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BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED

Office of Chief Counsel

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Part of

Public Record

STB Docket No. FD 36883

SUNRISE INDUSTRIAL RAIL, LLC
—LEASE AND CHANGE IN OPERATOR EXEMPTION—
RAILROAD LINES OF BROOKHAVEN LOGISTICS CENTER, LLC, IN
SUFFOLK COUNTY, N.Y.

Request for *State of Maine* Determination

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Dated: September 14, 2026

In response to the Board’s decision of July 16, 2026 (the Decision),¹ Brookhaven Logistics Center, LLC (BLC) requests that the Board find, consistent with *Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central R.R. (State of Maine)*, 8 I.C.C.2d 835 (1991), that 49 U.S.C. § 10901 does not apply to BLC’s acquisition of a rail line at the Brookhaven Rail Terminal in Brookhaven, N.Y. (the Line).² As explained below, BLC has cured the sole deficiency that the Board identified in the Decision—a missing permanent freight rail operating easement—by entering into an amended and restated industrial lease (the Lease) with the Line’s rail-carrier operator, Sunrise Industrial Rail, LLC (Sunrise), that grants Sunrise an exclusive freight rail operating easement to meet its common carrier obligations on the Line. The Lease also expressly prohibits BLC from unduly interfering with Sunrise’s freight rail service. Together, these provisions satisfy the Board’s *State of Maine* analysis.

I. Background

A. The Decision

In the Decision, the Board addressed BLC’s prior request for a *State of Maine* determination. The Board found that the agreements then governing BLC’s relationship with the Line’s operator satisfied the second prong of the *State of Maine* analysis that BLC could not unduly interfere with the operator’s common

¹ *Sunrise Indus. Rail, LLC—Lease & Change of Operator Exemption—R.R. Lines of Brookhaven Logistics Center, LLC, in Suffolk Cnty., N.Y.*, FD 36883 (STB served July 16, 2026).

² Simultaneously with this request, BLC is filing a request for protective order.

carrier obligation.³ The Board concluded, however, that the first prong was not met because the operator “did not retain a permanent, freight easement but held only a lessee interest.”⁴ The Board then gave BLC two options: (1) amend its agreements with the current operator to grant a permanent, exclusive freight easement and seek a new *State of Maine* determination; or (2) obtain § 10901 authority.⁵ BLC has chosen the first option and submits the amended Lease as Exhibit A for the Board’s review.

B. BLC’s ownership of the Line

BLC acquired the Line on May 4, 2022, when it purchased the Brookhaven Rail Terminal property, including a 28-acre parcel historically called Parcel A on which the Line sits.⁶ BLC purchased Parcel A subject to an agreement that gave the Line’s then-operator, Brookhaven Rail, LLC (Brookhaven Rail), the right to continue operating the Line as a common carrier.

On October 5, 2025, Sunrise began leasing the Line from BLC and replaced Brookhaven Rail as the Line’s operator. To complete this transaction, Sunrise obtained 49 C.F.R. part 1150, subpart D, exemption authority by filing a notice of

³ (Decision 7.)

⁴ (*Id.*)

⁵ (*Id.* at 7-8.)

⁶ BLC simultaneously purchased Parcel B, which contains approximately 50 feet of track connecting to the Line. In *Brookhaven Rail Terminal—Petition for Declaratory Order*, FD 35819 (STB served Aug. 30, 2016), the Board found that track on Parcel B would be ancillary spur track that 49 U.S.C. § 10906 excepts from § 10901’s acquisition-authority requirement.

exemption on September 4, 2025.⁷

On September 9, 2026, Sunrise and BLC entered into the Lease to cure the deficiency the Board identified in the Decision. Section 47 of the Lease grants Sunrise a permanent, exclusive freight rail operating easement over the Line. It also expressly bars BLC from unduly interfering with Sunrise's common carrier freight rail operations.

II. BLC does not require § 10901 authority under *State of Maine*

Under § 10901(a)(4), a noncarrier cannot acquire a rail line without Board authorization. The Board has held in *State of Maine* and its progeny that a noncarrier that purchases an ownership interest in a rail line's physical assets does not acquire the line under § 10901 if: (1) the freight rail carrier retains a permanent freight rail operating easement, exclusive against the noncarrier, together with the common carrier obligation on the line; and (2) the arrangement protects the carrier from undue interference with its common carrier freight rail service.⁸ The Board has applied this two-prong framework consistently for more than three decades, to both governmental and private noncarrier purchasers.⁹

⁷ See Sunrise Indus. Rail, LLC—Lease & Change of Operator Exemption—R.R. Lines of Brookhaven Logistics Center, LLC, in Suffolk Cnty., N.Y., 90 Fed. Reg. 44,867 (Sept. 17, 2025).

⁸ *E.g.*, *N.J. Transit Corp.—Acquisition Exemption—Norfolk S. Ry.*, FD 36676, slip op. at 3-4 (STB served July 27, 2023); *State of Maine*, 8 I.C.C.2d 835, 836-37 (1991).

⁹ *E.g.*, *N.J. Transit Corp.*, FD 36676 (STB served July 27, 2023); *Mass. Dep't of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc.*, FD 35892 (STB served Mar. 19, 2015). See, *e.g.*, *Fla. Dep't of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc.*, FD 35110, slip op. at 5 n.8 (STB served Dec. 15, 2010)

Both prongs of the *State of Maine* analysis are satisfied here. On the first prong, Section 47(a) of the Lease grants Sunrise “a permanent, exclusive freight rail operating easement over the [] Line . . . for providing common carrier freight rail transportation.” This is precisely the property interest the Board requires under *State of Maine*.¹⁰ This easement gives Sunrise the full right and necessary access to maintain, operate, and renew the Line.¹¹

Sunrise also bears a common carrier obligation to provide freight rail service on the Line. Sunrise assumed that obligation when it replaced Brookhaven Rail after receiving exemption authority. Further, Section 11(b) of the Lease requires Sunrise to provide freight rail service over the Line consistent with the common carrier obligation under 49 U.S.C. subtitle IV, part A. Section 48(b) further requires Sunrise to provide common carrier rail service on the Line until the Board authorizes otherwise.

The Lease also satisfies the second prong. Section 47(e) states that BLC “shall not unduly interfere” with Sunrise’s common carrier freight rail service over the Line. Although the Lease allows BLC to terminate for nonperformance and other reasons, Section 48(a) conditions any termination on the Board’s approval of a

(recognizing that the Board has applied *State of Maine* to the sale of a rail line to a private entity).

¹⁰ See *Santa Cruz Cnty. Reg’l Transp. Comm’n—Pet. for Declaratory Ord.*, FD 36213, slip op. at 2 (Oct. 24, 2018) (stating that *State of Maine* precedent requires the carrier to retain a “permanent, exclusive freight rail operating easement”).

¹¹ See *State of Maine*, 8 I.C.C.2d at 837 (stating that a permanent easement ensures the carrier both the full right and necessary access to maintain, operate, and renew the line).

change in the Line's operator, discontinuance of service, or abandonment of the Line. This mirrors termination provisions in other *State of Maine* proceedings where the Board granted *State of Maine* treatment.¹²

III. Conclusion

The Lease satisfies both prongs of the Board's *State of Maine* analysis. It grants Sunrise a permanent, exclusive freight rail operating easement over the Line. And it protects Sunrise from undue interference with its common carrier service.

BLC respectfully requests that the Board find that 49 U.S.C. § 10901 does not apply to BLC's ownership of the Line and that the current arrangements between BLC and Sunrise satisfy *State of Maine*.

Respectfully submitted,

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¹² *E.g., N.J. Transit Corp.*, FD 36676, slip op. at 4-5 (STB served July 27, 2023); *Santa Cruz*, FD 36213, slip op. at 3 (Oct. 24, 2018).

Exhibit A

AMENDED AND RESTATED INDUSTRIAL LEASE

THIS AMENDED AND RESTATED INDUSTRIAL LEASE (this “Lease”) is made on September 9, 2026 (the “Restatement Date”), by and between **Brookhaven Logistics Center, LLC**, a Delaware limited liability company (“Landlord”), and **Sunrise Industrial Rail, LLC**, a Colorado limited liability company (“Tenant”).

The parties entered an Industrial Lease dated October 5, 2025 (the “Effective Date” and such Industrial Lease, the “Original Lease”), under which Landlord leased the Premises (defined below) to Tenant for freight rail operations and transload operations.

The parties desire to amend and restate the Original Lease in its entirety to, among other things, clarify that it grants Tenant a permanent, exclusive freight rail easement over the Rail Infrastructure (as defined below).

The parties thus amend and restate the Original Lease to read in its entirety as follows:

1. PREMISES

a. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the premises (the “Premises”) shown on the site plan attached hereto as Exhibit A-1 (the “Site Plan”), which Premises is comprised of (i) the real property described on Exhibit A-2 attached hereto (the “Land”), and (ii) all buildings and improvements now or hereafter located on the Land, including the short-line railroad terminal, tracks, switches, signals, crossings, communication lines, poles, auxiliary tracks, and other similar improvements or fixtures (the “Improvements” and, collectively with the Land, the “Property”).

b. From the period commencing on the Effective Date and ending on the first anniversary of the Effective Date, Landlord will have the right to request that Tenant enter into licenses and/or occupancy agreements (the “Occupancy Agreements”) with one or more third-party occupants (the “Occupants”), granting such Occupants the right to occupy a portion of the Premises, in the locations specified on Exhibit A-1 (to the extent not already occupied by other Occupants), or such other locations reasonably agreed upon between the parties, from time to time, provided that the terms of such Occupancy Agreements are on commercially reasonable terms and the proposed use by the Occupant does not interfere, in any material respect, with Tenant’s rail and transload operations on the Premises, and Tenant agrees not to unreasonably withhold, condition or delay its consent to any such proposed Occupancy Agreements. The Occupants will have the right of reasonable cross-access among other portions of the Property for the purpose of ingress, egress and to utilize the Property in a manner consistent with rail and transload operations. Additionally, upon the Commencement Date (as hereafter defined) Landlord agrees (pursuant to occupant’s consent to assign to Tenant, and Tenant agrees to assume, the existing Occupancy Agreements described on Exhibit B attached hereto, which Landlord represents meet the requirements of Section 14.h. Upon any termination of this Lease, Tenant agrees to assign, and Landlord (or its designee) agrees to assume, all existing Occupancy Agreements.

2. TERM; EXTENSION

a. The term of this Lease shall begin on the date (the “Commencement Date”) that is one (1) day following the later of (i) the Effective Date; and (ii) the date on which Tenant is authorized to begin providing rail service by the Surface Transportation Board (“STB”), the federal regulatory agency having jurisdiction over the short-line rail located on the Premises, necessary to permit Tenant to operate the short-line rail located on the Premises. As of the Commencement Date, Landlord shall assign, and Tenant shall assume, that certain Industrial Lease, dated as of April 7, 2025 (the “Arrow Lease”), between Landlord and Arrow Reload Minnesota Inc. (“Arrow”), which Arrow Lease grants Arrow the right to occupy and perform certain transload activities at the Premises. Landlord agrees to obtain Arrow’s consent to the assignment of the Arrow Lease pursuant hereto prior to the Commencement Date, and provide written evidence thereof to Tenant, to the extent such consent is required pursuant to the terms of the Arrow Lease. Notwithstanding the foregoing if the Commencement Date does not occur within ninety (90) days of the Effective Date (other than as a result of a Force Majeure Event, which shall extend the 90-day period, or a default or breach by a party, for which the non-breaching party will continue to have all rights and remedies available under this Lease), this Lease shall automatically terminate and be of no further force or effect. The Lease Term shall expire at midnight on the last day of the month which is One Hundred Thirty Two (132) months after the Commencement Date (the “Expiration Date”). The initial term of this Lease and any extension of the initial term shall herein be the “Lease Term.” As used herein, the term “Lease Year” shall mean any consecutive twelve (12) month period commencing on the Commencement Date, or any anniversary thereof, except that, if the Commencement Date is other than the first day of the month, the first Lease Year shall mean the period commencing on the Commencement Date and ending twelve (12) months from the last day of the month in which the Commencement Date occurs. Except as expressly provided herein, in no event shall Tenant be permitted to operate from the Premises prior to the Commencement Date. Promptly following the Commencement Date, the parties hereto shall enter into a supplemental certificate fixing the Commencement Date and the stated Expiration Date.

b. So long as this Lease is in full force and effect and a Tenant Default (as defined in Section 19.a below) has not occurred, either at the time Tenant exercises the option provided in this Section 2.b. or at the commencement of the Extended Term, Tenant shall have the option to extend (the “Extension Option”) the Lease Term for one (1) period of five (5) years (the “Extended Term”). Tenant may exercise such Extension Option by giving written notice to Landlord of its intention to extend the Lease Term for the Extended Term (the “Extension Notice”) at least nine (9) months’ prior to the Expiration Date. Renewal for the Extended Term shall be upon the same terms and conditions as contained in this Lease except that: (i) the Base Rent payable during the Extended Term shall be determined as set forth in Section 2.c. below; (ii) Landlord shall have no obligations to construct or provide any improvements to the Premises or provide any allowances to Tenant; and (iii) Tenant shall have no further right to extend the Lease Term beyond the Extended Term.

c. Base Rent during the Extended Term shall be equal to “Fair Market Value”. For the purposes of this Lease, “Fair Market Value” shall mean the annual rental amount that a willing, comparable, non-equity tenant with a creditworthiness comparable to Tenant would pay, and a willing landlord of a comparable property in the marketplace would accept at “arms-

length” given appropriate consideration of rental rates for the entire Premises, the type of escalation clauses (including, but without limitation, operating expenses, real estate taxes), length of lease term, size and location of premises being leased, the fact that the premises are used primarily as a short-line rail terminal, and any other generally applicable terms and conditions of tenancy for the Premises. For the purposes of this Section 2.c., “comparable property” shall be located within the New York, New Jersey Connecticut Tri-State Metropolitan Area. All other terms and conditions of the Lease applicable to the payment of Rent, including the payment of Additional Rent, shall apply during an Extended Term. Landlord shall, within fifteen (15) days after receipt of the Extension Notice, deliver to Tenant a written determination of the Fair Market Value, as determined by Landlord, using the criteria set forth above. Tenant shall thereafter have fifteen (15) days to notify Landlord in writing of its acceptance of Landlord’s determination of the Fair Market Value, or to deliver to Landlord its own determination of the Fair Market Value, in which case Landlord and Tenant shall have an additional fifteen (15) days to negotiate in good faith a Fair Market Value acceptable to both Landlord and Tenant; provided, however, that in the event Landlord and Tenant are unable to agree on the Fair Market Value during such additional fifteen (15) day period, then each party shall make a separate determination of the Fair Market Value within five (5) business days thereafter, and such determinations shall be submitted to arbitration in accordance with the provisions below: (i) Landlord and Tenant shall each appoint one arbitrator who shall by profession be a real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of short-line rail terminals/industrial properties in the vicinity of the Premises. The determination of the arbitrators shall be limited solely to the issue as to whether Landlord’s or Tenant’s submitted Fair Market Value is the closest to the actual Fair Market Value as determined by the arbitrators, taking into account the requirements of this Section. Each such arbitrator shall be appointed within fifteen (15) days after the end of the 15-day period; (ii) the two arbitrators so appointed shall within ten (10) days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two arbitrators; (iii) the three arbitrators shall within thirty (30) days of the appointment of the third arbitrator reach a decision as to whether the parties shall use Landlord’s or Tenant’s submitted Fair Market Value, and shall notify Landlord and Tenant thereof; (iv) the decision of the majority of the three arbitrators shall be binding upon Landlord and Tenant; (v) if either Landlord or Tenant fails to appoint an arbitrator within the 15-day period, the arbitrator appointed by one of them shall reach a decision, notify Landlord or Tenant thereof, and such arbitrator’s decision shall be binding upon Landlord or Tenant; (vi) if the two arbitrators fail to agree upon and appoint a third arbitrator, or both Landlord and Tenant fail to appoint an arbitrator, then the appointment of the third arbitrator or any arbitrator shall be appointed by the president of the Appraisal Institute, Long Island New York Chapter, but subject to the instruction set forth in this Section; (vii) each party shall be responsible for the cost of the arbitrator they appoint (or the arbitrator appointed on its behalf), and Landlord or Tenant shall equally share the cost of the third arbitrator and all other costs of the arbitration proceeding; and (viii) once Landlord and Tenant arrive at an agreement as to the Fair Market Value as herein provided for, then Tenant agrees to execute and return to Landlord, within ten (10) business days after receipt thereof, a written extension form prepared by Landlord for attachment to this Lease memorializing the terms of such extension.

3. RENTAL

a. Commencing on the Commencement Date, Tenant agrees to pay to Landlord the base rent (“Base Rent”), which Base Rent shall be determined as hereinafter provided in this Article 3.

b. During the first Lease Year, Tenant shall pay to Landlord as Base Rent [REDACTED]
[REDACTED], an amount equal to (x) [REDACTED]
[REDACTED]; plus (y) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. As it relates to [REDACTED] Rent:

i. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ii. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

iii. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

iv. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

c. During the second Lease Year and for each Lease Year thereafter, Base Rent payable hereunder by Tenant shall be [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. In the event that Landlord and Tenant have not reached agreement with respect to [REDACTED] and executed an agreement establishing such [REDACTED] within thirty (30) days following Tenant's initial objection to the [REDACTED] Notice, then either Landlord or Tenant may terminate this Lease by delivering not less than thirty (30) days' written notice of termination (the "[REDACTED] Termination Notice") and this Lease shall terminate as of the date set forth in said notice, with neither party having any further obligation to the other under this Lease, except for those obligations stated to survive termination hereof. If Landlord and Tenant are unable to agree on an [REDACTED] and the Lease terminates pursuant to this Section 3.c., then, notwithstanding anything to the contrary set forth herein (other than as hereafter set forth in this Section 3.c.), the Base Rent for any portion of the Term falling beyond the first Lease Year will be calculated in accordance with Section 3.b. Within sixty (60) days of the [REDACTED] Termination Notice, Landlord agrees to identify an operator to replace Tenant as the common carrier of the Rail Line or provide consent to Tenant to seek authority from the STB to discontinue service over the Rail Line (the "STB Replacement Condition"). If Landlord fails to satisfy the STB Replacement Condition within [REDACTED] days of the [REDACTED] Termination Notice, the [REDACTED] Rate will automatically reduce to [REDACTED] on a going forward basis. If Landlord fails to satisfy the STB Replacement Condition within one hundred eighty (180) days of the [REDACTED] Termination Notice, the [REDACTED] Rate will further automatically reduce to [REDACTED]. Notwithstanding the reduction of the [REDACTED] Rate, Tenant shall have a continuing obligation to pay [REDACTED] until Tenant is replaced as the common carrier of the Premises.

d. The Base Rent and the Additional Rent shall be referred to herein collectively as the "Rent". All Rent shall be paid to Landlord on the first (1st) day of each month (except as expressly provided herein), [REDACTED], via Automated Clearing House (ACH) transfer, and Landlord agrees to provide to Tenant such information permitting Tenant to make such ACH payments. Landlord shall not be required to provide Tenant with any demand, invoice, or notice for payment. If the Commencement Date occurs on any day other than the first (1st) day of a month, the Rent for the first partial month in which Rent is payable (per the Base Rent Schedule above) shall be prorated on a daily basis.

e. In addition to any of Landlord's other remedies under this Lease, if any payment of Rent, or any other amount due to Landlord under this Lease, is not received by Landlord within [REDACTED] business days after Landlord delivers notice to Tenant that Tenant has failed to make such payment, a service charge of [REDACTED] per month on all past due amounts (the "Service Charge") shall become due and payable in addition to the regular Rent owed under this Lease. If Tenant fails to make any payment required under this Lease on its due date [REDACTED], or if Tenant is more than [REDACTED] days late on any payment required under this Lease, then the Service Charge shall be added to the next payment of Rent without requiring notice and opportunity to cure.

f. Upon request from Landlord, Tenant shall, within ten (10) days following Landlord's request, provide to Landlord a copy of Tenant's current, audited, signed financial statements, which financial statements shall have been reviewed and/or prepared by a major local or national certified public accounting firm. Landlord shall not be permitted to request copies of such financial statements more often than twice annually.

g. All other sums of money as shall become due and payable by Tenant under this Lease (hereinafter, "Additional Rent"), including, without limitation, Tenant's obligations pursuant to Article 5 and Article 14, all of which sums shall be payable as hereinafter provided, all to be paid to Landlord, as specified on the first page of this Lease. Base Rent and Additional Rent are also sometimes referred to herein, collectively, as "Rent".

