any act, omission or negligence of other tenants, licensees or of any other persons or occupants of the building or of adjoining or contiguous buildings or of owners of adjacent or contiguous property, or any part thereof.

Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by the acts or omissions of persons occupying any space adjacent to or adjoining the Premises, or any part thereof, or for any loss or damage resulting to Tenant or its property from water, gas, steam, fire, or the bursting, stoppage or leaking of sewer pipes, provided such loss or damage is not occasioned by the negligence of Landlord.

#### SECTION 22. INDEMNITY:

Except as otherwise provided in this Lease, during the full term of this Lease and for so long as Tenant occupies the Premises, and for all matters and things that accrue or occur during the term of this Lease and for so long as Tenant occupies the Premises, Tenant agrees to indemnify, hold harmless and defend Landlord, its officers, directors, shareholders, partners and spouses, and its successors, assigns, agents and employees, from and against, and reimburse such indemnified person for, any and all costs, expenses, liabilities, causes of action, claims, penalties, fines or demands, of any nature whatsoever (including without limitation all third party public liability and property damage claims) which may be imposed on, incurred by or asserted against Landlord, its officers, directors, shareholders, partners and spouse(s), and its successors, assigns, agents or employees, including any or all liabilities, obligations, damages, costs, remedial costs, disbursements and expenses (including without limitation, administration, and attorneys' fees and disbursements, including fees in connection with appeals and enforcement of this indemnity) of Tenant and Landlord in any way relating to or arising, or alleged and proven to arise, out of this Lease, the Premises, the possession, use, enjoyment or occupancy of all or any portion of the Premises, or related thereto, including the acts or omissions of Tenant, or any concessionaire, or subtenant or their respective licensees, servants, agents, employees and contractors, including without limitation those in any way

relating to or arising or alleged to arise out of, for, or in connection with (a) any claims based on strict liability in tort and any claim, penalty, or charge, or any asserted or threatened claim that Tenant polluted or contaminated the environment in any way or failed to obtain or comply with any and all environmental permits, laws, regulations, ordinances, order, and any other applicable environmental requirement in effect now or in the future in connection with Tenant's operations or occupancy, (b) any injury whatsoever to or the death of any person or any damage whatsoever to or loss of property in, on, about or near the Premises, or any part thereof, including the sidewalks adjoining the same, or in any manner growing out of or in connection with, or alleged to grow out of or in connection with, the use, or business conducted at the Premises, replacement, adaptation or maintenance of the Premises, or resulting or alleged to result from the condition of any thereof; (c) any violation, or alleged violation, of any provision of this Lease (except by Landlord) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Premises or Tenant's activities at the Premises, or the leasing, use, replacement, adaptation or maintenance thereof, except Tenant shall have no obligation with respect to any violation existing at the Premises as of the date of possession by Tenant; or (d) any default under the Lease by Tenant which would cause a default under any mortgage (except as to the payment of principal or interest thereunder). Nothing in this Section 22 shall be construed to make Tenant liable hereunder for matters directly resulting from the willful misconduct or gross negligence of the party otherwise to be indemnified hereunder or resulting from acts unrelated to the Lease, possession or use of the Premises. In case any action, suit or proceeding is brought against Landlord, its successors or assigns, agents or employees, in connection with any claim indemnified against hereunder, Landlord or mortgagee may and Tenant will, at Tenant's expense, diligently resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by Tenant and reasonably approved by Landlord and, in the event of any failure by Tenant to do so, Tenant shall pay all costs and expenses (including without limitation attorney's fees and expenses) incurred by Landlord in connection with such action, suit or proceeding (hereinafter collectively described as "Defending"). Any Defending pursuant to this Section shall not waive and Tenant expressly reserves the right to further evaluate and seek a declaratory judgment in a court of competent jurisdiction that such claim(s) are not covered by this Section. Tenant and Landlord each agree to promptly notify each other, in writing, of any claim or liability hereby indemnified against, provided the failure of either party to give prompt written notice to the other party shall not relieve either party of liability hereunder.

SECTION 23. RIGHT TO CURE DEFAULTS:

If Tenant shall fail to comply fully with any of its obligations under this Lease (including, without limitation, its obligations to maintain various policies of insurance, comply with all laws, ordinances and regulations and pay all bills for utilities), then Landlord shall have the right, at its option but without obligation to do so, and at Tenant's expense, to cure such breach on behalf of Tenant. Tenant agrees to reimburse Landlord (as additional rent) for all costs and expenses incurred as a result thereof together with interest thereon promptly upon demand.

SECTION 24. BANKRUPTCY-INSOLVENCY:

Tenant agrees that if the estate created hereby shall be taken upon execution, attachment or any other process of law, or if Tenant shall be adjudged a bankrupt or insolvent, or any receiver or trustee shall be appointed for the business or property of Tenant and not be discharged within thirty (30) days, or if Tenant shall make any assignment of its property for the benefit of creditors, or if Tenant shall file a voluntary petition in bankruptcy, or apply for reorganization, composition, extension or other arrangement with its creditors under any federal or state law now or hereafter enacted, and any such process, assignment, action or proceeding be not vacated or set aside within thirty (30) days thereafter, then each of the foregoing shall be deemed an Event of Default for the purposes of the following Section 25 and Tenant shall remain liable as provided in said Section 25. For the purpose of this Section 24, the term "Tenant" shall be deemed to include the guarantor of this Lease, if any. Notwithstanding anything to the contrary contained in this Lease, it is specifically understood that this Lease is not intended to be an asset of the Tenant.

SECTION 25. DEFAULT:

- A. The following shall be defined and deemed as an "Event of Default":
- (1) Any failure of Tenant to pay any Base Rent, Real Estate Taxes, additional rent, or other sum of money due within five (5) days after the same shall be due under this Lease; or
  - (2) Any failure of Tenant to maintain the insurance as required by this Lease;

- (3) Any failure of Tenant to correct any default with respect to Section "7" within three (3) days after notice of such default shall have been served upon Tenant; or
- (4) Any failure of Tenant to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by Tenant for more than ten (10) days after notice of such default shall have been served upon Tenant, or any sooner time otherwise specifically set forth in this Lease; or
- (5) If Tenant shall abandon said Premises; or
- (6) If by operation of law any interest of Tenant shall pass to another and not revert to Tenant within thirty (30) days; or
- (7) If Tenant shall fail after five (5) days written notice, to deposit or redeposit with Landlord any portion of the security deposited hereunder which Landlord has applied to the payment of any rent or additional rent due and payable hereunder; or
- (8) An Event of Default as defined in any other Section of this Lease.

