

ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, dated as of December 1, 2019 (the "Agreement"), is given by **360 MIDDLETOWN HOLDING LLC**, a limited liability company formed and validly existing under the laws of the State of New York with offices at 360 Crystal Run Road, Middletown, New York 10940 (the "Company"), and the persons, firms or corporations, if any, identified as Indemnitors at the end of this Agreement (collectively, the "Indemnitors"), to the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553 (the "Agency").

WITNESSETH:

WHEREAS, the Company has a fee interest in certain land located at 360 Crystal Run Road in the Town of Wallkill, Orange County, New York, and described more fully in Schedule A attached hereto and made a part hereof (the "Premises"); and

WHEREAS, the Company is requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (A) the acquisition by the Agency of a leasehold interest in an approximately 7.8±-acre parcel of land located at 360 Crystal Run Road in the Town of Wallkill, Orange County, New York (the "Land"), together with the existing approximately 31,534 square-foot warehouse building thereon (the "Existing Improvements"); (B) the renovation and reconstruction of the Existing Improvements to house the expanded Freund's Fish Market production line and scope of distribution, to be implemented in six (6) phases, including, but not limited to, (i) kosher Japanese food products, (ii) raw fish production, (iii) gefilte fish production, (iv) breeding machinery, (v) wholesale appetizing products, and (vi) frozen foods (collectively, the "Improvements"); and (C) the acquisition in and around the Improvements of certain items of equipment, machinery and other tangible personal property (the "Equipment"; and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, the Company has requested that the Agency provide financial assistance (the "Financial Assistance") to the Company to undertake the Project in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) a partial real property tax abatement through a certain Tax Agreement between the Agency and the Company, dated as of the date hereof (the "Tax Agreement") and (c) if necessary, a mortgage recording tax exemption for the financing related to the Project; and

WHEREAS, in furtherance of the Financial Assistance, the Agency has been asked to take a leasehold interest in the Premises and to lease the Premises back to the Company; however, any leasehold interest in the Premises shall be for the sole purpose of the Agency conferring certain financial assistance in its sovereign and/or municipal capacity and such ownership or other interest undertaken by the Agency shall not include the right, authority or potential for the Agency to control operations on or at the Premises, nor shall (or has) the Agency participate(d) in the management or participate(d) in the development of the Premises;

and

WHEREAS, the Agency is unwilling to take a leasehold interest in the Premises even in the limited capacity defined above, or to otherwise consummate the Financial Assistance unless the Company and the Indemnitors execute and deliver this Agreement to the Agency.

NOW, THEREFORE, in consideration of the foregoing and to induce the Agency to accept a leasehold interest in the Premises in the limited capacity as set forth above, and to consummate the Financial Assistance, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Indemnitors hereby covenant and agree with the Agency as follows:

1. DEFINITIONS. All capitalized terms used in this Agreement and not heretofore defined shall have the meanings set forth below.

(a) "Environment" means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

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

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

(d) "Hazardous Substance" means any substance (i) the presence of which requires investigation or remediation under any Environmental Law; or (ii) which is or becomes defined as a "hazardous waste", "hazardous substance", "toxic substance", pollutant or contaminant under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. Section 9601 *et seq.*), and/or the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 *et seq.*), and/or the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 *et seq.*), and/or the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601 *et seq.*), and/or Articles 15 or 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law or any regulations promulgated under any of the foregoing; or (iii) which is toxic (including, but not limited to, toxic mold), explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of New York or any political subdivision thereof; or (iv) the presence of which on the Premises causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or

threatens to pose a hazard to the health or safety of persons on or about the Premises; or (v) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

(e) "Improvements" mean any buildings, structures and other improvements (if any) presently or hereafter located on the Premises.

(f) "Indemnitee" means the Agency, its successors and assigns, and their respective officers, directors, employees, agents, representatives, contractors and subcontractors.

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

2. REPRESENTATIONS AND WARRANTIES: The Company represents and warrants to the Agency that to the best of the Company's knowledge, information and belief:

(a) Neither the Premises nor, any property adjacent to or within the immediate vicinity of the Premises is being or has been used for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not located on the Premises, except as set forth in Schedule B hereto.

(c) The soil, subsoil, bedrock, surface water and groundwater of the Premises are free of any Hazardous Substances.

(d) There has been no Release nor is there the threat of a Release of any Hazardous Substance on, at or from the Premises, or any property adjacent to or within the immediate vicinity of the Premises which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on the Premises, and the Company has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Premises or any property adjacent to or within the immediate vicinity of the Premises or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

(e) All Environmental Permits necessary for the acquisition, construction, equipping, use or operation of the Premises have been obtained and are in full force and effect.