4. PERFORMANCE

a. OmniTRAX, Inc. represents that it and Tenant are affiliated companies in a substantially similar manner to all other switching operations for which OmniTRAX, Inc. provides management, legal, accounting, and other similar advisory services ("OmniTRAX Services"). OmniTRAX, Inc. covenants to provide such OmniTRAX Services to Tenant in substantially the manner as it does for all such other switching operations such that Tenant will be able to perform its duties and obligations pursuant to this Lease.

b. Letter of Credit.

i. Upon the Commencement Date, in lieu of a security deposit, Tenant shall deliver to Landlord, as security for the performance by Tenant of every covenant and condition of this Lease, an irrevocable and unconditional letter of credit (the "Letter of Credit") in the amount of [REDACTED] (the "Security Amount"), issued by and drawn upon a commercial bank (the "Issuing Bank") reasonably satisfactory to Landlord, having total assets of not less than [REDACTED], which Letter of Credit shall have an initial term of not less than one year and thereafter to be annually renewable for a term expiring not less than sixty (60) days following the expiration of the term of this Lease, shall permit multiple drawings, shall be transferable by the beneficiary at one or more occasions at no charge to the beneficiary, and otherwise be in form and content reasonably satisfactory to Landlord, be for the account of Landlord, and be in an amount equal to the Security Amount.

ii. If Tenant shall default (beyond applicable cure periods) with respect to any covenant or condition of this Lease, including, but not limited to the payment of Rent, Landlord may draw upon the whole or any part of such Letter of Credit to the payment of any sum in default or any reasonable sum which Landlord is required to spend as a direct and proximate cause of Tenant's default. If any portion of the Letter of Credit is so applied, Tenant, upon demand by Landlord, will restore the Letter of Credit to the original amount deposited.

iii. The Letter of Credit shall provide that (A) the Issuing Bank shall pay to Landlord or its duly authorized representative an amount up the face amount of the Letter of Credit upon presentation of the Letter of Credit and a sight draft, in the amount to be drawn; (B) it shall be deemed automatically renewed, without amendment, for consecutive periods of one (1) year each thereafter during the Lease Term, unless Issuing Bank sends written notice (hereinafter referred to as the "Non-Renewal Notice") to Landlord by certified or registered mail, return receipt requested, not less than sixty (60) days next preceding the expiration date of the Letter of Credit that it elects not to have the Letter of Credit renewed, and it being agreed that the giving of such Non-Renewal Notice shall, for the purpose of this Section 4.b., be deemed a default under this Lease unless Tenant replaces the Letter of Credit with a substitute Letter of Credit meeting the criteria of this Section 4.b., or with a cash deposit at least fifteen (15) days prior to the expiration date of the Letter of Credit; (C) Landlord, subsequent to its receipt of a Non-Renewal Notice, and no earlier than fifteen (15) days prior to the expiration date of the Letter of Credit, shall have the right, exercisable by means of sight draft, to receive the monies represented by the Letter of Credit and hold such proceeds pursuant to the terms of this Section 4.b, as cash security deposit pending the replacement of such Letter of Credit; and (D) upon Landlord's sale of the Property, the Letter of Credit shall be transferable by Landlord.

iv. To insure that Landlord may utilize the Security Amount represented by the Letter of Credit in the manner, for the purpose, and to the extent provided in this Section 4.b., the Letter of Credit shall provide (a) that the full amount (or any portion) thereof may be drawn down by Landlord upon the presentation to the issuing bank of Landlord's draft drawn on the issuing bank with accompanying statement executed by an authorized officer of Landlord to the effect that Landlord is entitled to draw under the Letter of Credit in accordance with the terms of the Lease, and (ii) that the Letter of Credit shall be transferable by Landlord to any transferee of Landlord's interest in the Premises, without cost to Landlord (other than Landlord's attorneys' fees), in the event of a transfer of Landlord's interest in the Premises. In the event of any such transfer, Landlord shall transfer any interest it may have in the Letter of Credit to the transferee thereof and Landlord (upon such transfer) shall thereupon be released by Tenant from all liability for the return of such Letter of Credit, and Tenant agrees to look solely to the new Landlord under the Lease for the return of said Letter of Credit; and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the Letter of Credit to a new Landlord. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the Letter of Credit and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

5. REAL ESTATE TAXES

a. As used herein, the following terms wherever initially capitalized shall have the following meanings:

i. “Taxes” shall mean all real estate taxes and assessments (general or special), real estate rental receipt or gross receipt taxes levied with respect to the Property, or any other amount levied against Landlord in substitution for, or in lieu of, any tax which would otherwise constitute a real estate tax or a specific tax on rentals from all or part of the Property, plus the reasonable costs, including attorneys’ and appraisers’ fees, of any negotiation, contests or appeal pursued by Landlord in an effort to reduce the taxes, or the assessment on which any of the foregoing taxes are based. Taxes shall specifically exclude all: (1) federal, state, and local income taxes, (2) franchise, gift, transfer, excise, capital stock, estate, succession, and inheritance taxes, and (3) penalties or interest for late payment of Taxes (unless such late payment is caused by Tenant’s failure to timely pay the Taxes).

ii. “Tax Year” shall mean each twelve (12) month period, commencing on December 1 of each such period, or such other period hereinafter established as the real estate tax year by the Town of Brookhaven.

b. Landlord agrees to timely pay all Taxes during the first Lease Year (and the applicable portion of the second Lease Year to the extent this Lease is terminated pursuant to Section 3.c. above) without any reimbursement from Tenant. Commencing on the first anniversary of the Commencement Date, Tenant shall pay to Landlord, as Additional Rent, all Taxes payable during each Tax Year (or part thereof) occurring thereafter during the Lease Term. Tenant shall pay to Landlord the Taxes in equal monthly payments, in advance, beginning on the first anniversary of the Commencement Date, based upon estimated annual Taxes (as estimated by Landlord), but subject to adjustment after the end of each Tax Year on the basis of the actual Taxes incurred. Any overpayment will be credited against future monthly obligations for Taxes or shall be refunded to Tenant, at Landlord’s option. Any underpayment by Tenant shall be paid by Tenant to Landlord within thirty (30) days after Landlord delivers to Tenant a statement reconciling the amount actually collected from Tenant against actual Taxes for the applicable Tax Year (or portion thereof). Landlord shall have the right to bill for Taxes after receipt of the tax bills or upon the expiration or sooner termination of this Lease (except to the extent the Lease is terminated pursuant to Section 3.c).

c. Landlord shall institute proceedings to reduce the assessed valuation of the Land or any buildings or any other improvements on such Land. In the event Landlord shall obtain a tax refund as a result of any such reduction proceedings, then, provided Tenant is not then in default under the terms of this Lease, and after all applicable grace periods have expired, and after the final conclusion of all appeals or other remedies, Tenant shall be entitled to the net refund obtained. As used herein, the term “net refund” means the refund plus interest, if any, thereon, paid by the governmental authority less appraisal, engineering, expert testimony, attorney, printing and filing fees and all other Landlord costs and expenses of the proceeding, including an administrative fee to Landlord equal to [REDACTED] of the tax refund. Tenant shall pay to Landlord all appraisal, engineering, expert testimony, printing and filing fees and all other reasonable costs and expenses of the proceeding incurred by Landlord in the event said proceeding does not result in any net refund. Notwithstanding anything contained to the contrary herein, Tenant shall not be entitled to any refund in excess of Taxes paid by Tenant hereunder.

d. In the event that Landlord fails for any Tax Year during the Term to institute and/or continue tax certiorari proceedings, Tenant may elect to institute such proceedings for

such Tax Year, unless Landlord's failure to institute such proceedings is the result of and required (i) by prior settlements of tax certiorari proceedings; or (ii) any payment in lieu of tax or similar agreement.

e. Tenant shall be liable for all taxes assessed against and levied upon Tenant's trade fixtures, furnishings, equipment, and all other personal property of Tenant located at the Premises.

6. DELIVERY

a. Landlord shall have no obligation to alter, improve, decorate or otherwise prepare the Demised Premises for Tenant's occupancy and Tenant agrees to take same "as is" and acknowledges that the taking of possession of the Premises by Tenant shall be conclusive evidence that the Premises is in good and satisfactory condition at the time such possession was so taken.

b. Subject to the parties' right to terminate this Lease pursuant to Section 2.a above, if Landlord cannot deliver possession of the Premises to Tenant on or prior to the Commencement Date due to a Force Majeure Event, neither this Lease, nor any of the provisions hereof, shall be invalid, void, or voidable, except as expressly provided in this Lease, and Tenant shall have no claim against Landlord arising from Landlord's failure to deliver possession of the Premises by the Commencement Date, but Landlord shall proceed to diligently pursue all action necessary to deliver possession of the Premises to Tenant.

c. Landlord agrees to install, in a good and workmanlike manner (i) a security gate at the entrance to the Premises; and (ii) fencing around the perimeter of the Premises (collectively, "Landlord's Work"). Landlord shall submit to Tenant copies of all invoices for Landlord's Work. Conditioned upon the occurrence of the Commencement Date, Tenant shall reimburse Landlord for the actual cost of Landlord's Work, not to exceed \$50,000 within ten (10) days following the later of (i) receipt from Landlord of all applicable invoices and lien waivers; (ii) the Commencement Date; and (iii) the final completion of Landlord's Work. Failure of Landlord to perform any Landlord's Work shall not result in any delay of the Commencement Date or result in any liability of Landlord to Tenant, provided Landlord shall use good faith efforts to complete Landlord's Work prior to the Commencement Date.

7. REPAIRS AND MAINTENANCE OF PREMISES AND ALTERATIONS

a. Notwithstanding any other provision of this Lease, but subject to Section 5 above, this Lease is a "triple net" lease and no costs or expenses associated with the Premises shall be incurred by Landlord during the Lease Term. Tenant shall take good care of and maintain the Premises and the improvements thereto and, at Tenant's sole cost and expense, make all repairs and replacements thereto (including, for the avoidance of ambiguity, capital repairs and replacements) thereto as and when needed to preserve said Premises and fixtures in good working order and condition, reasonable wear and tear, obsolescence and damage from the elements, fire or other casualty excepted. The railroad tracks, switches and connecting railroad track will be maintained in accordance with, at a minimum, Federal Railroad Administration Class I standards. Notwithstanding anything contained in this Article 7 to the contrary, Landlord

shall be responsible for making any capital repairs and replacements to the roofs and structural components to any building existing on the Premises as of the Effective Date.

b. Without limiting in any respect Tenant's obligations set forth in this Article, Tenant shall, during the Term hereof: (i) maintain, operate and keep in good working order and repair all buildings, structures or other improvements to the Premises, including, without limitation, the short-line rail tracks; (ii) replace any and all broken glass in or about the Premises; (iii) keep the Premises and the sidewalks adjoining the Land clean and in good condition, reasonably free of accumulations of dirt and litter; (iv) neither encumber such sidewalks, nor allow the same to be obstructed or encumbered in any manner; (v) make any and all repairs and/or replacements to the sidewalks, curbs, parking areas, driveways, loading areas, storage areas or staging areas within the Premises; (vi) keep the Premises properly paved (if applicable) and drained and in good order and repair; (vii) commence, within a reasonable time after the end of a snowfall, to remove accumulated ice and snow from the Premises and diligently prosecute the same to completion; and (viii) maintain any mandatory landscape buffer areas, if applicable. Notwithstanding anything to the contrary set forth in this Lease, Tenant shall not be required to make any capital repairs or replacements to the Premises during the first Lease Year or at any time after timely delivery of the [REDACTED] Termination Notice, except as required to maintain the railroad tracks, switches and connecting railroad track in accordance with Federal Railroad Administration Class I standards.

c. If any repairs required to be made by Tenant are not made within thirty (30) days after receipt of written notice delivered to Tenant from Landlord, in addition to any other remedies under this Lease, Landlord may make such repairs without liability to Tenant for loss or damage to Tenant's equipment, fixtures, inventory or business by reason of such repairs, and Tenant shall pay to Landlord upon written demand as Additional Rent hereunder the cost of such repairs, plus interest at the Maximum Rate accruing from the date that is thirty (30) days after receipt of such written demand until paid by Tenant. At the expiration or earlier termination of Lease Term, Tenant shall surrender the Premises in a substantially similar condition as it existed on the Commencement Date, reasonable wear and tear and loss by fire or other casualty excepted.

d. Tenant shall not make any installations, alterations, additions, repairs, or improvements that affect the roof, structural components, mechanical systems, or plumbing systems of any permanent building on the Premises, or which exceed \$50,000.00 in cost in any one instance, without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed, provided, however, nothing herein shall limit or restrict Tenant's right to make repairs or replacements to the short-line rail tracks. Unless specifically required to be removed by Landlord as part of Landlord's approval, all installations, alterations, additions, repairs, improvements, and fixtures, by whomever installed or erected (except Trade Fixtures, as defined below) shall remain upon and be surrendered with the Premises and become the property of Landlord at the expiration or termination of the Lease. Any alterations, additions, repairs, or improvements not requiring the consent of Landlord shall be removed by Tenant on or prior to the expiration or termination of the Lease. Tenant shall repair and restore, at Tenant's sole cost, any damage resulting from the removal of any such alterations, additions, repairs, or improvements. Tenant, at its own cost, and without Landlord's prior approval, may erect such shelves, racking, conveyors, bins, equipment (including any

automatic equipment identification systems), machinery, and trade fixtures (collectively “Trade Fixtures”) in the ordinary course of its business so long as such items do not alter the basic character of the Premises, do not overload or damage the Premises, are not affixed to the structural components of any permanent buildings on the Premises (including without limitation, columns, load bearing walls and bar joists, but excluding the floor slab), may be removed without injury to the Premises, and the construction, erection, and installation thereof complies with all Applicable Laws. Tenant shall remove all Trade Fixtures from the Premises prior to the expiration or earlier termination of this Lease, and Tenant shall repair all damage to the Premises caused by the removal of the Trade Fixtures.

e. All construction work done by Tenant within the Premises shall be performed in a good and workmanlike manner and in compliance with all Applicable Laws. Tenant shall, before commencing any alterations or accepting delivery of any materials to be used in connection with the alterations, deliver to Landlord certificates evidencing insurance coverages reasonably acceptable to Landlord. Tenant shall not cause or permit any materialmen’s, mechanics’, artisans’, or other liens to be filed against the Land, the Improvements, the Property, or the Premises, and nothing contained in this Lease shall be deemed the consent or request of 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, alterations, or repairs of or to the Premises, or any part thereof, nor as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of a materialmen’s, mechanics’ or other lien against the Land, the Improvements, the Property, or the Premises. If any such lien should be filed, Tenant shall cause the same to be discharged of record, or post a bond, within fifteen (15) days after Tenant’s receipt of notice of the filing of the same. If Tenant fails to discharge or bond over any lien within such period, then in addition to any other right or remedy of Landlord, Landlord may discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by a deposit in court or by posting a bond. Any amount paid by Landlord for the aforesaid purposes, or for the satisfaction of any lien caused by Tenant, and all reasonable expenses of Landlord in defending any action or in procuring the discharge of such lien, shall be deemed Additional Rent hereunder and shall be repaid by Tenant to Landlord within ten (10) days after Tenant’s receipt of written demand from Landlord together with sufficient documentation evidencing the costs, plus interest at the Maximum Rate.

8. ACCEPTANCE OF PREMISES

Tenant, upon completion of the Improvements, shall accept the Premises in its then “AS-IS,” “WHERE-IS” condition as suited for the uses permitted under this Lease. If requested by Landlord, Tenant shall execute a written acceptance of the Premises subject to any latent defects and punch list items.

9. WAIVER

a. Tenant, for itself, and on behalf of any and all persons claiming through or under it, including creditors of all kinds, does hereby waive and surrender all rights and privileges which they or any of them might have under or by reason of any present or future law, to redeem the Demised Premises or to have a continuance of this Lease for the term hereby demised after

having-been dispossessed or ejected therefrom by process of law or after the termination of this Lease as provided herein.

b. In the event Landlord commences any summary proceeding (whether for non-payment of rent, or for Tenant's holding-over, or otherwise), or an ejectment action to recover possession of the Demised Premises, or other action for non-payment of rent, or for a breach of any of the covenants and conditions hereunder, Tenant covenants and agrees that it will not interpose any counterclaim or set-off in any such action or proceeding, or seek by consolidation or otherwise to interpose any counterclaim or set-off unless the failure to assert same would constitute a waiver of such counterclaim or set-off by Tenant and Landlord fails to waive the right to assert such waiver in writing.

10. UTILITIES AND SERVICES

Tenant shall directly contract with the applicable utility companies for all utilities to the Premises and shall pay the bills therefor directly to the utility company providing such service. Tenant agrees to provide to Landlord energy and utility data within ten (10) days following written request from Landlord; provided, that in no event shall Landlord request any such information more than one (1) time during any six (6) month period. Such energy and utility data shall include, but not be limited to, utility bills and information on electricity, gas, water, and any other relevant utility usage. As an option, Tenant may elect to execute a Utility Authorization Release Form allowing Landlord to collect the energy and utility consumption data directly from supplying utility provider(s). Landlord shall not be liable to Tenant for any interruption in or curtailment of any utility service, including, without limitation, the supply of water, sewage, electrical current, and other services to the Premises, nor shall any such interruption or curtailment constitute a constructive eviction or grounds for rental abatement in whole or in part hereunder. No diminution or abatement of rent or other compensation shall be claimed by Tenant because of, nor shall this Lease or any of the obligations of Tenant be affected or reduced by reason of, any interruption of any utility services. Notwithstanding the foregoing, in the event that such interruption, curtailment or suspension is caused by Landlord's gross negligence or willful misconduct and continues for a period of five (5) days and interferes with Tenant's conduct of its business throughout such five (5) day period, Rent shall be abated until such interruption, curtailment or suspension ceases.