E. In case of any Event of Default as hereinabove provided the Landlord shall have the immediate right of re-entry and may remove all persons and property from the Premises by summary proceedings, reasonable force or any rights otherwise available by law. In addition, in any Event of Default (whether or not Landlord shall elect to re-enter or to take possession pursuant to legal proceedings or pursuant to any notice provided for by law) Landlord shall have the right, at its option, to immediately terminate this Lease on two (2) days notice to Tenant and/or it may from time to time, whether or not this Lease be terminated, make such alterations and repairs as may be necessary in order to relet the Premises, and/or relet said Premises or any part thereof for such term or terms (which may extend beyond the term of this Lease) and at such rent(s) and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; upon each such reletting all rent(s) received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness (other than rental due hereunder) of Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees



and of costs of such alterations and repairs; third, to the payment of rent(s) due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future rent(s) as the same may become due and payable hereunder, with the right reserved to Landlord to bring such action(s) or proceeding(s) for the recovery of any deficits remaining unpaid without being obliged to await the end of the term for a final determination of Tenant's account, and the commencement or maintenance of any one or more actions shall not bar Landlord from bringing other or subsequent actions for further accruals pursuant to the provisions of this Section. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly subject to Landlord's right of action(s) or proceeding(s) as aforesaid. No such re-entry or taking possession of said Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach as damages for loss of the bargain and not as a penalty, including the cost of recovering the Premises, reasonable attorneys' fees, and including the worth at the time of such termination of the excess, if any, of the amount of all rent, additional rent, and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the aggregate rental value of the Premises for the remainder of the term, all of which shall be immediately due and payable from Tenant to Landlord. In the event of a breach or threatened breach by Tenant of any of its obligations under this Lease, Landlord shall also have the right to appropriate injunctive relief. The rights and remedies whether herein or anywhere else in this Lease provided shall be cumulative and the exercise of any one shall not preclude the exercise or act as a waiver of any other right or remedy of Landlord hereunder, or which may be existing at law, or in equity or by statute.

#### SECTION 26. SUBORDINATION:



- A. This Lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which the Premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessee or by any mortgagee, affecting any lease or the real property of which the Premises are a part. In confirmation of such subordination, Tenant shall execute promptly any certificate that Landlord may reasonably request.
- B. Landlord agrees to request from any prospective mortgagee of the Premises a non-disturbance type agreement which shall provide substantially, among other things, that so long as Tenant is not in default under any of the terms and conditions of this Lease, the mortgagee will not terminate this Lease or disturb the possession or occupancy of Tenant thereunder in any action brought to foreclose such mortgage, provided that upon such foreclosure, Tenant shall agree to attorn to and recognize said mortgagee as Tenant's landlord hereunder and shall execute and deliver an agreement, in form and content satisfactory to the mortgagee, confirming such attornment. The foregoing shall not require Landlord to accept a mortgage with a higher rate of interest, or to pay points or additional points, or to accept any mortgage that imposes any other monetary obligation upon Landlord, as a condition of obtaining a non-disturbance type agreement for Tenant. Landlord shall not be required to incur any expense in attempting to obtain such agreement. Failure to obtain such agreement shall have no effect on this Lease or the subordination of this Lease to such mortgage and shall impose no liability on Landlord. Tenant agrees to pay Landlord all expenses incurred by Landlord in connection with Landlord's compliance with this paragraph, including, without limitation, legal fees, processing costs, and any other administrative expenses billed to Landlord or Landlord's agent. Such expenses shall constitute additional rent and shall be due upon Landlord's demand.
- C. Notwithstanding the provision of Paragraph A, should any mortgagee require that this Lease be prior rather than subordinate to any such mortgage, Tenant shall, promptly upon request therefor by Landlord or such mortgagee, and without charge therefor, execute a document effecting

and/or acknowledging such priority, which document shall contain, at the option of such requesting party, an attornment obligation to the mortgagee as landlord in the event of foreclosure or to any party acquiring title through such mortgage in such event.

#### SECTION 27. SURRENDER OF PREMISES:

On the last day or sooner termination of the term, or any extension term, Tenant shall quit and surrender the Premises broom clean, in good condition and repair (reasonable wear and tear excepted; provided that damage to the Premises (such as, but not limited to, walls, floors and ceilings) resulting from the specific business use of the Premises by Tenant shall not be considered ordinary wear and tear), together with all alterations, additions and improvements which may have been made in, on or to the Premises, except movable furniture or trade fixtures put in at the sole expense of Tenant (it being understood that Tenant shall make all repairs required as a result of such removal); provided, however, that Tenant shall ascertain from Landlord at least thirty (30) days before the end of the term whether Landlord desires to have the Premises or any part thereof restored to the condition in which it was originally delivered to Tenant, and if Landlord shall so desire, then Tenant, at its own cost and expense, shall restore the same before the end of the term. Tenant shall, on or before the end of the term, remove from the Premises all its property together with any alterations, additions and improvements, the removal of which is requested by Landlord, and any or all of such property not so removed shall, at Landlord's option, become the exclusive property of Landlord or be disposed of by Landlord, at Tenant's cost and expense, without further notice to or demand upon Tenant. If the Premises be not surrendered as and when aforesaid, Tenant shall indemnify Landlord against loss or liability resulting from the delay by Tenant in so surrendering the Premises including, without limitation, any claims made by any succeeding occupant founded on such delay. Tenant's obligations under this Section shall survive the expiration or sooner termination of the term.

#### SECTION 28. RIGHT OF REDEMPTION:

Tenant waives any and all rights of redemption conferred by statute or otherwise, to the extent legally authorized, upon the expiration or sooner termination of the term or upon the entry of final unappealable judgment for recovery of possession through any action or proceeding.

#### SECTION 29. EFFECT OF UNAVOIDABLE DELAYS:

The provisions of this Section shall be applicable if there shall occur, during or prior to the term, any: (1) strike(s), lockout(s) or labor dispute(s), provided the Landlord is not adjudicated to be in violation of the New York Labor Law, the Fair Labor Standards Act, the National Labor Relations Act or any regulation duly enacted pursuant to said laws (after all appeals have been exhausted or the time within which to bring the appeal has expired); (2) good faith inability to obtain labor or materials or reasonable substitutes therefor; or (3) Acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, insurrection, revolution, sabotage, or fire or other casualty, or other conditions similar to those enumerated in this item (3) beyond the reasonable control of Landlord, including the delay or impediment by acts of Tenant, its officers, employees, agents, contractors or servants or by weather conditions. If Landlord shall, as a result of any such event, fail punctually to perform any Lease obligation, including, but not limited to, Landlord's obligations set forth in Sections 5 and 6 hereof, then such obligation(s) shall be punctually performed as soon as practicable after such event shall abate. If Landlord shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this Lease such time limit shall be deemed extended for a period equal to the duration of such event. Landlord shall under no circumstances be liable to Tenant for any damages which may result from any such delays and Tenant shall have no right to cancel or terminate this Lease by reason of any such delay caused by an event in this paragraph.