(f) No event has occurred with respect to the Premises which, with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law or non-compliance with any Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Premises which require any change in the present condition of the Premises or any work, repairs, construction, containment, clean-up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Premises.

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

3. COVENANTS OF COMPANY: The Company covenants and agrees with the Agency as follows:

(a) The Company shall keep, and shall cause all operators, tenants, subtenants, licensees and occupants of the Premises to keep, the Premises free of all Hazardous Substances and shall not cause or permit the Premises or any part thereof to be used for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substances.

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

(c) The Company shall not cause or permit any change to be made in the present or intended use of the Premises which would (i) involve the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or the use of the Premises as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, except solely in regards to the storage of petroleum or petroleum based products, such use is permitted by law and all relevant permits, registrations and/or certificates are obtained and maintained by the Company for such storage, (ii) violate any applicable Environmental Law, (iii) constitute non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to any past or present Release or

the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

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

(f) The Company shall at all times allow the Agency and its officers, employees, agents, representatives, contractors and subcontractors reasonable access to the Premises for the purposes of ascertaining site conditions, including, but not limited to, subsurface conditions.

(g) If at any time the Agency obtains any evidence or information which suggests that potential environmental problems may exist at the Premises, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Premises of a scope and level of detail satisfactory to the Agency be prepared by an environmental engineer or other qualified person acceptable to the Agency, at the Company's expense. Said audit may include a physical inspection of the Premises, a visual inspection of any property adjacent to or within the immediate vicinity of the Premises, personnel interviews and a review of all Environmental Permits. If the Agency requires, such inspection shall also include a records search and/or subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions, using methods recommended by the engineer or other person who prepared said audit report and acceptable to the appropriate federal, state and local agencies or authorities.

(h) Attached hereto as **Schedule C** is a complete list of all Environmental Permits presently required for the ownership, use or operation of the Premises and the businesses located thereon. The Company agrees to notify the Agency of any additions, deletions, or modifications of any Environmental Permits and the list thereof. Upon written request of the Agency, the Company shall furnish true and complete copies of all Environmental Permits.

4. **INDEMNIFICATION PROVISIONS:** The Company and the Indemnitors hereby jointly and severally covenant and agree, at their sole cost and expense, to indemnify, protect, defend, and save harmless each and every Indemnitee from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys' and experts' fees for attorneys and experts selected by the Indemnitee, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee relating to, resulting from or arising out of (a) the use of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other

waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, (b) the presence or claimed presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, (c) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, (d) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof, (e) a violation of any applicable Environmental Law, (f) non-compliance with any Environmental Permit, (g) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Agreement, and (h) the designation by the New York State Department of Environmental Conservation, the United States Environmental Protection Agency or any other governmental authority of the Agency as a party responsible or potentially responsible for the remediation of any condition on the Premises (collectively, the "Indemnified Matters").

The liability of the Company and the Indemnitors to each Indemnitee hereunder shall be perpetual and shall survive, and shall in no way be limited, abridged, impaired or otherwise affected, by (i) any amendment or modification of any of the documents (a) entered into in connection with any prospective indebtedness associated with the Premises as approved by the Agency (the "Loan Documents") or (b) otherwise entered into in connection with the Financial Assistance (the "Agency Documents") by or for the benefit of the Agency, any lender, or any subsequent owner of the Premises, (ii) any extensions of time for payment or performance required by any of the Loan Documents or the Agency Documents, (iii) the release of the Company, any Indemnitor, any guarantor of any of the indebtedness associated with the Financial Assistance, or any other person, from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents, the Agency Documents or this Agreement by operation of law, the lender's or Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Loan Documents or the Agency Documents, (v) any exculpatory provision contained in any of the Loan Documents or the Agency Documents limiting the lender's or the Agency's recourse to property encumbered by a mortgage or to any other security, (vi) any applicable statute of limitations, (vii) any investigation or inquiry conducted by or on the behalf of the Agency or any other Indemnitee or any information which the Agency or any other Indemnitee may have or obtain with respect to the environmental or ecological condition of the Premises, (viii) the sale or assignment of any indebtedness associated with the Financial Assistance or the foreclosure of any mortgage, (ix) the sale, transfer or conveyance of all or part of the Premises, (x) the dissolution or liquidation of the Company, (xi) the death or legal incapacity of any Indemnitor, (xii) the release or discharge, in whole or in part, of the Company or any Indemnitor in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, (xiii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under any bond, note or mortgage entered into in connection with the Financial Assistance or of any Indemnitor under this Agreement, (xiv) the expiration or termination of any sublease between the Agency and the Company or any other person with respect to the Financial Assistance (the "Sublease"), or (xv)

the reconveyance of title to the Premises by the Agency to the Company or any other person, whether in accordance with the terms of the Sublease, by foreclosure or deed in lieu of foreclosure, sale or otherwise.