11. USE OF PREMISES

a. The Premises may be used 24 hours per day/7 days per week by Tenant as a short-line rail terminal for freight rail operations (including common carrier railroad services, railcar delivery and switching services) and transload operations (collectively, the "Permitted Use"), and any other lawful purpose subject to Landlord's consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Tenant shall, at its sole cost: (i) obtain all licenses and permits necessary for its particular use of the Premises, and (ii) comply with all Applicable Laws. The Premises shall not be used for any noxious purposes, in violation of any Applicable Laws, or in any manner that creates any nuisance. If the Premiums on the Improvements are increased due to Tenant's use of the Premises, Tenant shall pay to Landlord the amount of the increase in the Premiums. As part of the Permitted Use, Tenant will have the right to operate within the Premises as a common carrier, to provide all rail switching,

interchange, storage and dispatch services, to receive all revenue from the Premises (subject to Tenant's obligation to pay Rent), to enter into and/or amend and modify interchange agreements or other agreements with Class I or other line haul carriers, industry track agreements, utility or communication occupancies, licenses, subleases or other similar agreements (collectively, the "Subordinate Agreements") related to its operations, in each case subject to the rights of any Occupants under the Occupancy Agreements that do not unduly interfere with Tenant's common carrier obligation over the Rail Line (defined below). Any such Subordinate Agreements entered into by Tenant shall be subject and subordinate to the terms of this Lease and shall not extend beyond the Term of this Lease. Tenant shall not enter into any Subordinate Agreements that affect title to the Property without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

b. Tenant shall provide freight rail service over the Rail Line and any connecting track on the Premises consistent with the common carrier obligation under 49 U.S.C. subtitle IV, part A, except that Tenant may enter into a written agreement with a rail customer that modifies or waives, as to service to that customer, any obligation that would otherwise apply under this Section 11.b.

c. Landlord hereby consents to Tenant making an application and/or filing to the STB and Landlord and Tenant agree to submit all required applications and/or filings to the STB to obtain all approvals required for Tenant to operate the short-line rail and rail terminal located on the Premises and the parties agree to cooperate in connection with same. Tenant shall submit such application and/or filing to Landlord for Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

d. Tenant shall promptly notify Landlord of any embargo or open and prepay station note imposed on traffic moving to or from any point on the Tracks. Tenant shall not impose any embargo or open and prepay station note that is inconsistent with its common-carrier obligation or its obligations under this Lease.

e. Unless Tenant seeks discontinuance authority from the STB based on the termination of this Lease, Tenant shall notify Landlord at least thirty (30) days prior to the date that Tenant intends to initiate any STB proceeding to discontinue rail freight service on any portion of the Leased Premises. Tenant shall include in its notice the reasons for seeking such discontinuance. Tenant shall comply with all regulatory requirements related to such discontinuance.

12. CONTINUOUS OPERATIONS

During the Lease Term, Tenant agrees not to cease Tenant's operations at the Premises for any period that would violate, in any material respect, any rules, regulations or requirements of the STB beyond any applicable notice and cure periods.

13. DAMAGE BY CASUALTY

Tenant shall give prompt notice to Landlord in case of fire or other damage to the Premises (a "Casualty Event"). In case of damage to or destruction to the Improvements by fire or any other cause, similar or dissimilar, insured or uninsured (a) Landlord shall restore, repair,

replace or rebuild the buildings on the Premises as nearly as may be practicable to the condition, quality and class the same was in immediately prior to such damage or destruction, or with such changes or alterations as Landlord shall elect to make (subject to Tenant's reasonable approval); and (b) Tenant shall restore, repair, replace, or rebuild all other Improvements as nearly as may be practicable to the condition, quality, and class the same was in immediately prior to such damage or destruction, or with such changes or alterations as Tenant shall elect to make. Such restoration, repairs, replacement, or rebuilding shall be commenced with reasonable promptness and prosecuted with reasonable diligence. Notwithstanding anything to the contrary stated in this Lease, upon a Casualty Event that results in Material Damage (as defined below), Tenant shall have the right, exercisable upon written notice to Landlord delivered within 75 days of the applicable Casualty Event, to elect not to restore, repair, replace, or rebuild such Improvements and to instead terminate this Lease, if (i) the Casualty Event occurs during the first Lease Year or otherwise prior to the parties finally agreeing upon the [REDACTED] or (ii) the Casualty Event occurs in any of the last two Lease Years. If Tenant elects to terminate the Lease in accordance with the preceding sentence, Tenant agrees to pay over to Landlord any insurance proceeds received by Tenant that are applicable to the Improvements owned by Landlord, including, without limitation, any and all Improvements related to the railroad tracks and rail terminal (which obligation shall survive the termination of this Lease) and this Lease shall terminate as of the date set forth in the aforementioned notice, with neither party having any further obligation to the other under this Lease, except for those obligations stated to survive termination hereof. For purposes hereof, "Material Damage" means, as a result of a Casualty Event, either (i) more than [REDACTED] of the Premises needs to be replaced or rebuilt, or (ii) the cost to restore, repair, replace, or rebuild the Improvements that Tenant is required to restore, repair, replace or rebuild will exceed [REDACTED] of the full replacement value of such Improvements at the time such Casualty Event occurs.

14. INDEMNITY AND INSURANCE

a. To the fullest extent permitted by Applicable Laws, Tenant releases, indemnifies, protects, defends (with counsel reasonably acceptable to Landlord), and holds Landlord and all Landlord Parties harmless from and against all Claims to the extent arising from: (i) any use or occupancy of, or activities within, the Premises or Property by Tenant or any Tenant's members, shareholders, officers, managers, agents, employees, contractors, invitees, subtenants, or any person on the Premises by reason of the Tenant's use or occupancy of the Premises (each a "Tenant Party"), (ii) any default by Tenant under this Lease, (iii) any negligence or willful misconduct of Tenant or any Tenant Party, (iv) any accident, injury, or damage in or to the Premises, and (v) any accident, injury, or damage in, about, or to the Property; provided, however, Tenant shall not be obligated to indemnify the Landlord Parties for any of the matters for which Landlord is obligated to indemnify Tenant and the Tenant Parties under Section 14(b) or to the extent a Claim was directly caused by the gross negligence of Landlord or a Landlord Party. As used in this Lease, "Claims" means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses, or expenses including, without limitation, reasonable attorneys' fees and the costs of enforcing any obligation under this Lease. The indemnity provided for in this Section shall survive the expiration or termination of this Lease.

b. To the fullest extent permitted by Applicable Laws, Landlord releases, indemnifies, protects, defends (with counsel reasonably acceptable to Landlord), and holds

Tenant and all Tenant Parties harmless from and against all Claims to the extent arising from: (a) any default by Landlord under this Lease, and (b) any gross negligence or willful misconduct of Landlord or any Landlord Party. The indemnity provided for in this Section shall survive the expiration or termination of this Lease.

c. Tenant shall maintain during the Lease Term the following minimum insurance coverage:

i. Railroad Liability Insurance subject to limit of [REDACTED] each accident and in the aggregate for bodily injury, property damage, contractual liability, pollution clean-up expenses for risks assumed by Tenant, and employers' liability for bodily injury sustained by employees of Tenant in the course of their employment under the Federal Employers Liability Act. Railroad Liability Insurance shall provide excess Business Automobile Liability Insurance. The Railroad Liability Insurance shall not be modified to eliminate or reduce coverage for the indemnity obligations under this Lease (other than modifications required by the insurer and which do not diminish the insurance coverage in any material respect), including without limitation, modification of the definition of an "insured contract", independent contractors, gravity related injuries and injuries sustained by an employee of an insured or any additional insured (other than modifications required by the insurer and which do not diminish the insurance coverage in any material respect);

ii. If Tenant uses or stores Hazardous Materials at the Premises or Property, except for the use and storage of Hazardous Materials that are exclusively common carrier obligations pursuant to Section 16 of this Lease or the use or storage of limited quantities of Hazardous Materials that is incident to, and reasonably necessary for, the maintenance of the Premises or Tenant's Permitted Use and is in compliance with all Hazardous Materials Laws (as defined in Section 16.e.ii. below) and Applicable Laws, Tenant shall maintain pollution liability insurance with limits not less than [REDACTED] per occurrence and in the aggregate for bodily injury and property damage; provided, however, that this pollution liability insurance requirement shall not apply to the extent that Tenant's Railroad Liability Insurance provides coverage for such pollution risks. Tenant acknowledges that Railroad Liability insurance provides for sudden and actual pollution events, and does not extend to gradual contamination. Therefore, if Tenant's activities at the Premises give rise to gradual or non-sudden environmental exposures, Tenant shall obtain and maintain separate pollution liability insurance to cover such risks. Under no circumstances shall Tenant be responsible for any pre-existing environmental conditions on the Premises;

iii. If construction will be performed at the Property by or on behalf of Tenant, Tenant shall provide, or shall cause contractor to provide, a builder's risk policy or installation floater to cover that portion of the work to be constructed, installed, altered, or repaired by contractor. Landlord shall be listed as a named insured or loss payee on the applicable policy. Notwithstanding the foregoing, this requirement shall not apply to track construction activities as such work will be covered by course of construction insurance maintained under Tenant's Special Form Property Insurance policy. Tenant further acknowledges that the course of construction coverage provided by Tenant's property insurance, and therefore the exception to the builder's risk insurance requirement, does not extend to the

construction of buildings. All policies are subject to approval of Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed.

iv. Tenant shall provide property insurance policy against loss or damage by fire (and against such other risks as would be covered by "All-Risk" insurance), including, without limitation, machinery & equipment breakdown with both coverage parts including coverage for spoilage, if applicable, and glass breakage that covers all Improvements and Tenant's property now or hereafter installed in the Premises (including, without limitation, all inventory, trade fixtures, furniture and other property removable by Tenant under the provisions of this Lease). For the avoidance of doubt, Tenant shall not be responsible for insuring any buildings at the Premises, which shall remain the sole responsibility of Landlord to insure. Such policy will insure Tenant's work and all Tenant improvements. Tenant's policy will include the following policy terms and conditions: (a) special causes of loss, (b) replacement cost coverage equal to 100% of the replacement cost of aforementioned property, (c) no coinsurance, and (d) business income & extra expense including rental value equal to the expected gross annual revenue. This coverage may be provided on a 12-month actual loss sustained basis. Tenant's property insurance shall include coverage for real and personal property of others, including foreign rolling stock and lading, in the Tenant's care, custody or control;

v. such other insurance as may be reasonably required by any lender holding a mortgage or deed of trust on the Premises, provided that Landlord provides Tenant with at least sixty (60) days' prior written notice of such requirement to allow Tenant reasonable time to procure such insurance.

d. Tenant's insurance policies shall (i) be issued by an insurance company licensed to do business in the State of New York that is rated by AM Best as A-VII or better, (ii) be reasonably satisfactory to Landlord, (iii) excluding worker's compensation and employer's liability insurance, name Landlord, Landlord's property manager (if any), and Landlord's lender as additional insureds and for property insurance to include Landlord as a loss payee where applicable, and (iv) be non-cancellable except after thirty (30) day's prior notice to Landlord, (v) shall be primary to any insurance of or available to Landlord, and (vi) provide a waiver of subrogation in favor of Landlord, Landlord's property manager (if any), and Landlord's lender. Tenant shall provide to Landlord both prior to Tenant's initial entry into the Premises and annually thereafter with certificates of insurance, on ACORD Form 25 or an equivalent, confirming that all policies required to be held by Tenant are in effect.

e. All parties hired by Tenant shall, upon Landlord's written request, provide evidence of and maintain general liability coverage, automobile liability coverage, workers' compensation and employer's liability coverage, and other coverages as deemed necessary by Landlord in its reasonable judgement consistent with industry standards for the scope of work performed. Coverage shall include, in favor of Tenant and Landlord, but shall not be limited to, additional insured status, primary and non-contributory coverage, and waiver of subrogation.

f. If Tenant fails, neglects, or refuses to maintain the insurance required under this Lease, Landlord may procure or renew such insurance. Tenant shall reimburse Landlord for any amounts paid by Landlord within thirty (30) days after receipt of notice by Landlord.

g. During the term of this Lease, Tenant shall pay to Landlord annually, as Additional Rent, [REDACTED]

h. Intentionally omitted.

i. In the event Tenant sublets or licenses all or any portion of the Premises to any third-party, or permits any party to enter on and occupy the Premises (each an "Occupant"), such subletting, licensing, entry or occupancy shall be pursuant to a written agreement between Tenant and the Occupant, and shall provide that such Occupant shall:

i. carry commercially reasonable liability policies of insurance, including, at a minimum, commercial general liability and worker's compensation and employer's liability insurance;

ii. excluding worker's compensation and employer's liability insurance, name Landlord, Landlord's property manager (if any), and Landlord's lender as additional insureds;

iii. assume towards Tenant and Landlord the indemnity obligations that Tenant assumes toward Landlord pursuant to Section 14(a) above.

15. APPLICABLE LAWS

Tenant agrees, at its own expense, to promptly comply with all applicable federal, state, county, and city laws, ordinances, rules, and regulations of governmental authorities, and all requirements of any legally-constituted public authority, and any private covenants, conditions, or restrictions (collectively, the "Applicable Laws") related to Tenant's occupancy, use, and alteration of the Premises. On the Commencement Date, the Premises will comply with all Applicable Laws. Tenant, at its own expense, agrees to promptly cause the Premises (including the docks) to comply with any Applicable Laws that are promulgated following the Commencement Date.

16. ENVIRONMENTAL MATTERS

a. Compliance with Hazardous Materials Laws. Neither Tenant, nor any Tenant Party, shall cause or permit any Hazardous Materials (as defined in Section 16.e.i. below) to be brought upon, kept, or used in or about the Premises or any buildings thereon, other than as may be required pursuant to common carrier obligations under Applicable Laws, and provided that limited quantities of Hazardous Materials may be used, handled, or stored on the Premises if the

use or storage is incident to, and reasonably necessary for, the maintenance of the Premises or Tenant's Permitted Use and is in compliance with all Hazardous Materials Laws (as defined in Section 16.e.ii. below) and Applicable Laws. Tenant, at its sole cost, will comply with all Hazardous Materials Laws related to Tenant's use of the Property. Prior to the expiration or earlier termination of this Lease, Tenant will remove from the Premises, at Tenant's sole cost, all Hazardous Materials that Tenant or any Tenant Party causes or permits to be present in, on, or under the Property. Upon Landlord's written request, Tenant will promptly deliver to Landlord documentation required to be maintained by Tenant under any Hazardous Materials Laws. All such documentation will list Tenant or a Tenant Party as the responsible party and will not attribute responsibility for any Hazardous Materials to Landlord or any Landlord Party. All reporting and warning obligations required under Hazardous Materials Laws arising from Tenant's use or occupancy of the Premises or Property are Tenant's sole responsibility. Tenant will not apply for or maintain any permits, licenses, or other governmental approvals for the transportation, storage, use, or disposal of Hazardous Materials on the Property without having first having obtained Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. To the extent that Tenant, or any Tenant Party, uses, handles, or stores any Hazardous Materials upon the Property, Landlord, in its commercially reasonable discretion, may obtain, or alter its, insurance policy(ies) related to the Property to insure claims related to said Hazardous Materials, or as a result of the presence of said Hazardous Materials, and Tenant shall be solely responsible for any additional costs and premiums related thereto as Additional Rent hereunder, and not as part of the Operating Expenses.

b. Notice of Actions. Tenant will notify Landlord of any of the following actions affecting Landlord, Tenant, or the Property that in any way relate to Tenant's use of the Property, immediately after Tenant becomes aware of the same: (a) any enforcement, clean-up, removal, or other governmental or regulatory action instituted, completed, or threatened under any Hazardous Materials Law; (b) any Claims made or threatened relating to any Hazardous Materials on the Property; and (c) any reports, records, letters of inquiry and responses, manifests, or other documents made by any person, including Tenant, to or from any environmental agency relating to any Hazardous Materials. Tenant will not take any remedial action in response to the presence of any Hazardous Materials in, on, or under the Property, nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Materials in, on, or under the Property without first notifying Landlord of Tenant's intention to do so and affording Landlord reasonable opportunity to investigate, appear, intervene, and otherwise assert and protect Landlord's interest in the Property.

c. Tenant's Hazardous Materials Indemnification. To the fullest extent permitted by Applicable Laws, Tenant releases, indemnifies, protects, defends (with counsel reasonably acceptable to Landlord), and holds Landlord and each Landlord Party harmless from and against all Claims to the extent arising, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release, or management of Hazardous Materials in, on, under, or from the Property (including water tables and atmosphere), but only to the extent arising from Hazardous Materials that Tenant or any Tenant Party brings onto, keeps, uses on, or permits to be brought upon, kept, or used on, the Premises or the Property. Tenant's indemnification obligations under this Section 16.c. includes, without limitation and whether foreseeable or unforeseeable: (a) the costs of any required or necessary repair, compliance,

investigations, clean-up, monitoring, response, detoxification, or decontamination of the Property; (b) the costs of implementing any closure, remediation, or other required action in connection with the Hazardous Materials; (c) the value of any loss of use and any diminution in value of the Property and adjacent and nearby properties, including groundwater; and (d) reasonable consultants' fees, experts' fees, and response costs. The obligations of Tenant under this Section 16 shall survive the expiration or earlier termination of this Lease for a period of four (4) years. Tenant shall have no liability for any Hazardous Materials existing in, on, under, or from the Property that: (w) existed prior to Tenant's entry onto the Property; (x) resulted from any Hazardous Materials brought onto the Property by a party other than Tenant or a Tenant Party; (y) resulted from any Hazardous Materials which migrated to the Property; or (z) resulted from the gross negligence or willful misconduct of Landlord or a Landlord Party.

d. Landlord agrees to indemnify and save Tenant harmless from and against any and all costs, expenses, claims, demands, loss, liability, fines and other penalties arising in connection with or as a result of any hazardous condition created or permitted by Landlord at the Premises including, but not limited to, the presence of Hazardous Materials created or allowed to exist by Landlord, its agents, employees, and contractors, or by prior tenants and/or occupants of the Premises.

e. Definitions.

i. "Hazardous Materials" means any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "Hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation now existing or existing on or after the Effective Date as the same may be interpreted by government offices and agencies, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) oil or any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, (vii) radioactive materials and waste, and (viii) infectious waste.

ii. "Hazardous Materials Laws" means any federal, state, or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority, existing now or in the future, which classify, regulate, list, or define Hazardous Materials.