#### SECTION 30. CONSENTS:

With respect to any provision of this Lease which provides, in effect, that Landlord shall not unreasonably withhold or unreasonably delay any consent or any approval, Tenant, in no event, shall be entitled to make, nor shall Tenant make, any claim for, and Tenant hereby waives any claim for money damages; nor shall Tenant claim any money damages by way of setoff, counterclaim or defense, based upon any claim or assertion by Tenant that Landlord unreasonably withheld or unreasonably delayed any consent or approval; but Tenant's sole remedy shall be an action or proceeding to enforce any such provisions, or for specific performance, injunction or declaratory judgment.

#### SECTION 31. TENANT'S SECURITY:

Tenant shall deposit with Landlord the sum of forty-eight thousand four hundred thirty-eight and 00/100 (\$48,438.00) Dollars as security for the full and faithful performance and observance by

Tenant of each and every term, provision and condition of this Lease, as follows: (i) twenty-eight thousand four hundred thirty-eight and 00/100 (\$28,438.00) Dollars on execution of this Lease and (ii) twenty thousand and 00/100 (\$20,000.00) dollars shall be paid by the transfer to Landlord of the security deposit being held by Park Property Associates LLC under that certain lease, dated December 1, 2010, by and between Park Property Associates LLC., as landlord, and Uniware Houseware Corp, as tenant, for premises known as 270 Oser Avenue, Hauppauge, New York, provided, however, if by reason of the application by the landlord under the 270 Oser Avenue lease of all or any part of the security deposited thereunder the amount transferred to Landlord under this Lease for 120 Wilshire Boulevard is less than \$20,000.00, Tenant shall, within five days of demand therefor from Landlord, deposit with Landlord such amount so that the total amount of security held by Landlord under this Lease shall be \$48,438.00. It is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to the payment of Base Rent and additional rent, Landlord may use, apply or retain the whole or any part of the security so deposited for the payment of any Base Rent and additional rent in default or any other sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, but not limited to, any damages or deficiency in the reletting of the Premises, whether such damages or deficiency may accrue before or after summary proceedings or other re-entry by Landlord. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the security or any balance thereof shall be returned to Tenant after the date fixed as the end of this Lease and after delivery of entire possession of the Premises to Landlord. Tenant shall not be entitled to any interest on security. In the absence of evidence satisfactory to Landlord of any assignment of the right to receive the security, or the remaining balance thereof, Landlord may return the security to the original Tenant, regardless of one or more assignments of the Lease itself. In the event of a sale, or leasing, subject to this Lease, Landlord shall have the right to transfer the security to the vendee or lessee and Landlord shall be considered released by Tenant from all liability for the return of such security; and Tenant agrees to look solely to the new landlord for the return of the security and it is agreed that this shall apply to every transfer or assignment made of the security to a new landlord. No holder of a mortgage to which the Lease is subordinate shall be responsible in connection with the security deposited hereunder, by way of payment of rents, or otherwise, unless such mortgagee shall have received the security deposited hereunder. Tenant further covenants that it will not assign, mortgage, encumber or attempt

to assign, mortgage, or encumber the monies deposited herein as security and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, mortgage, attempted assignment or attempted encumbrance. It is expressly understood and agreed that the issuance of a warrant and the re-entering of the Premises by Landlord for any default on part of Tenant prior to the expiration of the term, or any extension thereof, shall not be deemed such a termination of this Lease as to entitle Tenant to the recovery of security; that any unapplied portion of such deposit shall be retained and remain in possession of Landlord until the end of term.

SECTION 32. TENANT'S CERTIFICATE:

Tenant shall, without charge at any time and from time to time within ten (10) days after request by Landlord, certify by written instrument, duly executed, acknowledged and delivered, to any mortgagee, assignee of any mortgagee or purchaser, or any proposed mortgagee, proposed assignee of any mortgagee, or proposed purchaser, or any other person, firm, or corporation specified by Landlord:

- A. That this Lease is unmodified and in full force and effect (or, if there has been modifications, that the same is in full force and effect as modified and stating the modifications); and
- B. Whether or not there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof upon the part of Tenant to be performed or complied with (and, if so, specifying the same); and
- C. The dates, if any, to which the Rental(s) and other charges hereunder have been paid in advance; and
- D. The termination date of the Lease; and
- E. The amount of Base Rent currently being paid by Tenant; and
- F. The amount of security deposited hereunder; and
- G. That there are no options or rights other than as may be set forth in the Lease; and
- H. Such other and further items as may reasonably be required by Landlord, any mortgagee or any proposed assignee.

Tenant's failure to deliver such letter within the required



time, or failure of any such statement to contain the required certifications, shall be conclusive upon Tenant that this Lease is in full force and effect without any modification and that there are no defaults, or such items not certified to are as set forth in this Lease, as the case may be.

Tenant further agrees that upon written request of Landlord, Tenant will furnish to Landlord and to prospective mortgagees of the property its most recent financial statements and information as Landlord or such prospective mortgagees may Reasonably request.

If an institution furnishing or intending to furnish a mortgage on the Premises shall require a change or changes in this Lease as a condition of such financing and if Tenant refuses to agree thereto, the Landlord may terminate this Lease at any time, provided such changes shall not substantially alter the obligations of the parties each to the other or to impose on the Tenant any conditions more burdensome than as otherwise exists hereunder.

#### SECTION 33. WAIVER OF TRIAL BY JURY:

Landlord and Tenant do hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other upon any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage. It is further mutually agreed that in the event Landlord commences any summary proceedings for non-payment of any Base Rent and additional rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding.

#### SECTION 34. QUIET ENJOYMENT:

Landlord covenants that upon Tenant paying the rental(s) and performing and observing all Tenant's other Lease obligations, Tenant may peaceably and quietly have, hold and enjoy the Premises for the term hereof, subject and subordinate as provided in this Lease.

#### SECTION 35. SOLE BROKER:

Tenant covenants, warrants and represents to Landlord that there was no broker other than AIRECO REAL ESTATE CORP. (hereinafter referred to as the "Broker") instrumental in consummating this Lease, and that no conversations or prior negotiations were had with any broker other than Broker concerning the renting of the Premises. Tenant further acknowledges that Landlord would not



have entered into this Lease without such warranty and representation by Tenant. Tenant agrees to hold Landlord harmless against any commissions, claims, costs, expenses, demands, suits, causes of actions or liability whatsoever, including attorney's fees, with respect to finder's or brokerage fees or commissions arising out of transactions contemplated by this Lease asserted against Landlord by any other broker or finder. Any payments due to Landlord hereunder shall be due as additional rent. The representations contained in this section shall survive the termination of this Lease.