The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement heretofore given to the Agency or any other Indemnitee, as part of the application process for the Financial Assistance or otherwise.

5. AGENCY'S LIMITED ROLE: Under no circumstances shall the Agency's limited involvement herein be deemed to be (because it is not) participating in the management or participating in the development of the Premises as those terms are used in New York Environmental Conservation Law ("ECL") Section 27-1323. The Agency's limited involvement herein resulted from its acquiring a nominal interest in the Premises in the exercise of its statutory purposes and for no other reason, and such acquisition was undertaken under circumstances where it amounts to an involuntary acquisition as that term is defined under ECL Section 27-1323.

6. GOVERNING LAW: This Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of New York.

7. COUNTERPARTS: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall together constitute but one and the same instrument and shall be binding upon each of the undersigned as fully and completely as if all had signed the same instrument.

8. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon the Company, its successors and assigns, all subsequent owners of the Premises, the Indemnitors and their respective successors, assigns, executors, administrators, legal representatives, distributees and fiduciaries and shall inure to the benefit of each Indemnitee.

9. WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS AGREEMENT OR THE PREMISES, OR ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

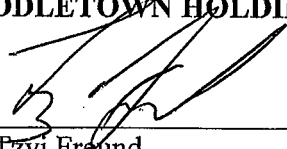
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[Signature Page to Environmental Compliance Agreement]

IN WITNESS WHEREOF, the Company and the Indemnitors (if any) have caused this Agreement to be duly executed as of the day and year first above written.

COMPANY:

360 MIDDLETOWN HOLDING LLC

By: 
Name: Tzvi Freund
Title: Member

INDEMNITOR(S):

By: _____

By: _____

STATE OF NEW YORK)
COUNTY OF ~~ORANGE~~)

KINGS

SS.:

On the 19 day of December in the year 2019, before me, the undersigned, personally appeared **Tzvi Freund**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public **SOLOMON GRUENBAUM**
NOTARY PUBLIC, State of New York
No. 01GR623328
Qualified in Kings County
Commission Expires Dec. 27, 2022

STATE OF _____)
COUNTY OF _____)

SS.:

On the ____ day of _____ in the year 2019, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE A

Section 60 Block 1 Lot 122

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Wallkill, County of Orange, State of New York, known and designated as being Lot #1 as shown on map entitled, "Minor Subdivision for Bryant Holdings, LLC" filed in the Orange County Clerk's Office on November 11, 2002 as Map No. 244-02 and being more particularly bounded and described as follows:

BEGINNING at a point on the southeasterly boundary of Crystal Run Road, where the same is intersected by the northeasterly boundary of Lot #2, Filed Map #224-02, lands now or formerly 360 Crystal Run LLC, said point marked by a monument found and running thence along the southeasterly boundary of Crystal Run Road, the following three (3) courses and distances:

1. N 48 degrees 49' 32" E a distance of 107.04 feet to a monument found;
2. N 52 degrees 12' 00" E a distance of 70.00 feet to a monument found;
3. N 75 degrees 51' 25" E a distance of 310.00 feet to a monument found;

Thence along the southwesterly boundary of Lot #1, Filed Map #96-95, lands now or formerly Gordon Wallkill MAB II Assoc. and in continuation along lands now or formerly Venda Properties, LLC (Liber 11569 Page 1821) S 32 degrees 56' 24" E a distance of 769.10 feet to an iron pin found; thence along the northwesterly and northeasterly bounds of Lot #2, Filed Map #224-02, lands now or formerly 360 Crystal Run Road LLC, the following two (2) courses and distances:

1. S 57 degrees 03' 36" W a distance of 346.68 feet;
2. N 41 degrees 10' 27" W a distance of 856.56 feet to the point of beginning, containing 7.791 +/- acres.

Premises known as 360 Crystal Run Road, Middletown, NY 10941

SCHEDULE B

Underground Storage Tanks

[NONE]

SCHEDULE C

Required Environmental Permits

[NONE]