17. EMINENT DOMAIN

a. If the Premises, or any substantial part thereof, is taken, if access to the Premises is taken, or if a portion of the parking area is taken such that the Property no longer conforms to zoning regulations applicable to the Property, in any permanent manner by any competent authority under the power of eminent domain, then the term of this Lease shall cease and terminate on the date when possession of the Premises, or the part thereof, passes to the

condemning authority. Tenant shall have no claim against Landlord for the value of any unexpired Lease Term. If a taking reduces the total area of the Property by 50% or more, regardless of whether the Premises is affected or the taking will render the Premises unsuitable for the Permitted Use, then Landlord may terminate this Lease by notifying Tenant at least thirty (30) days prior to the date the condemning authority takes possession of the portion of the Property. If a taking reduces the Property so as to render the Premises unsuitable for the Permitted Use, as reasonably determined by Tenant, then Tenant may terminate this Lease by notifying Landlord at least thirty (30) days prior to the date the condemning authority takes possession of the portion of the Property. If there is a partial taking pursuant to which neither Landlord nor Tenant terminates this Lease, the Base Rent and Additional Rent due hereunder shall be equitably reduced in proportion to the part of the Premises so taken. No money or other consideration shall be payable by Landlord to Tenant for the right of cancellation, and Tenant shall have no right to share in the condemnation award or in any judgment for damages caused by the taking. Nothing in this Section 17.a. shall prevent a separate award being made to Tenant by the condemning authority for the cost of removal of, Tenant's equipment or fixtures; for moving expenses; or for Tenant's personal property and fixtures, but Tenant's award shall not decrease Landlord's award.

b. If the Premises, or any substantial part thereof, shall be taken in any temporary manner by any competent authority under the power of eminent domain, this Lease shall remain in full force and effect, and Rent shall be equitably reduced to account for such temporary taking. No money or other consideration shall be payable by Landlord to Tenant for such temporary taking and Tenant shall have no right to share in the condemnation award or in any judgment for damages caused by the taking. Nothing in this paragraph shall preclude an award being made to Tenant by the condemning authority for the value of Tenant's interest in the Premises under this Lease, for loss of business or depreciation to and cost of removal of equipment or fixtures or for moving expenses or for Tenant's personal property and fixtures, but this award shall not decrease Landlord's award. To the extent that Tenant receives such award, Landlord shall have no obligation to abate any portion of Tenant's Rent.

18. ASSIGNMENT AND SUBLETTING

a. Except as permitted in Section 11 or this Section 18.a. below, Tenant shall not assign this Lease or any interest hereunder, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant (a) without the prior written consent of Landlord to each assignment and sublease, which consent shall not be unreasonably withheld, conditioned, or delayed, subject to review by Landlord of such proposed assignee's, sublessee's, or user's financials; and (b) except in compliance with the rules, regulations and requirements of the STB. Any assignment of this Lease or any sublease of all or a portion of the Premises made by Tenant in violation of this Article 18 shall be deemed null and void. Tenant may assign this Lease or sublet all or any part of the Premises, without Landlord's consent, but with no less than ten (10) days' prior written notice to Landlord, to (each a "Permitted Transferee") : (i) any entity controlling Tenant, controlled by Tenant, or under common control with Tenant, (ii) to an entity into which Tenant is merged or consolidated, or (iii) to an entity to which substantially all of Tenant's assets are transferred, but any merger, consolidation, or transfer of assets must be for a legitimate business purpose and not principally for the purpose of transferring Tenant's interest in this Lease. With respect to any assignment permitted by this Section 18.a., the assignee shall

become directly liable to Landlord, and with respect to any assignment not requiring the approval of Landlord, either the assignee shall have a credit rating and general financial wherewithal (as determined by Landlord in its reasonable discretion) equal to or greater than that of Tenant, or Tenant shall remain fully obligated under this Lease.

b. If Landlord transfers (other than for collateral security purposes) its ownership interest in the Premises, the transferor is automatically relieved of all obligations on the part of Landlord accruing under this Lease from and after the date of the transfer, provided that: (a) the transferee agrees in writing to assume such obligations, and (b) the transferor delivers or credits to the transferee any funds the transferor holds in which Tenant has an interest (such as the Security Deposit). Landlord's covenants and obligations under this Lease bind each successive Landlord only during and with respect to its respective period of ownership, but each transferor shall remain entitled to the benefits of Tenant's releases, indemnities, insurance, and other similar obligations under this Lease with respect to matters arising or accruing during the transferor's period of ownership.

c. For the purposes of this Lease (i) "Landlord" shall include its heirs, representatives, assigns, and successors in title to Premises, and (ii) "Tenant" shall include its heirs and representatives, and if this Lease is assigned or subleased as permitted by this Lease, shall also include Tenant's assignees or sublessees, as to Premises covered by such assignment or sublease.

d. Landlord and Tenant hereby agree that upon Landlord's assignment of the Arrow Lease to Tenant, Arrow shall be deemed to be a subtenant of Tenant and the Arrow Lease shall be deemed to be a sublease under this Lease. If this Lease should be terminated prior to the Expiration Date or if Landlord should succeed to Tenant's estate in the Premises, then at Landlord's election Arrow shall either surrender the Premises to Landlord within sixty (60) days of Landlord's request therefor, or attorn to and recognize Landlord as the subtenant's landlord under the sublease and Arrow shall promptly execute and deliver any instrument Landlord may request to evidence such attornment. Nothing contained herein to the contrary shall be deemed a waiver by Landlord to collect any Rent or Additional Rent due hereunder from the Subtenant.

19. DEFAULT; REMEDIES

a. The occurrence of any of the following shall constitute a "Tenant Default" under this Lease:

i. Tenant fails to pay any Rent within five (5) days following its due date and such failure is not cured within five (5) business days following receipt of written notice thereof from Landlord;

ii. The termination of any insurance required to be carried by Tenant under this Lease without replacement thereof by comparable coverage on or before the date of such termination;

iii. Tenant fails to perform any of its obligations under this Lease other than the payment of Rent or maintenance of insurance, and such failure continues for more than thirty (30) days (or, in the case of Tenant's failure to timely deliver an estoppel certificate, for more

than ten (10) days) after Tenant receives notice from Landlord demanding that Tenant cure such failure, or if such failure cannot be cured within thirty (30) days, within a period of time reasonably necessary to complete the cure so long as Tenant has commenced and is diligently pursuing the cure within the original thirty (30) day period;

iv. Tenant makes material misrepresentations or omissions in any financial statements, correspondence, or other information provided to Landlord by Tenant in connection with any consent or approval Tenant requests from Landlord under this Lease;

v. Tenant files a petition under any chapter of the Bankruptcy Code, or under any federal, state, or foreign bankruptcy or insolvency statute, or Tenant makes a general assignment or general arrangement for the benefit of creditors;

vi. An involuntary petition is filed under any chapter of the Bankruptcy Code, or under any federal, state, or foreign bankruptcy or insolvency statute, or a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed, by or against Tenant and such filing not being dismissed within sixty (60) days;

vii. An order is entered for or against Tenant for relief under any chapter of the Bankruptcy Code, or under any federal, state, or foreign bankruptcy or insolvency statute;

viii. A “custodian” is appointed, as such term is defined in the Bankruptcy Code (or of an equivalent thereto under any federal, state, or foreign bankruptcy or insolvency statute) for Tenant, or a trustee or receiver is appointed to take possession of substantially all of Tenant’s assets (or any of Tenant’s assets located at the Premises) or of Tenant’s interest in this Lease; or

ix. Substantially all of Tenant’s assets located at the Premises, or Tenant’s interest in this Lease, are subjected to attachment, execution, or other judicial seizure.

If a court of competent jurisdiction determines that any act described in this Section 19.a. does not constitute a Tenant Default, and the court appoints a trustee to take possession of the Premises (or if Tenant remains a debtor-in-possession of the Premises), and such trustee or Tenant transfers Tenant’s interest hereunder, then Landlord is entitled to receive the same amount of Rent as Landlord would be entitled to receive if such transfer had occurred pursuant to Section 18.

b. Upon the occurrence of any Tenant Default, Landlord may, without any demand or notice (except as expressly required in this Section 19), elect any one or more of the following remedies:

i. Landlord may terminate this Lease by giving notice of termination to Tenant, in which case this Lease shall terminate on the date specified in the notice, and possession of the Premises shall immediately return to Landlord, , subject to any common carrier replacement requirements of the STB. Landlord may immediately recover from Tenant all of Landlord’s actual damages incurred by reason of the Tenant Default, including, the following: (i) to the extent permitted by Applicable Laws, the difference, discounted using the Treasury Yield (as defined in this Section below), between the value of all Base Rent, Additional Rent, and all

other sums which would have been payable under this Lease by Tenant for the remainder of the Lease Term (the "Remaining Term"), and the aggregate reasonable rental value of the Premises for the Remaining Term, as reasonably determined by Landlord taking into consideration all relevant factors; plus (ii) all reasonable costs of recovering possession of the Premises and all reasonable costs incurred by Landlord due to the Tenant Default, including reasonable attorneys' fees; plus (iii) all unpaid Base Rent and Additional Rent accrued as of the date of termination, including Service Charges thereon and interest thereon at the Maximum Rate; plus (iv) all other sums of money and damages owed by Tenant to Landlord on the date of termination; plus (v) all other amounts reasonably necessary to compensate Landlord for all damages caused to Landlord by Tenant's Default, including reasonable attorneys' fees. Additionally, any of Tenant's property remaining in the Premises may be removed by Landlord and stored in a warehouse at Tenant's cost without Landlord being deemed guilty of trespass or becoming liable for any loss or damage to Tenant's property. If Tenant fails to pay the storage charges for Tenant's property as and when due, Landlord may deem such property abandoned and cause such property to be sold or otherwise disposed of without further obligation or any accounting to Tenant. "Treasury Yield" shall mean the rate of return per annum of Treasury Constant Maturities as published in document H.15 by the Board of Governors of the U.S. Federal Reserve System for the day on which the termination occurs, or if the termination occurs on a day on which Treasury Constant Maturities are not published, for the prior business day. The Treasury Constant Maturity Rate utilized shall be for the term closest to, but not exceeding, the number of months remaining in the Remaining Term. If the publishing of the rate of return of Treasury Constant Maturities is ever discontinued, then the Treasury Yield shall be based upon an index which, in Landlord's reasonable determination, most nearly corresponds to the rate of return of Treasury Constant Maturities.

ii. Landlord may terminate Tenant's right to possess the Premises without terminating this Lease, in which case Tenant will immediately surrender possession of the Premises to Landlord. In such case, this Lease will continue in full force and effect (except for Tenant's right to possess the Premises), and Tenant shall continue to be obligated for and pay all Rent as and when due under this Lease. Unless Landlord specifically states that it is terminating this Lease, Landlord's termination of Tenant's right to possess the Premises shall not be deemed an election by Landlord to terminate this Lease. If Landlord terminates Tenant's right to possess the Premises, Landlord may re-enter the Premises, remove all of Tenant's property from the Premises, and store the same in a warehouse at Tenant's cost without Landlord being deemed guilty of trespass or becoming liable for any loss or damage to Tenant's property. If Tenant fails to pay the storage charges as and when due, Landlord may deem Tenant's property abandoned and cause such property to be sold or otherwise disposed of without further obligation or any accounting to Tenant. Landlord, at Landlord's option, may relet the whole or any part or parts of the Premises from time to time, either in the name of Landlord or otherwise, to such tenant or tenants, for such term or terms ending before, on or after the Expiration Date, at such rental or rentals and upon such other conditions, which may include concessions and free rent periods, as Landlord, in its sole discretion, may determine. Landlord shall have no obligation to relet the Premises or any part thereof and shall in no event be liable for refusal or failure to relet the Premises or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon any such reletting, and no such refusal or failure shall operate to relieve Tenant of any liability under this Lease or otherwise to affect any such liability. Tenant will be immediately liable to Landlord for all Re-entry Costs (as defined in this Section below) and must

pay Landlord such Re-entry Costs within five (5) days after receipt of Landlord's demand to Tenant for payment of same. Landlord may relet the Premises for a period shorter or longer than the Remaining Term. If Landlord relets all or any part of the Premises, Landlord will, on a monthly basis, credit any Net Rent (as defined in this Section below) received for the current month against Tenant's Rent obligation for the next succeeding month. If the Net Rent received for any month exceeds Tenant's Rent obligation under this Lease for the succeeding month, Landlord will retain the surplus. "Re-entry Costs" means all costs of any kind or nature that Landlord incurs with respect to re-entering and reletting all or any part of the Premises after a Tenant Default, including, without limitation, all costs related to: (a) maintaining or preserving the Premises; (b) recovering possession of the Premises, (c) removing persons and property from the Premises and storing such property, including court costs and reasonable attorneys' fees; (d) renovating or altering the Premises; (e) the value of free rent and other concessions Landlord gives to a third-party in connection with reletting all or any part of the Premises, and/or (f) real estate commissions, advertising expenses, and similar expenses related to reletting the Premises. "Net Rent" means all rent Landlord receives from reletting all or any part of the Premises after deducting any unpaid Re-entry Costs and any other amounts owed by Tenant to Landlord.

iii. Landlord may pursue such other remedies under Applicable Laws or in equity.

c. A "Landlord Default" shall occur if Landlord fails to perform any of its obligations under this Lease within thirty (30) days following Landlord's receipt of notice from Tenant demanding that Landlord cure such failure, or if such failure cannot be cured within thirty (30) days, within a period reasonably necessary to complete the cure so long as Landlord has commenced and is diligently pursuing the cure within the original thirty (30) day period. Any Landlord Default notice from Tenant to Landlord shall state the nature and extent of the asserted failure and identify the provisions of this Lease containing the obligations of Landlord that Tenant asserts Landlord has failed to perform. If Tenant receives notice of a Mortgagee's name, address, and a request for notice upon a Landlord Default, Tenant shall provide the same notice required by this Section 19.c. to such Mortgagee at the same time Tenant gives notice to Landlord. If a Landlord Default occurs, Tenant shall have the right to: (i) sue for damages sustained by reason of the Landlord Default; (ii) perform the obligations described in Tenant's default notice, in which case Landlord shall reimburse Tenant for the reasonable costs of the performance of such obligations within thirty (30) days after Tenant's submission of an invoice therefor to Landlord; and/ or (iii) pursue any remedy available to Tenant under Applicable Laws or in equity. If Tenant elects to proceed under clause (ii) above, then such Landlord Default shall be deemed to have been cured when Tenant's costs has been reimbursed in full.

d. No provision of this Lease shall be deemed to have been waived by either party unless such waiver is in writing and signed by the party making such waiver. No custom or practice which may grow up between the parties in connection with the terms of this Lease shall be construed to waive or lessen either party's right to insist upon strict performance of the terms of this Lease, without a written notice thereof to the other party.

20. WAIVER OF CLAIMS AND SUBROGATION

Neither Landlord nor Tenant shall be liable to the other for any loss arising out of damage to or destruction of the Premises, the Improvements, or the contents of any part thereof, when such loss is caused by any perils which are, or should be, insured against by the property insurance policies required to be carried by Landlord and Tenant under this Lease. All such claims for all loss are hereby waived. Said waiver of liability is effective whether the damage or destruction is caused by the negligence of either Landlord, a Landlord Party, Tenant, or a Tenant Party. It is the agreement of Landlord and Tenant that the Rent under this Lease contemplates that each of Landlord and Tenant shall fully provide its own insurance protection, and that each of Landlord and Tenant shall look to its respective insurance carriers for reimbursement of any such loss and that the insurance carriers involved shall not be entitled to subrogation under any circumstances against any party to this Lease. Neither Landlord nor Tenant shall have any interest or claim in the other's insurance policy or policies, or the proceeds thereof, unless specifically covered therein as an additional insured. Any property insurance policy maintained by either of Landlord or Tenant must permit or include a waiver of subrogation in favor of the other party consistent with the provisions of this Section 20.

21. MORTGAGE SUBORDINATION

a. This Lease is subject and subordinate to any lien or security interest of any Mortgage, now or in the future, encumbering the Property, provided that, as to any future Mortgage, so long as Tenant is not in default under the terms of this Lease, the right of possession of Tenant to the Premises shall not be affected or disturbed by such holder in the exercise of any of its rights under the mortgage or any note secured thereby, any sale of the Premises pursuant to the exercise of any rights and remedies under the mortgage or otherwise shall be made subject to Tenant's right of possession under this Lease, and Tenant shall have the right to exercise its rights under Section 45 and 46 of this Lease. The provisions of this Article shall be self operative and no further instrument of subordination shall be required. The term "Mortgage" as used in this Lease shall include ground leases, deeds of trust, and deeds to secure debt. Tenant agrees that, in the event of foreclosure of any such Mortgage, or the sale of the Premises under the power contained therein, Tenant will attorn to and accept the purchaser at any such sale as Landlord for the balance of the then-remaining Lease Term. Notwithstanding the foregoing, Landlord shall obtain, an agreement from the holder of any mortgage now or hereafter encumbering the Premises (an "SNDA"), in the usual form of such holder, providing in substance that so long as Tenant is not in default under the terms of this Lease, the right of possession of Tenant to the Premises shall not be affected or disturbed by such holder in the exercise of any of its rights under the mortgage or any note secured thereby, and any sale of the Premises pursuant to the exercise of any rights and remedies under the mortgage or otherwise shall be made subject to Tenant's right of possession under this Lease and Tenant shall have the rights to exercise its right under Section 45 and 46 of this Lease.

b. Tenant agrees that in the event of a Landlord Default, or any other occurrence which would give Tenant the right to terminate this Lease, to claim a partial or total eviction, or to reduce any Rent payments hereunder in any material respect, Tenant shall not exercise any of the foregoing rights: (a) until it has notified in writing the holder of any Mortgage (a "Mortgagee") of such Landlord Default, (b) until a reasonable period of time, not exceeding

sixty (60) days, for commencement of remedying such Landlord Default shall have elapsed following notice to the Mortgagee, and (c) Landlord or Mortgagee, with due diligence, shall not have remedied, or commenced and be continuing to remedy, such Landlord Default within the aforementioned cure period; provided, however, the foregoing provisions of this Section 21.b. will only apply to the extent Tenant has received written notice of the existence of, and the applicable notice address for, any applicable Mortgagee. Tenant agrees that it shall execute reasonable documentation presented to Tenant by Landlord, including a subordination and non-disturbance agreement, for the purposes of subordinating Tenant's interests to those of any Mortgagee. Further, Tenant agrees that any such documentation shall not bind the Mortgagee with respect to any construction obligations of Landlord under this Lease.