SECTION 36. ATTORNEY'S FEES:

In the event that Landlord institutes or is made a party to:

(a) summary or other proceedings to recover possession of the Premises (including if Tenant remains in Premises at the expiration or sooner termination of the term of this Lease) and is "Successful" (as hereinafter defined); or

(b) a lawsuit to recover rent, additional rent or other payments due under the Lease and is Successful; or

(c) a lawsuit to enforce or to recover damage for the breach of any of the terms of the Lease and is Successful; or

(d) a lawsuit to determine the obligations of the Landlord and Tenant under the Lease and is Successful; or

(e) should Tenant desire to amend, modify or change the Lease, or desire to assign the Lease or sublease the Premises or in any other situation where Landlord needs the services of an attorney, provided, however, said attorney's fees shall not exceed \$1,000 for any one instance under this subparagraph (e) and this limit shall not otherwise apply;

it is specifically agreed that Tenant shall pay Landlord and/or Landlord shall be entitled to recover from Tenant, in addition to all items which Landlord may be entitled to recover in law or in equity, whether or not Landlord does recover any items, reasonable attorney's fees, and the costs and disbursements of said proceeding or otherwise as set forth in (a) - (e) above. Said payment(s) shall be due as additional rent, and Landlord's Petition and/or Pleading may make demand for payment of attorney's fees as an amount currently due and owing to Landlord as of the date of the Petition and/or Pleadings without the necessity of any or further demand therefor or invoice for the same.

For the purposes hereof, Landlord shall be Successful in the event

at any time Landlord obtains a judgment, order or recovers, or Tenant agrees to or is ordered to pay, or comply with, the whole or any part of the relief demanded in Landlord's petition, complaint, pleadings or other moving papers, whether at, during or prior to any trial or hearing, by stipulation, order or otherwise, whereby Landlord obtains or recovers, or Tenant agrees to pay or comply with the whole or any part of the relief demanded in Landlord's petition, complaint, pleading or other moving papers.

In the event Landlord shall recover possession of the Premises in any summary proceeding Tenant shall remain liable to Landlord under the Lease, and in addition to all other remedies available at law in equity or under the Lease, Landlord may seek damages for failure to pay rent under the Lease or failure to abide by the terms and conditions of the Lease. Landlord agrees to list the Premises with a real estate broker after Landlord has regained possession of the Premises.

#### SECTION 37. POLLUTION AND HAZARDOUS WASTE:

Tenant agrees that no part of the Premises will be used in any way for, and Tenant shall not suffer, permit or allow the use of the Premises or any part thereof, either directly or indirectly, for treatment, preparation, generation, manufacture, use, refining, production, storage, maintenance, handling, transfer, transporting processing, disposal, burial, dispersal, release, or placement of any Hazardous Substance (as hereinafter defined), petroleum products, pollutants or contaminants. Tenant shall not release, suffer or permit the release of any Hazardous Substance, petroleum products, pollutants or contaminants onto the Premises or into the subsurface thereof or onto any property whatsoever, including without limitation, surface water and ground waters unless in compliance with all applicable law(s), permit(s), order(s), or other valid governmental approval(s), whether now in effect or hereafter enacted. Tenant shall not install, nor cause the installation of, any underground storage tank(s) at the Premises. Furthermore, Tenant shall not cause or permit to occur any violation of any federal, state or local law, ordinance, regulation or order now or hereafter enacted, related to environmental conditions on, under or about the Premises, or arising from Tenant's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions. Tenant shall, at Tenant's own expense, comply with all laws regulating the treatment, preparation, generation, manufacture, use, refining, production, storage, maintenance, handling, transfer, transporting, processing, disposal, burial, dispersal, release, or placement of any Hazardous Substance, petroleum products, pollutants or contaminants. Furthermore, Tenant shall, at

Tenant's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities under all present and future laws. Tenant shall immediately notify Landlord in writing of any release or discharge of any Hazardous Substance, petroleum products, pollutants or contaminants, whether or not the release or discharge is in quantities that would require under law the reporting of such release or discharge to any governmental or regulatory agency. Tenant shall provide all information regarding the treatment, preparation, generation, manufacture, use, refining, production, storage, maintenance, handling, transfer, transporting, processing, disposal, burial, dispersal, release, or placement of any Hazardous Substance, petroleum products, pollutants or contaminants that is requested by Landlord. Tenant agrees to immediately provide Landlord with an exact copy of any notice, directive, request, demand or any other communication received by Tenant in connection with or relating to any matter or thing covered by this Section 37.

The term Hazardous Substance means, without limitation, any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, combustible, radioactive material, urea formaldehyde foam insulation, asbestos, PCB's, chemicals known to cause cancer or reproductive toxicity, or any manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which is restricted, prohibited, regulated, penalized by any and all federal, state, local, county, or municipal statutes, laws, or orders now or at any time hereafter in effect, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), as these laws have been or may be amended or supplemented, and any substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

Failure of Tenant to abide by all of the foregoing obligations shall be a default under this Lease which, if not cured within five (5) days of Landlord's notice, or sooner if an emergency, dangerous, or hazardous condition exists in, at, on, upon or about the Premises, shall entitle Landlord to pursue all remedies available in law, at equity and/or under the Lease.

In addition, Tenant shall indemnify and save Landlord and its successors and assigns and their respective officers, directors, shareholders, partners, agents and employees and the Premises and the building of which the Premises are part, harmless against any and all claims, obligations, liabilities, violations, penalties, fines, suits, governmental orders, causes of actions, judgments, damages, costs and expenses, whether civil or criminal or both, of any and all kind or nature which result from or are in any way connected with a breach or default by Tenant of the foregoing agreement and/or which the Landlord may be subject in connection with any Hazardous Substance at the Premises, including, without limitation, resulting from or in connection with the discharge, despoiler, release or escape of any Hazardous Substance, smoke, vapors, soot, fumes, acids, alkalis, toxic or hazardous chemicals, liquids or gases, volatile organics, waste materials or other irritants, contaminants or pollutants or otherwise at the Premises, or caused by or resulting from the use and operation of the Premises by Tenant, its successors and assigns and/or by reason of Tenant's invitees, licensees, employees, officers, agents, servants, etc., in any case whether or not Tenant has complied with its obligations pursuant to this agreement. This indemnification and save harmless agreement shall also cover any and all liens for hazardous waste clean up expenses in favor of the United States, New York State, or any political subdivision thereof, including the County of Suffolk, Town of Islip, and any governmental department of any of the foregoing which result from or are in any way connected with a breach or default by Tenant of the foregoing agreement and/or which the Landlord may be subject in connection with any Hazardous Substance at the Premises, including, without limitation, resulting from or in connection with the discharge, despoiler, release or escape of any Hazardous Substance, smoke, vapors, soot, fumes, acids, alkalis, toxic or hazardous chemicals, liquids or gases, volatile organics, waste materials or other irritants, contaminants or pollutants or otherwise at the Premises, or caused by or resulting from the use and operation of the Premises by Tenant, its successors and assigns and/or by reason of Tenant's invitees, licensees, employees, officers, agents, servants, etc.

