

360 MIDDLETOWN HOLDING LLC

TO 7

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

LEASE AGREEMENT

*This conveyance of leasehold interest concerns a certain parcel of land located at
360 Crystal Run Road in the Town of Wallkill, Orange County, New York
TMID No.: 60-1-122*

Dated as of December 1, 2019

LEASE AGREEMENT
(Company to Agency)

THIS **LEASE AGREEMENT**, dated as of the 1st day of December, 2019 (the "Lease Agreement"), is by and between **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 **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:

The Company desires to rent to the Agency the vacant land described in **Schedule A** attached hereto (the "Leased Premises") pursuant to the terms contained herein, during the term of that certain leaseback agreement, between the Agency and the Company, dated as of the date hereof (the "Leaseback Agreement").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Granting Clause.** The Company hereby leases to the Agency the Leased Premises, upon the terms and conditions of this Lease Agreement.
2. **Warranty of Title.** The Company warrants that it has a good and marketable leasehold interest in the Leased Premises and forever warrants such leasehold interest in the Leased Premises.
3. **Term.** The term of this Lease Agreement shall be coterminous with the term of the Leaseback Agreement (the "Lease Term").
4. **Rent.** The Agency agrees that it will pay to the Company, for the use of the Leased Premises, rent of One and No/100 Dollar (\$1.00) per annum.
5. **Taxes.** The Company agrees to pay all taxes to be assessed on, or charges or expenses incurred with respect to, the Leased Premises during the Lease Term.
6. **Maintenance and Insurance of Premises.** The Company shall maintain and insure the Leased Premises. The Agency shall not be required to maintain the Leased Premises or incur any costs with respect to the Leased Premises. All insurance or condemnation proceeds shall be distributed and governed by the Leaseback Agreement.
7. **Lease Expiration.** The parties agree that at the expiration of the Lease Term the Agency will surrender the Leased Premises to the Company pursuant to the terms and conditions

of this Lease Agreement and the Leaseback Agreement in the then condition of the Leased Premises.

8. Hold Harmless. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members and employees, and their respective successors or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Leased Premises or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Leased Premises or as a result of a breach by the Company of its representations or agreements contained herein or in the Leaseback Agreement, or (ii) liability arising from or expense incurred by the Agency's financing, constructing, equipping, owning and leasing of the Leased Premises, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or negligence on the part of the indemnified party.

9. Non-Merger. So long as any leasehold or sub-leasehold mortgage is in existence, unless all mortgagees shall otherwise expressly consent in writing, fee title to the Facility and the leasehold estate of the Agency therein created by this Lease Agreement shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Company or by Agency or by a third party, by purchase or otherwise.

10. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Orange County Industrial Development Agency
 Orange County Business Accelerator
 4 Crotty Lane, Suite 100
 New Windsor, New York 12553
 Attn: Laurie Villasuso, Chief Operating Officer and
 Executive Vice President

With a copy to: Kevin T. Dowd, Esq.
 Attorney – Orange County IDA
 46 Daisy Lane
 Montgomery, New York 12549

And to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Russell E. Gaenzle, Esq.

To the Company: 360 Middletown Holding LLC
360 Crystal Run Road
Middletown, New York 10940
Attn: Tzvi Freund, Member

With a copy to: Billig Loughlin & Silver, LLP
461 Broadway
P.O. Box 1447
Middletown, New York 12701
Attn: Jacob Billig, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

11. No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby; provided that such employees did not engage in willful misconduct or negligent acts or omissions.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State of New York (the "State") or Orange County, New York, and neither the State nor Orange County, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Leased Premises (except for revenues derived by the Agency with respect to the Unassigned Rights (as such term is defined in the Leaseback Agreement)).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such

request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

12. Subordination of Lease Agreement to Mortgage(s). The Agency agrees that this Lease Agreement shall be subordinate to any future mortgages granted by the Company in favor of any lender (the "Mortgagee"), executed and delivered herewith and all further mortgages, modifications, extensions or renewals thereof and to all advances secured thereunder together with interest thereon hereafter placed on the Leased Premises with the consent of the Mortgagee, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in, or assign its rights to receive the amounts described in Section 2.6 of the Leaseback Agreement or its the Unassigned Rights (as defined in the Leaseback Agreement).

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

[Remainder of Page Intentionally Left Blank]

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

360 MIDDLETOWN HOLDING LLC

By: 

Tzvi Freund, Member

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Laurie Villasuso, Chief Operating Officer and
Executive Vice President

STATE OF NEW YORK)
COUNTY OF ~~ORANGE~~) SS.:
 14.26.5

On the 17 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. 01GR6233328
Qualified in Kings County
Commission Expires Dec. 27, 2022

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

On the 23rd day of December in the year 2019, before me, the undersigned, personally appeared **Laurie Villasuso**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

KELLY A. REILLY Notary Public, State of New York Registration #01RE6256838 Qualified In Ulster County Commission Expires March 5, 20 <u>20</u>
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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