22. SIGNAGE

Tenant shall have the right to install, at Tenant's sole cost, such signage as Tenant deems necessary or appropriate, subject to Applicable Laws and Landlord's approval, which shall not be unreasonably withheld, conditioned, or delayed; provided, however, Landlord's approval will not be required with respect to the installation of any safety signage. Tenant agrees that no other signs, other than as approved by Landlord or as expressly permitted in this Article 22 shall be erected or painted which are visible outside the Premises. All signage shall be removed by Tenant at its sole cost on or prior to the expiration or earlier termination of the Lease, and Tenant shall repair all damage to the Premises or the Property resulting from its removal of such signage.

23. LANDLORD'S RIGHT OF ENTRY

Landlord, or a Landlord Party, may enter the Premises at reasonable hours and upon reasonable notice to Tenant, to examine the Premises and to do anything Landlord may be required to do to satisfy its obligations under this Lease or which Landlord deems necessary for the good of the Premises, except that Landlord shall be accompanied by a representative of Tenant. No notice or Tenant accompaniment shall be required in the case of emergencies. During the last nine (9) months of this Lease, Landlord may show the Premises and display a "For Rent" sign on the Premises. Landlord shall enter the Premises at its own risk, shall comply and cause any Landlord Parties to comply with all safety protocols applicable to the operations at the Premises, and shall use all measures reasonably necessary to minimize any interference with Tenant's use of the Premises.

24. EFFECT OF TERMINATION OF LEASE

No termination of this Lease prior to the scheduled expiration of this Lease shall prevent Landlord from collecting Rent for the period prior to termination of the Lease.

25. NO ESTATE IN LAND

This Lease shall create only the relationship of landlord and tenant between the parties, and no estate in the Land or Property shall pass out of Landlord to Tenant.

26. HOLDING OVER

If Tenant remains in possession of the Premises after expiration of the Lease Term, or fails to return the Premises to Landlord in the manner and condition required by this Lease, Tenant shall be a Tenant at sufferance and all of the terms and provisions of this Lease shall be applicable during the period following the Lease Term (the "Holdover Period"), except that during the Holdover Period, Landlord shall have the right to charge Rent equal to one hundred fifty percent (150%) of the Rent payable by Tenant during the last month of the Lease Term. If during any Holdover Term, Landlord provides to Tenant written notice that Landlord has leased the Premises, or any portion thereof, to a third-party, and Tenant does not vacate the Premises within sixty (60) days following its receipt of said notice, Landlord shall have the right to seek actual and consequential damages caused by Tenant's possession of the Premises following said 60-day period. Tenant agrees to vacate and deliver the Premises to Landlord within ten (10) days following Tenant's receipt of notice from Landlord to vacate Premises. Tenant's occupancy or possession of the Premises during the Holdover Period shall not extend the Lease Term.

27. WAIVER

The rights and remedies of Landlord under this Lease, as well as those provided by Applicable Laws, shall be cumulative. A waiver by Landlord or Tenant of any Tenant Default or Landlord Default, respectively, shall not be construed to be a continuing waiver of such Tenant Default or Landlord Default, nor as a waiver of any subsequent Tenant Default or Landlord Default. The acceptance by Landlord of any installment of Rent after its due date shall not alter the obligation of Tenant to pay subsequent installments of Rent promptly when due. No receipt of money by Landlord from Tenant after the expiration or termination of this Lease shall reinstate the Lease or extend the Lease Term.

28. NOTICES

All notices or other communications required or permitted hereunder shall be in writing and delivered via personal delivery, U.S. Mail, overnight delivery service, or electronic mail, addressed to the respective parties as follows:

Notices to Tenant:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Notices to Landlord:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

With a copy to:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Notices shall be deemed received by the recipient (i) when personally delivered, (ii) with respect to certified U.S. mail or overnight delivery service, on the date that delivery is made to the recipient, and (iii) with respect to electronic mail, when the electronic mail is sent by the sender. Landlord or Tenant may update its contact information set forth above upon ten (10) days' prior written notice to the other party. Rejection or other refusal to accept any notice, or the inability to deliver notice because of a changed address for which no notice was given, shall be deemed to constitute receipt of any notice sent hereunder.

29. TIME OF ESSENCE

Time is of the essence of this Lease.

30. BANKRUPTCY

Neither this Lease, nor any interest herein, nor any estate hereby created, shall pass to any trustee or receiver in bankruptcy, or to any other receiver or assignee for the benefit of creditors or otherwise by operation of law during the Lease Term.

31. GOVERNING LAW

This Lease shall be governed by the laws of the State of New York.

32. ENTIRE AGREEMENT

This Lease contains the entire agreement between Landlord and Tenant, and no modifications of this Lease shall be binding upon Landlord or Tenant unless evidenced by an agreement in writing signed by each of Landlord and Tenant following the Effective Date.

33. ATTORNEY'S FEES

In any action legal action between Landlord and Tenant under this Lease, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.

34. ESTOPPEL CERTIFICATES

Landlord and Tenant each agree to certify in writing the status of this Lease and the Rent payable hereunder, at any time, upon ten (10) days written notice from the other party. Such estoppel certificate shall be in a form reasonably satisfactory to: (i) Landlord, (ii) Tenant, (iii) any governmental authority or public agency, (iv) a prospective purchaser of the Property, (v) a prospective, permitted assignee or sublessee of Tenant, and (vi) a prospective holder of a security

instrument executed by Landlord or Tenant, as the case may be. Such estoppel certificate shall certify: (i) the Commencement Date, (ii) the expiration date of the Lease Term, including any extensions thereof, (iii) whether or not this Lease is in full force and effect, (iv) whether or not this Lease has been amended or modified, and if so, in what manner, (v) the date through which Rent has been paid, (vi) whether or not there are any known Tenant Defaults or Landlord Defaults, and if so, specifying the particulars of such default and the action required to remedy it, (vii) whether or not there are any known setoffs against, or defenses to, the enforcement of the terms and conditions of this Lease, and if so, specifying the particulars of such setoffs or defenses, and (viii) such other factual information as the requesting party reasonably requests.

35. INTENTIONALLY OMITTED.

36. FORCE MAJEURE

Landlord or Tenant shall be excused, without penalty, for the period of any delay in the performance of any obligations hereunder when prevented from doing so by causes beyond its control, which shall include acts of God, inclement weather events, governmental restrictions, the inability of any utility company or provider to connect or provide utility services to the Premises, pandemic, strikes, labor disturbances, shortages of materials or supplies and the inability to obtain said materials or reasonable substitutes at reasonable cost, and actions or inactions of governmental authorities (but not violations of Applicable Laws) (a “Force Majeure Event”). In connection with any Force Majeure Event, the party claiming such Force Majeure Event must use commercially reasonable efforts to mitigate the effect of such Force Majeure Event. Nothing contained in this Section 36 shall excuse either party from paying in a timely fashion any payments due under the terms of this Lease. Notwithstanding the foregoing, a Force Majeure Event does not excuse Tenant from its obligation to provide common carrier service under this Lease unless the Force Majeure Event constitutes a valid excuse under applicable STB precedent and Tenant issues an embargo, to the extent required under applicable STB precedent.

37. QUIET ENJOYMENT; LANDLORD REPRESENTATIONS

Landlord warrants that it has the right to execute and to perform this Lease and to grant the tenancy of the Premises to Tenant. If no Tenant Default exists, Tenant shall peaceably and quietly have, hold, and enjoy the Premises during the Lease Term without hindrance by Landlord, or any person acting by, through or under Landlord.

38. EXCULPATION

Tenant agrees that it shall look solely to Landlord’s interest in the Premises and Landlord’s personal property used in connection with the Premises for the satisfaction of any claim or judgment requiring the payment of money by Landlord, and no other property or assets of Landlord or any Landlord Party shall be subject to levy, execution, or other enforcement procedures for the satisfaction of any such claim or judgment. Tenant agrees that no Landlord Party will be personally liable for any claim or judgment in connection with this Lease. In no event shall Landlord or any Landlord Party be liable to Tenant, Tenant Party, or any other person for consequential, indirect, special, or punitive damages.

39. DUE AUTHORIZATION AND EXECUTION

Tenant represents and warrants that this Lease has been duly authorized, executed, and delivered by and on behalf of Tenant and constitutes the valid and binding agreement of Tenant.

40. MAXIMUM RATE

If Tenant does not pay any amount required under this Lease when due, Tenant shall pay Landlord interest on the delinquent payment, calculated at the Maximum Rate from the date the payment is due through the date the payment is made. Such interest will be considered Additional Rent and will be in addition to any of Landlord's other remedies under this Lease. "Maximum Rate" means interest at a per annum rate equal to two (2) percentage points in excess of the "prime rate" of interest then charged by UMB Bank, N.A., or if UMB Bank, N.A. is not then in existence, another comparable bank selected by Landlord. If the Maximum Rate exceeds the maximum interest rate permitted by Applicable Laws, such rate will be reduced to the highest rate allowed by Applicable Laws.

41. NO ACCORD AND SATISFACTION

No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, cash such check without being bound by the conditions of any such statement. If Tenant pays any amount other than an actual amount due to Landlord, receipt of such partial payment will not constitute an accord and satisfaction. Landlord may retain any such partial payment, whether restrictively endorsed or otherwise, without prejudice to Landlord's right to collect the balance due under this Lease. If all or any portion of any payment is dishonored for any reason, payment will not be deemed made until the entire amount due is actually collected by Landlord. The foregoing provisions apply to the receipt or collection of any amount by any person on Landlord's behalf.

42. CONFIDENTIALITY

Each party acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants, or could benefit Tenant's competitors or impair Tenant's relationships with its vendors and suppliers. Tenant agrees that it and each Tenant Party shall not intentionally or voluntarily disclose the terms and conditions of this Lease to any newspaper, publication, any other tenant or apparent prospective tenant of the Premises, or real estate agent, either directly or indirectly, without the prior written consent of Landlord, but Tenant may disclose the terms of this Lease to prospective, permitted subtenants or assignees. Landlord agrees that it and each Landlord Party shall not intentionally or voluntarily disclose the amounts of the Base Rent or any other aspect of the rent structure of the Lease, or any information about the nature, design, operation, methods or equipment used in the conduct of Tenant's business in the Premises. Landlord and Tenant may make disclosures if required by Applicable Laws, and to their attorneys, lenders, accountants, auditors, consultants, and others with a valid business reason to review this Lease for a good faith business purpose.

43. BROKER

Tenant represents and warrants to Landlord that no agent, broker, or realtor has been involved with respect to this Lease on behalf of Tenant. Tenant, other than with respect to Tenant's Broker, indemnifies and holds Landlord harmless from any claims, liabilities, losses, costs and expenses incurred by Landlord with regard to any claim by any person or entity that it is entitled to compensation as a result of this Lease through its relationship with Tenant. Landlord represents and warrants to Tenant that no agent, broker has been involved with respect to this Lease on behalf of Landlord. Landlord, other than with respect to Landlord's Broker, indemnifies and holds Tenant harmless from any claims, liabilities, losses, costs and expenses incurred by Tenant with regard to any claim by and person or entity that it is entitled to compensation as a result of this Lease through its relationship with Landlord. Landlord shall pay all commissions to Tenant's Broker and Landlord's Broker pursuant to separate agreement(s).

44. OFAC COMPLIANCE

a. Tenant represents and warrants to Landlord that Tenant is not a party with whom Landlord is prohibited from doing business pursuant to the regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, including those parties named on OFAC's Specially Designated Nationals and Blocked Persons List. Tenant is currently in compliance with, and shall at all times during the Lease Term remain in compliance with, the regulations of OFAC and any other governmental requirement relating thereto. In the event of any violation of this section, Landlord shall be entitled to immediately terminate this Lease and take such other actions as are permitted or required to be taken under law or in equity. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, RISKS, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) INCURRED BY LANDLORD ARISING FROM OR RELATED TO ANY BREACH OF THE FOREGOING CERTIFICATIONS. These indemnity obligations shall survive the expiration or earlier termination of this Lease.

b. Landlord represents and warrants to Tenant that Landlord is not a party with whom Tenant is prohibited from doing business pursuant to the regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, including those parties named on OFAC's Specially Designated Nationals and Blocked Persons List. Landlord is currently in compliance with, and shall at all times during the Lease Term remain in compliance with, the regulations of OFAC and any other governmental requirement relating thereto. In the event of any violation of this section, Tenant shall be entitled to immediately terminate this Lease and take such other actions as are permitted or required to be taken under law or in equity. LANDLORD SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TENANT FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, RISKS, LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS) INCURRED BY TENANT ARISING FROM OR RELATED TO ANY BREACH OF THE FOREGOING CERTIFICATIONS. These indemnity obligations shall survive the expiration or earlier termination of this Lease.

45. PURCHASE OPTION

a. Provided no Tenant Default has occurred and is continuing at the time of Tenant's exercise of the option set forth in this Article, Tenant shall have the option to purchase the Premises (the "Purchase Option"), during the period [REDACTED] (the "Option Period") and upon such terms and conditions as are set forth below:

b. The "Purchase Price" to be paid by Tenant to purchase the Premises shall be (the "Option Price") [REDACTED];

c. Tenant shall give Landlord notice of its exercise of the Purchase Option by executing and delivering to Landlord, during the Option Period, a Contract of Sale (the "Purchase Contract") in the form annexed hereto as Exhibit D, and delivering an earnest money deposit to the national title insurance company listed as the escrow agent in the Purchase Contract, in the amount of [REDACTED]. Upon receipt of the Purchase Contract and confirmation of the title insurance company's receipt of the earnest money deposit, Landlord will promptly countersign and return the fully executed Purchase Contract to Tenant.

d. The Purchase Contract shall be subject to (i) all easements and encumbrances existing on the date hereof; (ii) all new utility easements entered into with Tenant's prior written consent prior to the date Tenant exercises the Purchase Option; (iii) any state of facts an accurate survey may show; (iv) the then-physical condition of the Premises; (v) all municipal codes, rules, regulations and interpretations; and (vi) all violations placed upon the Premises due to the actions or inaction of Tenant.

46. RIGHT OF FIRST REFUSAL

a. Landlord agrees to provide Tenant prior written notice before marketing the Premises for sale during the Lease Term. If at any time during the Option Period, Landlord receives a bona fide offer to purchase the Premises from a third-party purchaser (a "Qualifying Offer") and Landlord, in its sole discretion, intends to accept the Qualifying Offer, Landlord shall first offer the Premises to Tenant ("ROFR") as follows:

i. Landlord shall give to Tenant a written notice (a) setting forth the terms of the Qualifying Offer; and (b) offering to sell the Premises to Tenant at the purchase price stated in the Qualifying Offer (the "ROFR Price"), and otherwise on the terms of the Purchase Contract.

ii. Tenant shall have the right to purchase the Premises by notifying Landlord in writing of the exercise of such ROFR not later than twenty (20) days after Tenant's receipt of such notice from Landlord, time being of the essence.

b. Tenant shall not have a ROFR if, at the time Landlord is obligated to deliver notice to Tenant, Tenant:

i. a Tenant Default has occurred and is continuing; or

ii. has assigned this Lease, other than to a Permitted Transferee.

c. If Tenant timely exercises the ROFR, then Tenant shall have the right and obligation to purchase and Landlord shall have the obligation to sell the Premises for the ROFR Price and otherwise upon the terms stated in the Purchase Contract.

d. Tenant's ROFR shall not apply to:

i. any sale or transfer of the Premises to a partnership, corporation, limited liability company, or trust in which Landlord or its affiliates, principals, members, partners, shareholders, officers or directors has a controlling and equity interest or a majority of the interests in such entity;

ii. any sale or transfer of the Premises to the spouse, child or sibling of Landlord or any principal of Landlord, or to a trust for the benefit of such person; or

iii. any transfer without consideration.

The transferee under this Section 46.d. shall continue to be subject to Tenant's right to exercise its ROFR in connection with any subsequent covered sale or transfer.

e. If Tenant either rejects the ROFR or does not timely exercise the ROFR, then Landlord shall be free to sell the Premises on substantially similar terms as the Qualifying Offer and at a purchase price not less than [REDACTED] of the ROFR Price to a third-party person or entity within [REDACTED] thereafter upon such terms and conditions as Landlord determines without further obligation to Tenant. Following said [REDACTED] period, if not sold by Landlord as herein provided (and provided further, the Option Period has not expired), the rights granted Tenant hereunder shall be deemed reinstated and if Landlord thereafter again desires to sell the Premises it must first give Tenant another, new notice of its rights hereunder.

f. Notwithstanding anything to the contrary stated in this Lease, absent Tenant's prior written consent (which may be withheld in Tenant's sole and absolute discretion), Landlord shall have no right to accept any offer to purchase all or any portion of the Premises from Anacostia Rail Holdings Company (or from any of its affiliates or subsidiaries) if such offer was submitted prior to the commencement of the Option Term or outside of a formal marketing process for the sale of the Premises that was initiated by Landlord.

g. Upon any sale of the Premises to a third-party person or entity in accordance with Section 46.e. above, Tenant's ROFR shall forever terminate, provided that any sale of the Premises prior to the commencement of the Option Period (i.e. prior to Tenant's ability to exercise its ROFR) shall not terminate Tenant's ROFR or Purchase Option.

h. The provisions of this Article shall prevail over Tenant's Purchase Option contained in Article 45 above with respect to any Qualifying Offers for which Landlord provides a written notice to Tenant pursuant hereto prior to the timely exercise of Tenant's Purchase Option.

47. FREIGHT RAIL EASEMENT.

a. Grant. Landlord hereby grants to Tenant a permanent, exclusive freight rail operating easement over the Rail Line (the "Freight Rail Easement") for providing common carrier freight rail transportation. The Freight Rail Easement runs with the land and survives the expiration or earlier termination of this Lease. As used in this Lease, "Rail Line" means the approximately 0.47-mile rail line and approximately 14,348 feet of additional track on the Premises, including all Improvements necessary for common carrier freight rail operations over the line and track and such reasonable portions of the Premises immediately adjacent to this line and track as are necessary for access, maintenance, and operation to support common carrier service over the line and track. The Rail Line does not include any spur, industrial, team, switching, or side tracks.

b. Exclusive Use. The Freight Rail Easement shall be exclusive to Tenant and its successors and assigns, and no other person or entity (including Landlord) shall have the right to use the Rail Line for freight rail operations or common carrier railroad services without Tenant's prior written consent.

c. Rights Included. The Freight Rail Easement shall include the right to: (i) operate freight rail and common carrier railroad services over the Rail Line; (ii) maintain, repair, replace, and improve the Rail Line; (iii) access the Rail Line at all times through the most practical means solely for use of the Rail Line to provide common carrier freight rail service; (v) enter into interchange agreements, industry track agreements, and other agreements with Class I or other line haul carriers.

d. Recording. Tenant shall have the right to record a memorandum of the Freight Rail Easement in the land records of the county in which the Property is located.

e. No Undue Interference. Notwithstanding any Landlord rights under this Lease to the contrary, Landlord shall not unduly interfere with Tenant's or its successor's or assign's provision of common carrier freight rail service over the Rail Line.