All payments due from Tenant hereunder shall be due and payable as additional rent within thirty (30) days of presentation of a statement therefor by Landlord.

This indemnification shall include, but not be limited to, legal fees and other charges to which Landlord may be put, including cleanup costs, in defending against any action or proceeding in connection with the foregoing.



This indemnification and save harmless agreement shall survive the termination of this Lease.

Section 38. SURFACE AND SUBSURFACE SAMPLING BY TENANT:

Tenant shall have the right, within twenty (20) days from the date of this Lease, to conduct and complete surface and subsurface sampling of the soil at the premises, or otherwise conduct a "Phase I" environmental survey of the premises. Any such sampling and/or survey shall be at Tenant's sole cost and expense. Said sampling and/or survey shall not be commenced by Tenant, or any of its officers, agents, servants, employees or contractors prior to written notice to Landlord, which notice shall set forth the extent of the proposed sampling and/or survey and by whom said sampling and/or survey shall be conducted and which notice shall also provide Landlord with evidence that public liability insurance as required by this Lease is in full force and effect, and that Workman's Compensation, in statutory limits, is in full force and effect. Tenant agrees that promptly after the completion of said sampling and/or survey, the premises shall be returned to the condition that existed prior to the commencement of said sampling and/or survey. Tenant shall indemnify and hold Landlord harmless, in accordance with the indemnity provisions of this Lease, by reason of said sampling and/or survey or in connection with any damage or injury (including death) to persons or property which result from said sampling and/or survey.

Tenant hereby agrees to provide Landlord with a true and complete copy of the results of said sampling and/or survey. Tenant agrees not to disclose the results of such sampling and/or survey to any person or entity without Landlord's prior written consent. In the event such sampling and/or survey by Tenant discloses any toxic or hazardous substances in excess of legal limits, Landlord shall have no obligation or responsibility to Tenant for any damages whatsoever by reason thereof, and provided the same was not caused by Tenant's use or occupancy of the premises, Tenant shall have the right to notify Landlord of its desire to terminate this Lease by reason of the existence of such hazardous or toxic substances in excess of legal limits by written notice to Landlord received by not later than twenty (20) days from the date of this Lease, which notice shall include a copy of the report of the results of the sampling and/or survey and shall set forth a date not less than twenty (20) days from the date of Tenant's notice by which Tenant desires to terminate this Lease.

Notwithstanding any such notice from Tenant, this Lease shall remain in full force and effect if, prior to the date set forth in Tenant's termination notice, Landlord notifies Tenant of its desire to remediate the condition at the premises, commences the

remediation within such twenty (20) days period and thereafter continues diligently to prosecute the completion of such work. Landlord shall be fully responsible for the cost and expense of the remediation described in this paragraph provided the same was not caused by Tenant's use or occupancy of the premises.

In the event Landlord desires to allow this Lease to terminate in response to Tenant's twenty (20) days notice, Landlord shall so notify Tenant and, provided Tenant has paid Landlord all amounts due under this Lease to the date set forth in Tenant's termination notice, and removed any items placed in, on or about the premises and returned the premises to Landlord in accordance with the provisions of the Lease, this Lease shall terminate on the date set forth in Tenant's termination notice as if such date was the date originally set forth for the expiration of the term of this Lease and all obligations which were to survive the expiration or termination of the term of the Lease shall survive the termination of the Lease in accordance with this Section 38 but Tenant shall not be obliged to indemnify Landlord for any action, proceeding or suit arising from, related to or concerning such toxic or hazardous substance except as to acts or omissions or occurrences accruing during the term of this Lease prior to termination in accordance with this Section 38.

#### SECTION 39. ADJACENT EXCAVATION-SHORING:

If an excavation shall be made upon land adjacent to the Premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation license to enter upon the Premises for the purpose of doing such work as said person shall deem necessary to preserve the wall, the property, or the building of the Premises from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Landlord, or diminution or abatement of rent.

#### SECTION 40. DEFINITION AND LIABILITY OF LANDLORD:

- A. The term "Landlord" as used in this Lease means only the owner in fee or the mortgagee in possession for the time being of the Premises, so that in the event of any transfer of said fee title, Landlord shall be and hereby is entirely freed and relieved of all obligations of Landlord hereunder and it shall be deemed without further agreement between the parties and such grantee(s) that the grantee has assumed and agreed to observe and perform all obligations of Landlord hereunder.
- B. It is specifically understood and agreed that there shall be no personal liability on Landlord in respect to any of



the covenants, conditions or provisions of this Lease. This exculpation of personal liability shall be absolute and without any exception whatsoever. In the event of a breach or default by Landlord of any of its obligations under this Lease, Tenant shall look solely to the equity of Landlord in the Premises for the satisfaction of Tenant's remedies. Tenant shall have no rights of lien, levy, execution or other enforcement proceedings against any other property or assets of Landlord. However, if Landlord's equity in the Premises is less than its liability to Tenant, provided Tenant has obtained a valid judgment in a court of competent jurisdiction for such liability, and such judgment is entered and recorded as a judgment against Landlord during the term of this Lease or any extension thereof, and no mortgage encumbers the Premises, upon notice to Landlord of its intention to do so, Tenant shall be entitled to satisfy that part of the judgment which is excess of Landlord's equity in the Premises by offsetting against the amount of the judgment as and when the same become due and payable that part of the Base Rent and additional rent due from Tenant under the terms of this Lease. If Landlord's equity in the Premises is less than its liability to Tenant, provided Tenant has obtained a valid judgment in a court of competent jurisdiction for such liability, and such judgment is entered and recorded as a judgment against Landlord during the term of this Lease or any extension thereof, and a mortgage encumbers the Premises which mortgage was recorded prior to entry of Tenant's judgment against Landlord, upon notice to Landlord of its intention to do so, Tenant shall be entitled to satisfy that part of the judgment which is excess of Landlord's equity in the Premises by offsetting against the amount of the judgment as and when the same become due and payable that part of the Base Rent and additional rent due from Tenant under the terms of this Lease which exceeds Landlord's monthly payments due under the mortgage.

#### SECTION 41. RELATIONSHIP OF PARTIES:

Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of Landlord and Tenant.

#### SECTION 42. NOTICES:

Except as may be provided by the Civil Practice Law & Rules or Real Property Actions and Proceedings Law, every notice, approval,

consent or other communication authorized or required by this Lease shall not be effective unless served in writing and sent by United States certified mail, return receipt requested, directed, if to Tenant to the Premises, and if to Landlord, at the address set forth on the first page of this Lease, or such other address as either Tenant or Landlord may designate, from time to time, by notice given as provided herein.

Notwithstanding anything contained herein, all pleadings, petitions, notices of petitions, notices, summonses or other documents in connection with any litigation, proceeding or hearing in connection with this Lease shall be valid and effective provided the same is served in compliance with the statutory requirements governing such litigation, proceeding or hearing.

Each and all of the rental(s) payable by Tenant to Landlord under any of the provisions of this Lease shall be paid to Landlord at the same place where a notice to Landlord is herein required to be directed. If either party shall properly exercise any option or election herein given to terminate this Lease, the term shall expire and come to an end on the date properly specified in the notice of termination with the same force and effect as if said date had been originally fixed herein as the expiration date of this Lease, except for the continuation of Tenant's liability as set forth in Section 25 hereof.

#### SECTION 43. WAIVER:

One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be construed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach and no provision of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on the account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided. All checks tendered to Landlord as and for the rent of the demised premises shall be deemed payments for the account of Tenant. Acceptance by Landlord of rent from

anyone other than Tenant shall not be deemed to operate as an attornment to Landlord by the payor of such rent or as a consent by Landlord to an assignment or subletting by Tenant of the demised premises to such payor, or as a modification of the provisions of this Lease. No act or thing done by Landlord or Landlord's agents during the term hereby demised shall be deemed an acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employee of Landlord or Landlord's agent shall have the power to accept the keys of said premises prior to the termination of the Lease and the delivery of keys to any such agent or employee shall not operate as a termination of the Lease or a surrender of the Premises.

#### SECTION 44. MISCELLANEOUS DEFINITIONS:

- A. "Affiliate" means any person, firm or corporation which controls or is controlled by the party in question, or is controlled by the same person(s), or firm(s) or corporation(s), or which is a member with such party in a relationship of joint venture, partnership or other form of business association which in any way affects the subject matter involved. The term "control" means the ownership of stock possessing, and of the right to exercise, at least fifty-one percent (51%) of the total combined voting power of all classes of stock of the controlled corporation issued, outstanding and entitled to vote for the election of directors, whether such ownership be direct or indirect through control of another corporation(s).
- B. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The Section headings used herein are for reference and convenience only. Each and every term and provision of this Lease which requires any performance (whether affirmative or negative) by Tenant shall be deemed to be both a covenant and a condition. The words "re-enter" and "re-entry" as used herein are not restricted to their technical legal meaning.

#### SECTION 45. END OF TERM:

Tenant acknowledges that possession of the Premises must be surrendered to Landlord at the expiration or sooner termination of the term of this Lease. Tenant agrees to indemnify and save Landlord harmless against all costs, claims, loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding

tenant founded on such delay. The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant to timely surrender possession of the Premises as aforesaid will be extremely substantial, will exceed the amount of the monthly rent and additional rent theretofore payable hereunder, and will be impossible to accurately measure. Tenant therefore agrees that if possession of the Premises is not surrendered to Landlord on the date of the expiration or sooner termination of the term of this Lease, then Tenant shall pay to Landlord for each month and for each portion of any month during which Tenant holds over in the Premises after the expiration or sooner termination of the term of this Lease, a sum equal to two times the aggregate of that portion of the Base Rent and additional rent which was payable under this Lease during the last month of the term hereof, same payable in advance on the first day of each month. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Premises after the expiration or sooner termination of the term of this Lease. The provisions of this paragraph shall survive the expiration or sooner termination of the term of this Lease.

#### SECTION 46. UNDERSTANDING:

It is fully understood that Landlord and Tenant agree that this is a "net net net lease" and Tenant is to be fully responsible, liable and is to pay all taxes, fees, assessments, expenses, insurance, repairs both interior and exterior, and any other charges for the Premises, except to the extent otherwise set forth in this Lease.

#### SECTION 47. JURISDICTION:

In any controversy concerning or related to this Lease or involving Landlord and Tenant under this Lease agreement, it is hereby agreed that the courts of the State of New York, in and for the County of Suffolk, be deemed the jurisdiction for purposes of any controversy involving the Lease herein and the laws of the State of New York shall be applicable. Tenant hereby further warrants and represents to Landlord that is authorized to do business in the State of New York and hereby submits to the jurisdiction of the courts of the State of New York.

#### SECTION 48. EXHIBITS:

Landlord and Tenant agree that all of the terms and conditions, restrictions and covenants contained in the following:

- Exhibit A - Description of Premises
- Exhibit B - Office/showroom plan

Exhibit C - Covenants and Restrictions  
Exhibit D - deleted  
Exhibit E - Department of Health Letter  
Exhibit F - Tenant Agency Compliance Agreement

are to be strictly adhered to and these Exhibits are to be attached hereto and made part hereof.

SECTION 49. AUTHORITY:

Tenant warrants and represents that it is duly formed and in good standing, and has corporate or partnership power and authority, as the case may be, to enter into this Lease and has taken all corporate or partnership action, as the case may be, necessary to carry out the transaction contemplated herein, so that when executed, this Lease constitutes a valid and binding obligation enforceable in accordance with its terms. Tenant represents that the execution of this Lease has been authorized by resolution of the Board of Directors of any proposed corporate Tenant hereunder, or if the proposed Tenant is a partnership, the execution of this Lease has been consented to in writing by the partners thereof. Prior to the execution of this Lease Tenant shall provide Landlord with a certified copy of the corporate resolution(s), partnership consent, or other proof in form acceptable to Landlord which shall authorize the execution of the Lease at the time of execution and also evidence the authority of the signatory to sign this Lease on behalf of and bind the Tenant.

SECTION 50: Suffolk County Industrial Development Agency

Landlord advises Tenant as follows: (i) Landlord has applied to the Suffolk County Industrial Development Agency (the "IDA") for assistance to construct the land and building known as 120 Wilshire Boulevard, Edgewood, New York ("120 Wilshire Boulevard"), (ii) in connection with such assistance, among other things, Landlord is obligated to (a) lease 120 Wilshire Boulevard to the IDA and the IDA will sublease 120 Wilshire Boulevard to Landlord, and as a result thereof this Lease shall be a sublease of Landlord's lease with the IDA, and (b) to enter into a Payment In Lieu of Tax Agreement ("PILOT Agreement") with the IDA, an Environmental Compliance and Indemnification Agreement with the IDA and other agreements with the IDA; (iii) that Landlord's lease with the IDA requires that: (x) this Lease between Landlord and Tenant contain a provision requiring Tenant to comply with the provisions of the lease between Landlord and the IDA applicable to Tenant, and (y) that Tenant enter into a Tenant Agency Compliance Agreement with the IDA, a form of which agreement is attached hereto as Exhibit "F". Tenant understands and acknowledges the foregoing, and that as a



result of the assistance Landlord will receive from the IDA Tenant will be receiving a benefit, among other things, in that Tenant's obligation to pay real estate taxes shall be as set forth in Article 4 of this Lease.