48. STB TERMINATION CONTINGENCIES

a. Contingent Termination. Notwithstanding any other provision of this Lease and except to the extent this Lease terminates due to Tenant's acquisition of ownership of all or any portion of the Property that is necessary for providing common carrier rail service over the Rail Line (the "Common Carrier Property"), any termination of this Lease (whether by expiration, early termination, default, or otherwise) as to all or any portion of the Common Carrier Property is contingent upon, and is not effective until, the earlier of: (i) the STB's approval of a change in operator of the Rail Line to a successor operator; (ii) the STB's approval of discontinuance of the Rail Line under 49 U.S.C. § 10903; (iii) the STB's approval of abandonment of the Rail Line under 49 U.S.C. § 10903 (each, an "STB Termination Condition").

b. Cooperation. Each party shall cooperate with the other party in connection with any application or filing to the STB to satisfy an STB Termination Condition, including executing documents, providing information, and participating in any STB proceedings as reasonably necessary. The party seeking to terminate this Lease shall be responsible for all costs

and expenses associated with obtaining the applicable STB Termination Condition. Tenant shall, if requested by Landlord, assign all interchange agreements, trackage rights agreements, or any other agreement with a railroad involving the Premises to any successor operator.

c. Continuation of Obligations. Until an STB Termination Condition is satisfied or Tenant purchases the Common Carrier Property, Tenant shall continue to operate common carrier rail service at the Premises (subject to a valid excuse under STB precedent), and both parties shall continue to perform their respective obligations under this Lease with respect to the Common Carrier Property.

d. Effect of STB Termination Condition. Upon satisfaction of an STB Termination Condition: (i) if the STB Termination Condition is a change in operator, this Lease will terminate as to the Common Carrier Property as of the effective date of the change in operator, and the Freight Rail Easement will transfer to the successor operator; (ii) if the STB Termination Condition is a discontinuance, this Lease will terminate as to the Common Carrier Property as of the effective date of the discontinuance, and the Freight Rail Easement will terminate; and (iii) if the STB Termination Condition is an abandonment, this Lease will terminate as to the Common Carrier Property as of the effective date of the abandonment, and the Freight Rail Easement will terminate. To the extent Tenant purchases the Common Carrier Property, the Lease will terminate as to such Common Carrier Property as of the closing of the purchase.

e. Survival. The provisions of this Article survive the expiration or earlier termination of this Lease until all STB Termination Conditions applicable to any termination have been satisfied.

49. MISCELLANEOUS

a. Separate Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. Facsimile, portable document format (PDF), or other electronic copies of signed counterparts of this Lease shall have the same effect as an original signed counterpart.

b. Captions and Section Numbers. The captions, section numbers, article numbers, and headings appearing in this Lease are inserted only as a matter of convenience, and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease.

c. Partial Invalidity. If any term, covenant, or condition of this Lease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term, covenant, or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

d. No Third-Party Beneficiary. Nothing herein expressed or implied is intended or shall be construed to confer upon any person or entity, other than the parties hereto and their successors or permitted assigns, any rights or remedies under this Lease.

e. WAIVER OF JURY TRIAL. LANDLORD AND TENANT EACH WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN

ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE AND OCCUPANCY OF THE PROPERTY.

f. Memorandum. Within five (5) business days following the first anniversary of the Commencement Date, Landlord and Tenant agree to execute and deliver for recording with the clerk and recorder for the county in which the Property is located a memorandum of this Lease, including the options and rights granted to Tenant pursuant to Articles 45, 46 and 47 of this Lease, in the form attached hereto as Exhibit E.

[Signature Pages Follow.]

IN WITNESS WHEREOF, Tenant hereby executes this Lease as of the Effective Date set forth on the first page hereof.

TENANT:

SUNRISE INDUSTRIAL RAIL, LLC, a Colorado limited liability company

Signed by:


By: _____
C7C4A735476A471...

Name: _____
Colby Tanner

Title: _____
CEO

Solely for purposes of joining in Article 4:

OMNITRAX, INC., a Colorado corporation

Signed by:


By: _____
C7C4A735476A471...

Name: _____
Colby Tanner

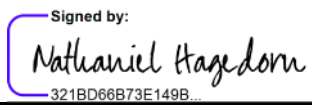
Title: _____
CEO

IN WITNESS WHEREOF, Landlord hereby executes this Lease as of the Effective Date set forth on the first page hereof.

LANDLORD:

BROOKHAVEN LOGISTICS CENTER, LLC, a
Delaware limited liability company

By: NPD Management, LLC, its Administrative
Manager

By:  321BD66B73E149B...
Nathaniel Hagedorn, Manager

SCHEDULE B EXCEPTIONS:

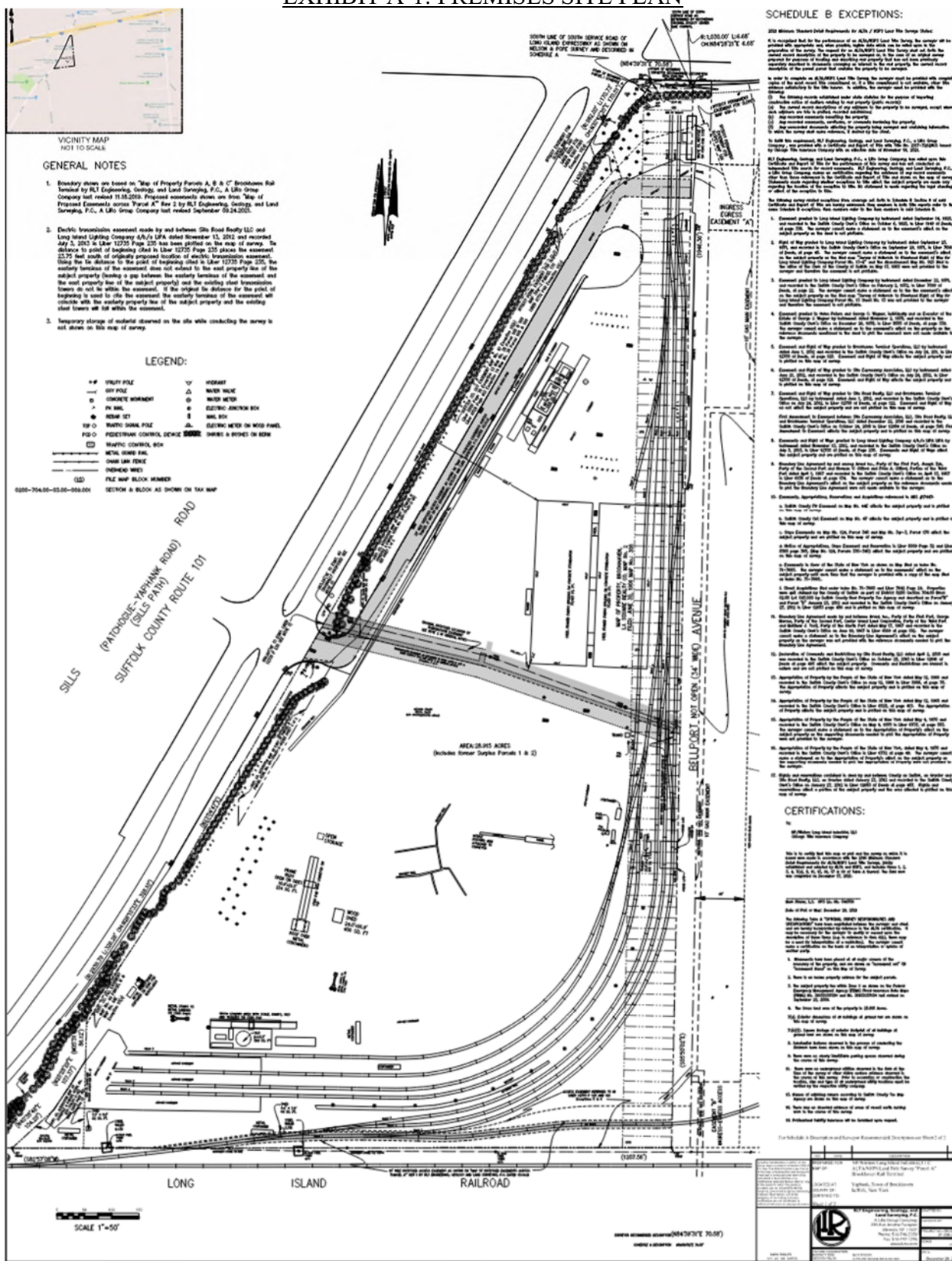


EXHIBIT A-2: LEGAL DESCRIPTION OF THE LAND

Parcel I (SBL No. 200-704.00-2-36.001 which has been retired and is now known as SBL No. 200-704.00-2-36.002)

ALL that certain plot, piece or parcel of land, situate, lying and being at Yaphank, Town of Brookhaven, County of Suffolk and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of Long Island Expressway (New York State Route 495; south service road) where same is intersected by the southeasterly side of Sills Road

RUNNING THENCE along the southerly side of said Long Island Expressway the following two (2) courses and distances:

- (1) North 84 degrees 06 minutes 52 seconds East, 71.07 feet;
- (2) Along the arc of a curve bearing to the left having a radius of 1030.00 feet a distance of 16.15 feet to the westerly side of Bellport Avenue (not open);

THENCE along the westerly side of Bellport Avenue South 05 degrees 50 minutes 33 seconds East, 1931.62 feet to the northerly side of land of the Long Island Rail Road;

THENCE along said last mentioned land, South 82 degrees 58 minutes 07 seconds West, 1079.92 feet;

THENCE North 05 degrees 10 minutes 04 seconds West, 245.33 feet to the southeasterly side of Sills Road;

THENCE along said last mentioned road the following two (2) courses and distances:

- (1) Along the arc of a curve bearing to the left having a radius of 2939.79 feet a distance of 330.72 feet;
- (2) North 23 degrees 04 minutes 16 seconds East, 198.72 feet;

THENCE South 05 degrees 32 minutes 19 seconds East, 104.42 feet to a Right of Way taking line;

THENCE North 23 degrees 04 minutes 16 seconds East, 336.66 feet to a monument found;

THENCE South 77 degrees 04 minutes 31 seconds East, 39.81 feet;

THENCE North 23 degrees 04 minutes 16 seconds East, 74.82 feet;

THENCE North 89 degrees 52 minutes 37 seconds West, 15.06 feet;

THENCE North 05 degrees 33 minutes 18 seconds West, 156.55 feet to the southeasterly side of Sills Road;

THENCE along the southeasterly side of Sills Road the following two (2) courses and distances:

- (1) North 23 degrees 04 minutes 16 seconds East, 836.37 feet;
- (2) Along the arc of a curve bearing to the left having a radius of 982.00 feet a distance of 151.99 feet to the southerly side of the Long Island Expressway at the point or place of BEGINNING.

Parcel II (SBL No. 200-704.00-2-43)

All that certain plot piece or parcel of land, situate, lying and being at Yaphank, County of Suffolk and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the easterly boundary line of County Road 101 (Sills Road) at the northeast corner of Tax Lot 1.1 of district 200, section 704, block 2, as shown on the Suffolk County Tax Map, said point being 75.00 feet easterly measured at a right angle from station 276+12± of the Survey Centerline of County Road 101 (Sills Road); Running thence North 23° 04' 16" East 447.31 feet to a point, said 16" East 447.31 feet to a point, said East 447.31 feet to a point, said point being 75.00 feet easterly measured at a right angle from station 280+60±;

Thence South 05° 33' 18" East, along the easterly line of Sills 18" East, along the easterly line of Sills East, along the easterly line of Sills Road (CR 101), 146.24 feet to the northerly line of Old Town Road, said point being distant 145 ± feet easterly measured at a right angle from station 279+31±;

Thence South 89°52'37" East, along the northerly line of Old Town 37" East, along the northerly line of Old Town East, along the northerly line of Old Town Road, 20.57 feet to a point, said point being 164.00 feet easterly measured at a right angle from station 279+39±;

Thence, South 23°04'08" West 74.79 feet to a point, said point 08" West 74.79 feet to a point, said point West 74.79 feet to a point, said point being 164.00 feet easterly measured at a right angle from station 278+64±;

Thence North 77°21'27" West 39.66 feet to a point on the easterly line 27" West 39.66 feet to a point on the easterly line West 39.66 feet to a point on the easterly line of Sills Road (CR 101), said point being 125.00 feet easterly measured at a right angle from station 278+57±;

Thence South 23° 04' 16" West, along the easterly line of Sills 16" West, along the easterly line of Sills West, along the easterly line of Sills Road (CR 101) 336.66 feet to the easterly line of the aforementioned tax lot 1.1, said point being 125.00 feet easterly measured at a right angle from station 275+21±;

Thence North 05°32'19" West, along the easterly line of said tax 19" West, along the easterly line of said tax West, along the easterly line of said tax lot 1.1, a distance of 104.42 feet to the Point of Place of Beginning.

Parcel III (SBL No. 200-704.00-2-42)

All that certain plot piece or parcel of land, situate, lying and being at Yaphank, County of Suffolk and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the northerly line of land of the Metropolitan Transportation Authority (Long Island Railroad), said point being 124.69 feet easterly at a right angle from station 268+25± of the Survey Centerline of County Road 101 (Sills Road);

Running thence North 40° 38' 17" East 103.95 feet to a point, said 17" East 103.95 feet to a point, said East 103.95 feet to a point, said point being distant 137.05 feet easterly measured at a right angle from station 269+23.67;

Thence North 25°27'58" East 107.36 feet, to the easterly line of Sills 58" East 107.36 feet, to the easterly line of Sills East 107.36 feet, to the easterly line of Sills Road (CR 101), said point being distant 125.19 feet easterly measured at a right angle from station 270+26±;

Thence South 05°27'58" East, along the easterly line of Sills 58" East, along the easterly line of Sills East, along the easterly line of Sills Road (CR 101), 160.61 feet to the northerly line of land of the Metropolitan Transportation Authority (Long Island Railroad), said point being 223 ± feet easterly measured at a right angle from station 269+06+;

Thence South 82°58'07" West, along said northerly line of land of the 07" West, along said northerly line of land of the West, along said northerly line of land of the Metropolitan Transportation Authority (Long Island Railroad), 130.35 feet to the Point or Place of Beginning.

EXHIBIT B: LIST OF EXISTING OCCUPANCY AGREEMENTS

1. [REDACTED]

[REDACTED]
[REDACTED].

2. [REDACTED]

[REDACTED].

EXHIBIT C: RESERVED

EXHIBIT D: CONTRACT OF SALE

[SEE ATTACHED]

[SELLER]

Seller

to

[PURCHASER],

Purchaser

CONTRACT OF SALE

District:

Section:

Block :

Lot :

Address:

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THIS AGREEMENT made as of the ____ day of _____, 202_ (the “Effective Date”), by and between [SELLER], having an address at _____ (herein called “Seller”), and [PURCHASER], having an address at _____ (herein called “Purchaser”).

RECITALS

- A. Seller is the owner of the Premises (as defined below).
- B. Seller and Purchaser are parties to that certain Amended and Restated Industrial Lease (the “Lease Agreement”), dated as of September 9, 2026, and the term of which commenced on October 5, 2025 (the “Term Commencement Date”).
- C. Upon the full satisfaction of, and subject to, the terms and conditions set forth in this Agreement, Seller has agreed to sell the Premises to Purchaser, and Purchaser has agreed to purchase the Premises from Seller.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as set forth below.

ARTICLE I.

Purchase and Sale

Section 1.01. Upon the terms and conditions of this Agreement, Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller:

(a) The land (the “Land”) located in _____ County, New York and designated on the _____ County Land and Tax Map as District 0200-704.00-02.00-036.002, Section _____, Block _____, Lot _____, commonly know as _____, _____, New York and more particularly described on Schedule A attached hereto and forming a part hereof.

(b) All buildings and improvements situated on the Land, including, but not limited to, all existing railroad tracks, yards, spurs, docks, rails, ties, ballasts, other track materials, switches, signals, crossings, bridges, tunnels, trestles, culverts, buildings, signals, electronic signal systems, crossing protection devices, communication lines, poles, auxiliary tracks, and other improvements or fixtures (collectively the “Improvements”).

(c) All right, title and interest of Seller and Seller’s Affiliates in and to all unexpired warranties, indemnities and/or guaranties, if any, related to the Improvements.

(d) All right, title and interest of Seller in and to any land lying in the bed of any highway, street, road or avenue, open or proposed adjoining the Land.

(e) All right, title and interest of Seller in and to all mineral rights, oil and gas rights, subsurface rights, easements, tenements, hereditaments, privileges and appurtenances in any way belonging to the Land.

The Land, Improvements and other property described in this Section 1.01 are hereinafter sometimes collectively referred to as the "Premises."

ARTICLE II.

Purchase Price

Section 2.01. The purchase price (the "Purchase Price") for the Premises is _____ Dollars (\$ _____), payable as follows:

(a) _____ (the "Deposit") upon the full execution of this Agreement by wire transfer or certified or bank check, the receipt of which is hereby acknowledged, said Deposit to be held in escrow pursuant to the provisions of Article XIV of this Agreement.

(b) The balance of the Purchase Price (subject to adjustment as provided in this Agreement) by wire transfer, if requested by Seller, to an account designated by Seller, or certified or bank check payable to the order of Seller or its designee upon the Closing.

ARTICLE III.

Title

Section 3.01. Seller shall convey and Purchaser shall accept insurable title to the Premises free and clear of all liens, encumbrances and other defects (sometimes collectively referred to hereinafter as, "Title Defects") in title, except for the following (the "Permitted Exceptions"):

(a) Any Title Defects arising after the Term Commencement Date that are (i) caused by the Purchaser or its affiliates; or (ii) the responsibility of the Purchaser or its affiliates to cure pursuant to the Lease Agreement;

(b) All laws, ordinances, codes, regulations or requirements (including but not limited to zoning, building and environmental protection and rent laws and regulations affecting the Premises or the use thereof), adopted by any governmental or municipal authority having jurisdiction thereof, and all amendments and additions thereto now or which will be at the Closing (as hereinafter defined) in force and effect;

(c) All zoning, building, and environmental laws, ordinances, codes, restrictions and regulations, and any amendments thereto heretofore adopted by any municipal,

state, federal or other authority having or claiming jurisdiction over the Premises, provided same do not interfere with Purchaser's use of the Premises as of the Term Commencement Date;

(d) Such state of facts as would be shown by an accurate survey of the Premises;

(e) [Intentionally deleted];

(f) Real estate taxes, unpaid water charges and sewer rents and vault taxes, if any, whether or not same are liens (subject, however, to adjustment as provided in Article 5 hereof);

(g) Easements, conditions, covenants and restrictions of record existing prior to the Term Commencement Date;

(h) [Intentionally deleted];

(i) All violations and/or notes or notices of violations of law or municipal ordinances, orders, or requirements noted in or issued by any Governmental Authority (as hereinafter defined) after the Term Commencement Date having jurisdiction against or affecting the Premises that (a) are the responsibility of Purchaser under the Lease Agreement; or (b) were caused by Purchaser, its affiliates, subtenants or licensees;

(j) Any exceptions caused by, consented to or approved by, in writing, Purchaser, its agents, representatives or employees;

(k) Any and all contracts in connection with the Premises or related to the short-line rail operations at the Premises to which Purchaser is a party or that has been entered into by Seller with Purchaser's written approval; or

(l) Minor variations between record lines and lot lines that do not affect the use or development of the Premises in any material way.