Tenant agrees that it shall comply with the provisions of the lease between Landlord and the IDA applicable to Tenant, and further, upon request from Landlord, Tenant shall execute and deliver the Tenant Agency Compliance Agreement attached hereto as Exhibit "F", and provide such information with respect to the number of Tenant's employees employed at the Premises, and such other information as may be required by the IDA, as and when required by the IDA, and otherwise comply with Tenant's obligations under the Tenant Agency Compliance Agreement. Tenant further agrees that, notwithstanding anything that may be contained in any agreement between the Landlord and the IDA: (i) Tenant's obligations shall be as set forth in this Lease, (ii) Tenant shall pay to Landlord the Base Rent and additional rent as set forth in this Lease, and (iii) Tenant agrees to pay increases in Real Estate Taxes (or payments in lieu thereof) in accordance with Article 4 of this Lease.

Tenant further agrees that because this Lease shall become a sublease of the lease between Landlord and the IDA, the following shall be applicable:

1. The term of this Lease shall be as set forth in this Lease, except, notwithstanding anything contained or implied herein, for the sole purpose of maintaining the status of this Lease as a sublease of the lease between Landlord and the IDA for the term of the lease between Landlord and the IDA, and not as an assignment of such lease, the status of this Lease as a sublease shall be deemed to expire or terminate one day prior to the date that the lease between Landlord and the IDA expires or terminates for any reason whatsoever, and, except for termination of this Lease in accordance with its terms, immediately upon such termination of the lease between the Landlord and the IDA, without any further action or agreement being required, this Lease shall revert to the lease relationship existing between Landlord and Tenant prior to the execution of the lease between Landlord and the IDA for the remainder of the term thereof as set forth in this Lease and shall be valid, binding and enforceable as written in accordance with its terms. The parties hereto expressly acknowledge and agree that the immediately preceding sentence has been inserted herein to evidence their intent that this Lease shall be a sublease and not an assignment of this Lease for the term of the



lease between Landlord and the IDA.

2. Tenant hereby expressly acknowledges and agrees that nothing contained or implied in the lease between Landlord and the IDA, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, or any other agreement in connection therewith, nor any lease or transfer of 120 Wilshire Boulevard shall be deemed, construed or implied in any respect to: (i) increase any obligations of Landlord with respect to the Premises, the Tenant and/or under this Lease, (ii) affect Tenant's obligations under the Lease or give Tenant any further, greater or increased rights or remedies, nor permit Tenant to take any action with respect to the Premises or the Lease, other than Tenant has under the Lease, (iii) in the event or events any term or condition of the lease between Landlord and the IDA, or the PILOT Agreement, or the Environmental Compliance and Indemnification Agreement or any other agreement executed in connection therewith, requires any payment, performance, compliance, action, work, indemnity, or otherwise from the Landlord which obligation is that of the Tenant under this Lease, Tenant expressly agrees to promptly make or do such payment, performance, compliance, action, work, indemnity or otherwise, without any setoff, deduction or counterclaim whatsoever. Either concurrent with, or promptly after, any such payment, performance, compliance, action, work, indemnity or otherwise by Tenant, Tenant shall provide Landlord with evidence of any such payment, performance, compliance, action, work, indemnity or otherwise by Tenant. If Tenant fails to make any such payment or do any such performance, compliance, action, work, indemnity or otherwise, Landlord shall have all rights and remedies against Tenant as are or would be available to Landlord against Tenant under the Lease for a breach or default thereunder, and Tenant shall indemnify, defend, hold and save Landlord harmless from and against any costs, liabilities, expenses, losses, damages and the like which Landlord sustains, suffers, expends or incurs, or which Landlord may or might sustain, suffer, expend or otherwise incur, including Landlord's attorneys' fees, caused by, or resulting therefrom, including all causes of action, attorney fees and expenses incurred in defending or prosecuting any suits or actions which may arise as a result of any of the foregoing, or to enforce any of Tenant's obligations in connection with the Tenant Agency Compliance Agreement.

3. Tenant agrees to pay all Base Rent, additional rent, increases in real estate taxes (or payments in lieu of taxes) and other charges as set forth in this Lease, and comply with and abide by all of the terms and conditions of this Lease, notwithstanding the leasing of the Premises to the IDA, or execution of, or anything contained or implied in the lease between Landlord and the IDA, the PILOT Agreement, the

Environmental Compliance and Indemnification Agreement, and/or any other agreement executed in connection therewith. Tenant further agrees not to do, cause or suffer to be done, any act (whether by omission or commission) which would result in a breach of or default under any term, covenant, provision or condition of the lease between Landlord and the IDA, the PILOT Agreement, the and/or any other agreement executed in connection therewith, or the Tenant Agency Compliance Agreement.

4. Neither Tenant, nor its successors and assigns shall enter into any agreement which shall modify, surrender or merge this Lease. Any agreement made in contravention to the provisions of this paragraph shall be of no force or effect to Landlord. Furthermore, neither Tenant, nor its successors and assigns, shall take, suffer or permit the termination of the lease between Landlord and the Agency and/or this Lease, except as the lease between Landlord and the IDA and/or the Lease may be terminated in accordance with its terms.

5. Tenant shall not assign this Lease nor sublet the Premises in whole or in part; and shall not permit Tenant's interest in this Lease to be vested in any third party by operation of law, except as may be expressly provided in this Lease.

6. This Lease is subject and subordinate to the lease between Landlord and the IDA.

7. In the event at any time the lease between the Landlord and the IDA or the PILOT Agreement is terminated, or expires in accordance with the terms thereof, for any reason whatsoever, notwithstanding anything contained or implied in this Lease, this Lease shall remain and be valid, binding, in full force and effect and enforceable in accordance with its terms, and the relationship and status between Landlord and Tenant shall, without any action, agreement, or notice on the part of Landlord being required, immediately revert to the relationship and status between Landlord and Tenant as it existed on the date immediately prior to the date Landlord subleased the building from the IDA, as if the lease between the Landlord and the IDA, the PILOT Agreement, or any other agreement executed in connection therewith never existed, provided, however, if at such time Tenant is in default under the terms and conditions of this Lease Landlord shall have the right to pursue all remedies against Tenant by reason thereof. Notwithstanding the foregoing, in the event, at any time, Landlord, or any assignee or designee or Landlord, or any purchaser or purchasers of the building, or any mortgagee or mortgagees of the building request confirmation of the status of the relationship between Landlord and Tenant, Tenant agrees to

promptly comply with such request.

8. Tenant hereby expressly acknowledges, confirms, understands and agrees that Landlord has the sole and absolute right in its discretion at any time to terminate the lease between Landlord and the IDA, whether or not Landlord is in default under the lease between Landlord and the IDA, and whether or not this Lease is in full force and effect, and Tenant hereby consents to such right, and Landlord shall have no liability to Tenant as a result of the exercise thereof.