Section 3.02. Purchaser shall promptly, but no later than ten (10) days after the Effective Date, order a title report for the Premises from Chicago Title Insurance Company (the "Title Company") and cause a copy thereof to be simultaneously sent to Seller's attorney. Purchaser shall, within fifteen (15) days of its receipt of the title report advise Seller of any Title Defects other than the Permitted Exceptions and Seller shall be entitled to have the Closing (as defined in Section 9.01 herein) of title adjourned for a reasonable time period for the purpose of clearing such Title Defects. In the event Seller is unable or unwilling to cure any Title Defects, Seller shall deliver notice ("Seller's Notice") to Purchaser that such Title Defects will not be removed. In the event Seller elects not to cure the Title Defects as herein provided, Purchaser shall have the right to either terminate this Agreement by notifying Seller in writing of its intention to terminate this Agreement within five (5) days after its receipt of Seller's Notice or close title subject to such Title Defect. In the event Purchaser terminates the Agreement due to Seller's election not to cure a Title Defect, the Escrow Agent shall refund the Deposit and all interest thereon to Purchaser and this Agreement shall terminate and be of no further force and effect, with neither party having any further obligations hereunder (except as otherwise provided herein). Failure of Purchaser to notify Seller of Title Defects or of its intention to terminate this Agreement within the aforesaid five (5)

business day period after Seller's Notice shall constitute a waiver of Purchaser's right under this Section 3.02, and in such event, Purchaser shall be required to perform hereunder and accept title subject to those Title Defects which Seller is either unable or unwilling to cure; provided, however, notwithstanding anything to the contrary stated herein, Seller shall be required to cure the Required Cure Items (as hereafter defined) without any obligation on the part of Purchaser to provide a Seller's Notice. In the event a continuation of title at Closing reveals additional Title Defects, Seller shall be entitled to adjourn the Closing for a reasonable period of time (not to exceed seventy five (75) days in the aggregate) and Seller and Purchaser shall have the same rights with respect to such additional Title Defects as if they had appeared in the original title report. Notwithstanding the foregoing, Seller shall be obligated to (i) satisfy any mortgage or other consensual, monetary liens granted by Seller or to satisfy any unpaid taxes or assessments (except to the extent such taxes or assessments are unpaid as a result of a breach by Purchaser or its affiliates under the Lease Agreement) ; (ii) cure any other Title Defect which can be cured by the payment of money, not to exceed [REDACTED]; (iii) the standard printed exceptions that can be removed through the provision of an owner's affidavit; and (iv) any monetary liens or encumbrances, including, any mechanic's liens created by or arising from any work performed by, through or under Seller (excluding work performed by Purchaser, its affiliates, their subtenants and/or licensees), and any other liens or encumbrances first appearing of record following the Term Commencement Date as a result of any knowing act or omission of Seller in violation of the Lease Agreement and that was not consented to by Purchaser (the "Required Cure Items"). Failure to cure any Required Cure Item shall be deemed a material default by Seller under this Agreement.

Section 3.03. Unpaid franchise taxes of any corporation in the chain of title shall be no objection to title provided that the Title Company agrees to insure against collection of same out of the Premises and Seller deposits with the Title Company sufficient security, acceptable to and required by the Title Company to issue such insurance.

Section 3.04. If a search of the title discloses judgments, bankruptcies or other returns against other persons having names the same as or similar to that of Seller, Seller shall on request deliver to Purchaser or the Title Company an affidavit showing that such judgments, bankruptcies or other returns are not against Seller.

Section 3.05. If at the Closing Date (as defined in Section 9.01 herein) there are any liens or encumbrances which Seller is obligated to pay and discharge, Seller may use any portion of the cash balance of the Purchase Price to satisfy same, provided Seller shall have delivered to Purchaser at the Closing of title, instruments in recordable form sufficient to satisfy such liens and encumbrances of record, together with the cost of recording and filing said instruments. The existence of any such tax or other liens and encumbrances shall not be deemed objections to title if Seller shall comply with the foregoing requirements.

Section 3.06. At Closing, the Title Company shall issue to Purchaser, at Purchaser's sole cost and expense, an ALTA Owner's Form of title insurance policy (the "Owner's Title Policy"), in the amount of the Purchase Price, insuring Purchaser's fee title interest in the Real Property subject only to the Permitted Exceptions and such other exceptions to title as Purchaser shall have accepted or have been deemed to have accepted. Purchaser shall be entitled to request that the Title Company provide, at Purchaser's sole cost and expense, such endorsements (or amendments) to the Owner's Title Policy as Purchaser may reasonably require, provided that (a) such

endorsements (or amendments) shall be at no cost or additional liability to Seller, (b) Purchaser's obligations under this Agreement shall not be conditioned upon Purchaser's ability to obtain such endorsements and, if Purchaser is unable to obtain such endorsements, Purchaser shall nevertheless be obligated to proceed to close the transaction contemplated by this Agreement (the "Transaction") without reduction of or set off against the Purchase Price, (c) such endorsements (or amendments) are customarily provided by the Title Company in similar Transactions, and (d) the Closing shall not be delayed as a result of Purchaser's request. Purchaser shall be required to pay all costs incurred in connection with any new survey or update or modification of any existing survey requested by Purchaser.

Section 3.07. Violations. Seller shall convey and Purchaser shall accept title to the Premises subject to all present and future violations of record caused by Purchaser or that are the responsibility of Purchaser to cure pursuant to the Lease Agreement. Seller shall have no obligation to cure any such violations except to the extent caused by Seller or its affiliates. Purchaser and Seller acknowledge and agree that Purchaser is purchasing the Premises in an "as-is," "where-is" condition. Notwithstanding, Seller agrees to credit to Purchaser against the Purchase Price the cost of all monetary fines, liens, penalties, and judgements in connection with any such violations (i) existing prior to the Term Commencement Date; or (ii) caused by Seller after the Term Commencement Date.

ARTICLE IV.

Special Assessments

Section 4.01. If on Effective Date the Premises or any part thereof shall be or shall have been affected by a special assessment which are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purposes of this Agreement all the unpaid installments of any such special assessment which are to become due and payable prior to Closing shall be paid and discharged by Seller, and all the unpaid installments of any such special assessment which are to become due after Closing shall be payable by Purchaser.

ARTICLE V.

Apportionments/Reimbursements of Certain Expenses

Section 5.01. The following are to be apportioned as of 11:59 P.M. of the day preceding the date of the Closing:

(a) Real estate taxes paid by Seller, if any, on the basis of the fiscal years for which same have been assessed. Any refund of real estate taxes paid for years prior to Closing shall be the sole property of Seller. Any refund of real estate taxes for the tax year in which Closing occurs as a result of a tax certiorari proceeding or an overpayment of taxes (after deducting reasonable legal fees and other costs of protest or collection) shall be apportioned between Seller and Purchaser on a pro rata basis as of the Closing Date, based upon the amount of taxes for such year paid by Seller and Purchaser. This provision shall survive the Closing.

(b) Water charges and sewer rents paid by Seller, if any, on the basis of the fiscal years, respectively, for which the same have been assessed. If there are water meters on the Premises, Seller, to the extent obtainable, shall supply to Purchaser a water meter reading current through the Closing Date, or if not feasible to so read, to a date not more than thirty (30) days prior to the Closing Date, and the unfixed meter charges based thereon for the intervening period shall be apportioned on the basis of such last meter reading. Upon the taking of a subsequent actual water meter reading, such apportionment shall be readjusted and Seller or Purchaser, as the case may be, will promptly deliver to the other the amount determined to be due upon such readjustment. If Seller is unable to furnish such prior meter reading, any reading subsequent to the Closing will be apportioned on a per diem basis from the date of such reading immediately prior thereto, and Seller shall pay the proportionate charges due up to the date of Closing.

(c) the value of propane for heating, if any, stored at the Premises at the prevailing price.

(d) Rents of tenants and security deposits, if any.

(e) Any matter specified in this Article that cannot reasonably be determined and apportioned between Seller and Purchaser on the Closing Date shall be specified by Purchaser and Seller in writing at Closing, and shall be subject to final settlement at such time as such matter is finally determined but in no event later than 60 days following the Closing Date. Such apportionments shall be effective as of the Closing Date. The provisions of this paragraph shall survive the Closing.

Section 5.02. Insurance Premiums. Subject to Article XIII, no existing insurance policy shall be assigned to Purchaser, and no adjustment of any insurance premiums shall be made.

Section 5.03. Closing Costs. Purchaser shall pay all premiums and charges of the Title Company for the Owner's Title Policy to be issued pursuant to the Title Report, the cost of a new survey or of any updates or modifications to any existing survey obtained by Purchaser, all recording and filing charges in connection with the instruments by which Seller conveys the Premises, all escrow charges, and any other costs customarily paid by a purchaser pursuant to local practice. Seller shall pay all transfer taxes applicable to the transfer of the Premises to Purchaser, the cost to record any release of lien, the cost to cure any Title Defect or Required Cure Item, and except as otherwise provided herein, any other costs customarily paid by a seller pursuant to local practice. Each party shall pay its own attorneys. The obligations of the parties to pay applicable escrow or closing charges shall survive the termination of this Agreement.

Section 5.04. Any omissions or errors made in the computation of any apportionments at Closing shall be corrected post closing. Reimbursement of the appropriate amounts shall be made promptly after determination of the correction is made. The provisions of this Section 5.04 shall survive the date of Closing for a period of six (6) months.

ARTICLE VI.

Condition of Premises

Section 6.01. Purchaser has examined the Premises and is familiar with the physical condition thereof. Seller has not made and does not make any representations as to the physical condition, expenses, operation, use or any other matter or thing affecting or related to the Premises, except as herein specifically set forth, and Purchaser hereby expressly acknowledges that no representations have been made, and, subject to the provisions of Sections 6.03 and 6.04, Purchaser further acknowledges that it agrees to take the Premises “as is” at the Closing in their present condition, subject to reasonable use, wear, tear and natural deterioration between the Effective Date and the Closing Date (as hereinafter defined).

Section 6.02. Purchaser acknowledges that it shall have had, as of the Closing Date, open access to, and sufficient time to review, all information, documents, agreements, studies, and tests relating to the Premises that Purchaser elects to conduct, including a complete and thorough inspection, analysis, and evaluation of the Premises, including but not limited to environmental issues, if any, and shall conduct such tests, and obtain and review such information as Purchaser shall require in the course of its investigation. Purchaser shall undertake such investigation as shall be required to make Purchaser fully aware of the condition of the Premises, as well as all facts, circumstances and information which may affect the use and operation of the Premises, and Purchaser covenants and warrants to Seller that Purchaser shall rely solely on Purchaser’s own due diligence investigation in determining to purchase the Premises. Purchaser acknowledges and agrees that Seller makes no representations or warranties whatsoever regarding the completeness and / or accuracy of any information, if any, disclosed to Purchaser. Purchaser acknowledges that it has had the opportunity to retain professional advisors, including legal counsel, in connection with its due diligence investigation of the Premises and the entering into this Agreement. Purchaser acknowledges that it has made a personal inspection of the Premises before entering into this Agreement.

ARTICLE VII.

Warranties and Representations

Section 7.01. Seller warrants and represents that:

(a) Seller has the requisite power and authority to enter into and perform the terms of this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby requires or will require no further action or approval to constitute this Agreement as a valid and binding obligation of Seller.

(b) The performance of this Agreement will not result in any violation of, will not be in conflict with, or will not constitute a default under, any corporate charter, certificate of incorporation, by-law, mortgage, indenture, contract, permit, judgment, decree, order, statute, rule or regulation, applicable to Seller.

(c) Except as disclosed on Schedule B attached hereto:

(i) Seller has not received any written communication from any governmental authority that alleges a violation of law (including, but not limited to, any environmental law) with respect to the Premises.

(ii) Seller has not received any written communication from any governmental authority that initiates or threatens any condemnation of any portion of the Premises.

(iii) Seller has not received any written notice initiating or threatening any litigation or administrative proceeding related to the Premises.

Section 7.02. Purchaser warrants and represents that:

(a) Purchaser has the requisite power and authority to enter into and perform the terms of this Agreement, and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby require no further action or approval to constitute this Agreement as a valid and binding obligation of Purchaser.

(b) The performance of this Agreement will not result in any violation of, will not be in conflict with, or will not constitute a default under, any corporate charter, certificate of incorporation, by-law, mortgage, indenture, contract, permit, judgment, decree, order, statute, rule or regulation, applicable to Purchaser.

Section 7.03. The representations and warranties in this Article VII shall survive the Closing for the applicable statute of limitations; provided that the representations and warranties in Sections 7.01(c)(i)-(iii) shall survive the Closing for twelve (12) months.

ARTICLE VIII.

Conditions Precedent to Closing

Section 8.01. In addition to any other condition set forth in this Agreement, Purchaser's obligation to close is subject to all of the following conditions precedent:

(a) All of Seller's representations and warranties shall be true and correct in all material respects as of the Closing Date.

(b) Seller shall have performed all of the obligations of Seller hereunder to be performed on or prior to the Closing.

Section 8.02. In addition to any other condition set forth in this Agreement, Seller's obligation to close is subject to the following conditions precedent:

(a) All of Purchaser's representations and warranties shall be true and correct in all material respects as of the Closing Date.

(b) Purchaser shall have performed all of the obligations of Purchaser herein to be performed on or prior to the Closing.

ARTICLE IX.

Closing and Closing Documents

Section 9.01. The purchase and sale of the Premises shall close, as evidenced by the delivery of the documents as set forth in Section 9 of this Agreement and disbursement to Seller of the net sale proceeds due to Seller in accordance with the terms of this Agreement and the performance by Seller and Purchaser of all their respective obligations under this Agreement (the "Closing"), on or about forty-five days after the Effective Date (the "Closing Date").

Section 9.02. At the Closing:

(a) Seller shall deliver to Purchaser:

(i) A special warranty deed with covenant against grantor's acts (the "Deed") in proper statutory short form for recording, which shall be duly executed and acknowledged so as to convey to Purchaser fee simple title to the Premises, free of all Title Defects, except as herein stated, which Deed shall contain the covenant required by subdivision 5 of Section 13 of the Lien Law;

(ii) Possession of the Premises, subject to possession of any occupants pursuant to the Lease Agreement.

(iii) A non-foreign status affidavit ("FIRPTA"), as required by Section 1445 of the Internal Revenue Code.

(iv) Checks to the order of the appropriate officers in payment of all applicable New York real property transfer taxes calculated on the Purchase Price hereunder and copies of any required tax returns therefor (TP-584 and RP-5217) executed by Purchaser and Seller.

(v) A Seller's title affidavit as reasonably requested by the Title Company.

(vi) Reasonable proof of Seller's authority as represented in Section 7.01(a) hereof.

(vii) Such other instruments and documents herein required to be delivered to Purchaser or the Title Company at the Closing.

(b) Purchaser shall deliver to Seller:

(i) the balance of the Purchase Price pursuant to and in the manner set forth in this Agreement;

(ii) such other instruments and documents herein required to be delivered to Seller at the Closing, including, but not limited to, signed counterparts of the

appropriate New York State real property transfer tax forms (TP-584 and RP-5217) in the amount of the Purchase Price hereunder; and

(iii) Reasonable proof of Purchaser's authority as represented in Section 7.02 (a) hereof.

Section 9.03. At any time or times on or before the date specified for the satisfaction of any condition, Purchaser or Seller may elect in writing to waive any such condition to which it receives the benefit, respectively. By closing the transaction, Purchaser and Seller shall be conclusively deemed to have waived the benefit of any remaining unfulfilled conditions in this Agreement (provided, the foregoing shall not be deemed as a waiver of claims for any breaches of representations or warranties of which the non-breaching party did not have actual knowledge as of the Closing). In the event any of the conditions set forth in Section 9.02 or Section 9.03 or elsewhere in this Agreement are neither waived nor fulfilled, Purchaser or Seller (as appropriate) may terminate their obligations to perform at the Closing and otherwise under this Agreement in accordance with the provisions of Article XI or Article XII, respectively.

ARTICLE X.

Transfer Taxes and Other Charges

Section 10.01. At the Closing Seller shall pay all federal, state and local transfer, documentary stamps and other taxes and charges imposed upon or relating to the transfer of the Premises. At the Closing, Seller and Purchaser shall each, to the extent required by applicable law, duly execute and deliver all tax returns and information returns necessary and proper in connection therewith. The provisions of this Section 10.01 shall survive the Closing.

ARTICLE XI.

Seller Default

Section 11.01. If Seller shall default in any material respect in the performance of any of Seller's obligations under this Agreement, or should any representation or warranty of Seller pursuant to Section 7.01 be untrue in any material respect, and provided that Purchaser has duly and timely performed all of its obligations and is not in default hereunder in any material respect, as Purchaser's sole and exclusive remedy, Purchaser shall be entitled to either (i) pursue specific performance of this Agreement, or (ii) terminate this Agreement, receive the return of the Deposit, and receive its actual costs incurred in connection with the transactions contemplated under this Agreement, not to exceed [REDACTED]. In the event that Seller has rendered the remedy of specific performance unavailable through its willful, grossly negligent or intentional acts, then Purchaser shall have all remedies available under law or equity.

Section 11.02. Subject to the limitations set forth in this Agreement, Purchaser will have all rights and remedies available under applicable law or in equity for defaults occurring or discovered after the Closing with respect to those provisions of this Agreement that are intended to survive the Closing. The provisions of this Section 11.02 shall survive the Closing.

ARTICLE XII.

Purchaser's Default

Section 12.01. If Purchaser shall default in any material respect in the performance of any of Purchaser's obligations under this Agreement, or should any representation or warranty of Purchaser pursuant to Section 7.02 be untrue in any material respect, and provided that Seller has duly and timely performed all of its obligations and is not in default hereunder in any material respect, as Seller's sole and exclusive remedy, Seller shall be entitled to terminate this Agreement and receive and retain the Deposit as liquidated damages, and this Agreement shall terminate and be of no further force and effect, with neither party having any further obligations hereunder, excepting Purchaser's indemnity and hold harmless obligations set forth in Article VI and any other obligations of Purchaser set forth in those provisions of this Agreement which by their express terms survive the termination of this Agreement.