9. Any payments required to be made by Tenant hereunder shall be paid without any setoff, deduction or counterclaim whatsoever, be deemed additional rent under this Lease, and, in the event or events of nonpayment of the same, Landlord shall be entitled to all rights and remedies available under this Lease for nonpayment of rent. Any performance required to be made by Tenant hereunder shall be deemed a performance required of Tenant under this Lease, and, in the event or events of nonperformance of the same, Landlord shall be entitled to all rights and remedies available under the Lease for nonperformance of the same. Failure by Tenant to comply with any of the terms and conditions of the Tenant Agency Compliance Agreement shall be deemed a default by Tenant under this Lease and in the event or events of nonperformance of the same, Landlord shall be entitled to all rights and remedies available under this Lease for nonpayment or nonperformance of the same.

#### SECTION 51 ENTIRE AGREEMENT:

No oral statement or prior written matter shall have any force or effect all of which shall merge herein and be superseded hereby. No waiver of any provisions of this agreement shall be effective unless in writing, signed by the waiving party. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease and expressly agrees to accept the Premises "as is", subject to the terms and conditions of this Lease. This agreement shall not be modified except by a writing subscribed by all parties, nor may this Lease be cancelled by Tenant except with the written consent of Landlord, unless otherwise specifically provided herein. If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and enforced to the fullest extent

permitted by law. The submission by Landlord of the within Lease in draft form shall be deemed submitted solely for Tenant's consideration and not for acceptance and execution. Such submission shall have no binding force or effect, shall confer no rights nor impose any obligations, including brokerage obligations, upon either party unless and until both Landlord and Tenant shall have executed this Lease and duplicate originals thereof shall have been delivered to the respective parties. All captions herein are solely for convenience and shall not be given any legal effect. Landlord and Tenant understand, agree, and acknowledge that: (i) this Lease has been freely negotiated by both parties; and (ii) that, in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

Except as otherwise provided in this Lease, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors and permitted assigns.


IN WITNESS WHEREOF, the parties hereto have hereunto set their hands.

LANDLORD: WILSHIRE RENTAL PROPERTIES LLC.

By: Edgewood Land L.P.

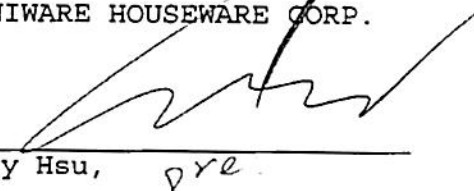
By: Edgewood Land Corp.

By:

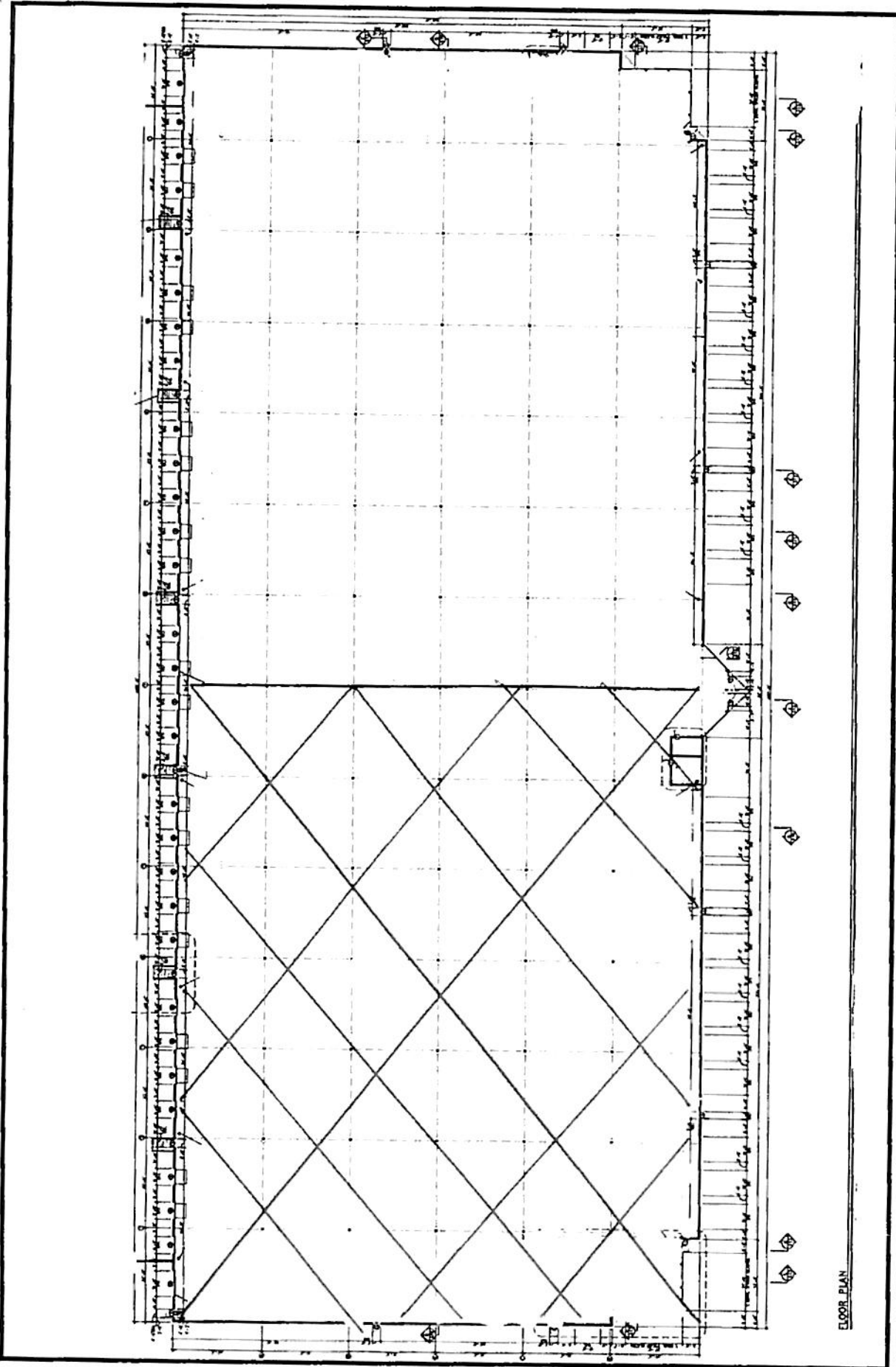
  
Gerald Wolkoff, President

TENANT: UNIWARE HOUSEWARE CORP.

By:

  
Lily Hsu, pre.

wilshirerentalunimax312913.1se



FLOOR PLAN

Exhibit "A"

**A1**

HEADLAND BUSINESS CENTERS  
 125 W. 10TH ST., SUITE 1000, ST. LOUIS, MO 63102  
 (314) 425-1234  
 125 W. 10TH ST., SUITE 1000, ST. LOUIS, MO 63102  
 (314) 425-1234