Section 12.02. Subject to the limitations set forth in this Agreement, Seller will have all rights and remedies available under applicable law or in equity for defaults occurring or discovered after the Closing with respect to those provisions of this Agreement that are intended to survive the Closing. The provisions of this Section 12.02 shall survive the Closing.

ARTICLE XIII.

Damage or Destruction; Condemnation

Section 13.01. Damage or Destruction.

(a) Seller shall keep in full force and effect until Closing its present hazard insurance with respect to the Premises. The risk of any loss by fire or other casualty shall be assumed solely by Seller until Closing; provided, however, that in the event of damage to or destruction of the Premises, or any part thereof, this Agreement shall, except as hereafter expressly provided, remain in full force and effect, and Seller, at Purchaser's option, shall either: (i) repair or restore the Premises; or (ii) (a) pay over to Purchaser the amount of the insurance proceeds collected, to the extent not applied to the restoration or repair of the Premises; or, if any proceeds have not been collected, Seller shall assign to Purchaser all its right, title and interest in and to the same, to the extent not applied by Seller to the restoration or repair of the Premises; and (b) Seller shall be solely responsible for and shall pay or credit to Purchaser at Closing any deductible or self-insured retention amount under Seller's insurance policy. Furthermore, if the total amount of insurance proceeds collected or assignable (net of any deductible or self-insured retention paid by Seller) is less than the actual, reasonable cost to fully restore the Premises to their condition immediately prior to such damage (excluding those portions of the Premises required to be restored by Purchaser pursuant to the Lease Agreement), Purchaser shall have the right to (x) terminate this Agreement, or (y) proceed to Closing (in accordance with the foregoing provisions of this Section 13.01(a)(ii)).

(b) If damage to the Premises by fire or other casualty occurs and the cost of repairing such damage will, in the opinion of a mutually agreed upon independent inspector, exceed [REDACTED], Purchaser may, at its option, upon written

notice to Seller not later than 10 days after receipt of notice of such fire or other casualty, either (i) terminate this Agreement, or (ii) elect to proceed to Closing as provided in this Agreement, in which case, Seller shall pay over to Purchaser the amount of the insurance proceeds collected, to the extent not applied to the restoration or repair of the Premises; or, if any proceeds have not been collected, Seller shall assign to Purchaser all its right, title and interest in and to the same, to the extent not applied by Seller to the restoration or repair of the Premises. Upon termination pursuant to the preceding sentence, the obligations of each party to the other shall terminate without further liability hereunder or otherwise, except that the Deposit shall be refunded by Seller to Purchaser.

Section 13.02. Condemnation. The risk of any loss by the taking of the Premises or any part thereof by eminent domain (hereinafter a “taking”) shall be assumed solely by Seller until Closing; provided, however, that in the event of a taking, Purchaser may, upon notice to Seller, not later than 10 days after receipt of notice of such taking, (i) terminate this Agreement, or (ii) elect to proceed to Closing as provided in this Agreement, in which case, Seller shall pay over to Purchaser the amount of the condemnation proceeds collected, to the extent not applied to the restoration or repair of the Premises; or, if any proceeds have not been collected, Seller shall assign to Purchaser all its right, title and interest in and to the same, to the extent not applied by Seller to the restoration or repair of the Premises. Upon termination pursuant to the preceding sentence, the obligations of each party to the other shall terminate without further liability hereunder or otherwise, except that the Deposit shall be refunded by Seller to Purchaser.

ARTICLE XIV.

Escrow Agent

Section 14.01. The Deposit shall be held in escrow until Closing by the Title Company (“Escrow Agent”). The Deposit shall be placed in a non-interest bearing account (unless requested by Purchaser to be deposited in an interest bearing account) and the Deposit shall be paid over as follows:

(a) in the event title closes hereunder the Deposit shall be paid to Seller at Closing;

(b) in the event title does not close by reason of a default by Seller or a failure of a condition precedent, the Deposit shall be paid to Purchaser together (if applicable) with the monies to be remitted to Purchaser pursuant to Section 11.01 of this Agreement; and

(c) in the event title does not close by reason of a default by Purchaser, the Deposit shall be paid to Seller and this Agreement shall be null and void and there shall be no further liability on behalf of either party.

Section 14.02. Escrow Agent is acting hereunder as stakeholder only, without compensation and for the convenience and at the request of the parties. Escrow Agent shall not be liable for any action taken or omitted in good faith, provided that the Escrow Agent shall be liable for its gross negligence or willful misconduct in any event. Escrow Agent shall not be liable for and the parties jointly and severally agree to indemnify Escrow Agent against and hold Escrow Agent harmless from the payment of any interest or court costs or legal fees in any legal action

that may be brought to recover the monies held in escrow or any part thereof unless the Escrow Agent shall fail or refuse to pay over any such monies pursuant to a final judgment, order or decree. At any time, Escrow Agent shall be entitled, in its sole discretion, to apply to any court of competent jurisdiction to determine the rights of the parties hereof, and in the event of such application and the payment of the Deposit into such court, Escrow Agent shall be relieved and discharged from any liability or responsibility to the parties hereto.

Section 14.03. Notwithstanding any other provision of this Agreement, no notice, demand, request or other communication to the Escrow Agent in connection herewith shall be binding on the Escrow Agent unless it is in writing, refers specifically to this Agreement, is addressed to the Escrow Agent and is actually received by the Escrow Agent.

ARTICLE XV.

Notices

Section 15.01. Any notice, statement, demand or other communication required or permitted to be given, rendered or made by either party to the other pursuant to the terms of this Contract or pursuant to any applicable law or requirement of any public authority shall be in writing and shall be deemed to have been properly given, rendered or made by (a) delivery by hand, (b) overnight courier, or (c) certified mail, return receipt requested, addressed as appropriate, if to Seller, at the address listed above, with a copy to:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

and to Purchaser, at the address listed above, with a copy to:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Any such notice, if (x) delivered by hand, shall be deemed to have been given, rendered or made when actually delivered by hand, (y) sent by overnight courier, shall be deemed given, rendered or made upon actual receipt, or (z) sent by certified mail, return receipt requested, shall be deemed given, rendered or made as of three (3) days from the postmark of such notice. Either party may, by notice as aforesaid, designate a different address or addresses for notices, statements, demands or other communications intended for it. The attorneys for the respective parties hereto may transmit or receive any notice hereunder on behalf of their respective clients.

ARTICLE XVI.

Broker

Section 16.01. Seller and Purchaser represent and warrant to each other that they have not dealt with any broker, finder or like agent in connection with this transaction. The parties agree to, and hereby do, indemnify and save harmless each other and its respective legal representatives, heirs, successors and assigns against and from any loss, liability or expense, including reasonable attorneys' fees, arising out of any claim or claims for commission or other compensation for bringing about this Agreement or the transaction contemplated hereby made by any [other]broker, finder or like agency which are based in whole or in part on dealing with such party or its representatives. The provisions of this Article survive the Closing and the termination of this Agreement.

ARTICLE XVII.

Assignment

Section 17.01. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Purchaser shall have the right to assign this Agreement to any affiliate of Purchaser without Seller's consent but on prior written notice to Seller, provided that (a) such assignment shall not relieve Purchaser of its obligations under this Agreement; (b) assignee is controlled by Purchaser or under common control with Purchaser; and (c) the majority of ownership interests in assignee shall be owned by Purchaser or under common ownership with Purchaser.

ARTICLE XVIII.

Confidentiality

Section 18.01. Purchaser shall keep in strict confidence all information obtained with respect to the Premises pursuant to or in connection with this Agreement (including, without limitation, all terms and provisions of this Agreement, all Exhibits attached hereto and all information obtained in connection with any inspections of the Premises) until such time as the Closing is completed. Purchaser agrees to instruct its agents, employees, advisers and consultants to comply with the provisions of this Section 18.01. Notwithstanding the foregoing, Purchaser may disclose all information obtained with respect to the Premises to its directors, officers, shareholders, members, managers, bankers and advisors, as long as such parties agree to keep the information confidential until such time as the Closing is completed. If the purchase and sale of the Premises contemplated hereby is not completed for any reason, Purchaser shall promptly return to Seller all instruments and materials, or copies of instruments and materials, or copies of instruments and materials, delivered pursuant hereto or made by Purchaser. The provisions of this Section 18.01 shall survive any termination of this Agreement.

ARTICLE XIX.

Disclaimers and Limitations

Section 19.01. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR ANY CLOSING DOCUMENT TO THE CONTRARY, PURCHASER EXPRESSLY UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT THE CONVEYANCE OF THE PREMISES SHALL BE MADE BY SELLER TO PURCHASER ON AN “AS IS, WHERE IS” BASIS AND WITH ALL FAULTS, AND PURCHASER ACKNOWLEDGES THAT PURCHASER HAS AGREED TO BUY THE PREMISES IN ITS PRESENT CONDITION (SUBJECT TO PURCHASER’S RIGHT OF INSPECTION AND REVIEW AS PROVIDED HEREIN) AND THAT PURCHASER IS RELYING SOLELY ON ITS OWN EXAMINATION AND INSPECTIONS OF THE PREMISES AND NOT ON ANY STATEMENTS OR REPRESENTATIONS MADE BY SELLER OR ANY AGENTS OR REPRESENTATIVES OF SELLER, EXCEPT AS OTHERWISE EXCEPT SPECIFICALLY PROVIDED IN THIS AGREEMENT OR ANY CLOSING DOCUMENT. ADDITIONALLY, PURCHASER HEREBY ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT OR ANY CLOSING DOCUMENT, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES OR ANY PORTION THEREOF, OR WITH RESPECT TO THE ECONOMICAL, FUNCTIONAL, ENVIRONMENTAL OR PHYSICAL CONDITION, OR ANY OTHER ASPECT, OF THE PREMISES. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR ANY CLOSING DOCUMENT TO THE CONTRARY, SELLER HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR CONCERNING: (i) THE NATURE AND CONDITION OF THE PREMISES OR ANY PART THEREOF, INCLUDING BUT NOT LIMITED TO ITS WATER, SOIL, OR GEOLOGY, OR THE SUITABILITY THEREOF FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY ELECT TO CONDUCT THEREON, OR ANY IMPROVEMENTS PURCHASER MAY ELECT TO CONSTRUCT THEREON, OR ANY INCOME TO BE DERIVED THEREFROM, OR ANY EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ANY OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME; (ii) THE ABSENCE OF ASBESTOS OR ANY ENVIRONMENTALLY HAZARDOUS SUBSTANCES ON, IN OR UNDER THE PREMISES OR ON, IN OR UNDER ANY PROPERTY ADJACENT TO OR ABUTTING THE PREMISES; (iii) THE MANNER OF CONSTRUCTION OR CONDITION OR STATE OF REPAIR OR LACK OF REPAIR OF ANY IMPROVEMENTS; (iv) THE COMPLIANCE OF THE PREMISES OR THE OPERATION OF THE PREMISES OR ANY PORTION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY; AND (v) THE NATURE OR EXTENT OF ANY EASEMENT, RESTRICTIVE COVENANT, RIGHT-OF-WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR OTHER SIMILAR MATTER PERTAINING TO THE PREMISES, OR PORTION THEREOF.

ARTICLE XX.

Miscellaneous

Section 20.01. No Oral Modification. This Agreement constitutes the entire Agreement between the parties hereto and may not be modified or amended except by instrument in writing signed by the parties hereto, and no provisions or conditions may be waived other than by a writing signed by the party waiving such provision or condition.

Section 20.02. Construction of Agreement. This Agreement shall be construed and interpreted without reference to the principle that a contract is to be construed against the drafter thereof. It is acknowledged and agreed by the parties hereto that the provisions hereof have been drafted by both parties hereto through the course of negotiations.

Section 20.03. Schedules. All Schedules referred to in this Agreement, if any, are hereby incorporated in this Agreement by reference.

Section 20.04. Governing Law. This Agreement shall be governed by the laws of the State of New York.

Section 20.05. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns.

Section 20.06. Article Headings. Article headings are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof and shall not be considered in interpreting or construing this Agreement.

Section 20.07. Severability. If any term, covenant, condition or provision of this Agreement to any circumstance or to any party shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement or the application thereof to any circumstances or to any party other than those as to which any term, covenant, condition or provision is held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

Section 20.08. Disclaimer. Each of the parties hereto acknowledges that neither the other party nor any real estate broker nor any agent, officer, employee, servant or representative of such other party has made any representations whatsoever regarding the subject matter of this transaction except as specifically set forth herein, and each of the parties hereto acknowledges that in executing, delivering and/or performing this Agreement it has not relied upon and does not rely upon any such other representation.

Section 20.09. Prevailing Party Costs. Should either party apply to a court of competent jurisdiction to enforce any provision of this Agreement or to recover the Deposit (whether from the Escrow Agent or the other party), the party against whom any final judgment is entered agrees to pay to the prevailing party all reasonable costs, charges, and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith. The prevailing party shall also be entitled to pre-judgment interest at the statutory rate in accordance with CPLR 5004 on any amount

awarded to it including, without limitation, such statutory interest on the Deposit from the date of breach by the non-prevailing party. Venue in any action brought under this Agreement shall be in the Supreme Court of the State of New York located in Suffolk County and the law of the State of New York shall apply without regard to principles of conflicts of law. The provisions of this paragraph shall survive the Closing or any earlier termination of this Agreement.

Section 20.10. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall be one instrument. Delivery of an executed counterpart of this Agreement in pdf or other electronic transmission shall be equally effective as delivery of a manually executed original. Signatures delivered electronically (including via DocuSign or similar e-signature platforms) shall have the same legal effect and validity as an original ink signature for all purposes.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

Seller: [SELLER]

By: _____

Name:

Title:

Purchaser: [PURCHASER]

By: _____

Name:

Title:

SCHEDULE A

Metes and Bounds Property Description

Parcel I (SBL No. 200-704.00-2-36.001 which has been retired and is now known as SBL No. 200-704.00-2-36.002)

ALL that certain plot, piece or parcel of land, situate, lying and being at Yaphank, Town of Brookhaven, County of Suffolk and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of Long Island Expressway (New York State Route 495; south service road) where same is intersected by the southeasterly side of Sills Road

RUNNING THENCE along the southerly side of said Long Island Expressway the following two (2) courses and distances:

(1) North 84 degrees 06 minutes 52 seconds East, 71.07 feet;

(2) Along the arc of a curve bearing to the left having a radius of 1030.00 feet a distance of 16.15 feet to the westerly side of Bellport Avenue (not open);

THENCE along the westerly side of Bellport Avenue South 05 degrees 50 minutes 33 seconds East, 1931.62 feet to the northerly side of land of the Long Island Rail Road;

THENCE along said last mentioned land, South 82 degrees 58 minutes 07 seconds West, 1079.92 feet;

THENCE North 05 degrees 10 minutes 04 seconds West, 245.33 feet to the southeasterly side of Sills Road;

THENCE along said last mentioned road the following two (2) courses and distances:

(1) Along the arc of a curve bearing to the left having a radius of 2939.79 feet a distance of 330.72 feet;

(2) North 23 degrees 04 minutes 16 seconds East, 198.72 feet;

THENCE South 05 degrees 32 minutes 19 seconds East, 104.42 feet to a Right of Way taking line;

THENCE North 23 degrees 04 minutes 16 seconds East, 336.66 feet to a monument found;

THENCE South 77 degrees 04 minutes 31 seconds East, 39.81 feet;

THENCE North 23 degrees 04 minutes 16 seconds East, 74.82 feet;

THENCE North 89 degrees 52 minutes 37 seconds West, 15.06 feet;

THENCE North 05 degrees 33 minutes 18 seconds West, 156.55 feet to the southeasterly side of Sills Road;

THENCE along the southeasterly side of Sills Road the following two (2) courses and distances:

(1) North 23 degrees 04 minutes 16 seconds East, 836.37 feet;

(2) Along the arc of a curve bearing to the left having a radius of 982.00 feet a distance of 151.99 feet to the southerly side of the Long Island Expressway at the point or place of BEGINNING.

Parcel II (SBL No. 200-704.00-2-43)

All that certain plot piece or parcel of land, situate, lying and being at Yaphank, County of Suffolk and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the easterly boundary line of County Road 101 (Sills Road) at the northeast corner of Tax Lot 1.1 of district 200, section 704, block 2, as shown on the Suffolk County Tax Map, said point being 75.00 feet easterly measured at a right angle from station 276+12± of the Survey Centerline of County Road 101 (Sills Road); Running thence North 23° 04' 16" East 447.31 feet to a point, said 16" East 447.31 feet to a point, said East 447.31 feet to a point, said point being 75.00 feet easterly measured at a right angle from station 280+60±;

Thence South 05° 33' 18" East, along the easterly line of Sills 18" East, along the easterly line of Sills East, along the easterly line of Sills Road (CR 101), 146.24 feet to the northerly line of Old Town Road, said point being distant 145 ± feet easterly measured at a right angle from station 279+31±;

Thence South 89°52'37" East, along the northerly line of Old Town 37" East, along the northerly line of Old Town East, along the northerly line of Old Town Road, 20.57 feet to a point, said point being 164.00 feet easterly measured at a right angle from station 279+39±;

Thence, South 23°04'08" West 74.79 feet to a point, said point 08" West 74.79 feet to a point, said point West 74.79 feet to a point, said point being 164.00 feet easterly measured at a right angle from station 278+64±;

Thence North 77°21'27" West 39.66 feet to a point on the easterly line 27" West 39.66 feet to a point on the easterly line West 39.66 feet to a point on the easterly line of Sills Road (CR 101), said point being 125.00 feet easterly measured at a right angle from station 278+57±;

Thence South 23° 04' 16" West, along the easterly line of Sills 16" West, along the easterly line of Sills West, along the easterly line of Sills Road (CR 101) 336.66 feet to the easterly line of the aforementioned tax lot 1.1, said point being 125.00 feet easterly measured at a right angle from station 275+21±;

Thence North 05°32'19" West, along the easterly line of said tax 19" West, along the easterly line of said tax West, along the easterly line of said tax lot 1.1, a distance of 104.42 feet to the Point of Place of Beginning.

Parcel III (SBL No. 200-704.00-2-42)

All that certain plot piece or parcel of land, situate, lying and being at Yaphank, County of Suffolk and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the northerly line of land of the Metropolitan Transportation Authority (Long Island Railroad), said point being 124.69 feet easterly at a right angle from station 268+25± of the Survey Centerline of County Road 101 (Sills Road);

Running thence North 40° 38' 17" East 103.95 feet to a point, said 17" East 103.95 feet to a point, said East 103.95 feet to a point, said point being distant 137.05 feet easterly measured at a right angle from station 269+23.67;

Thence North 25°27'58" East 107.36 feet, to the easterly line of Sills 58" East 107.36 feet, to the easterly line of Sills East 107.36 feet, to the easterly line of Sills Road (CR 101), said point being distant 125.19 feet easterly measured at a right angle from station 270+26±;

Thence South 05°27'58" East, along the easterly line of Sills 58" East, along the easterly line of Sills East, along the easterly line of Sills Road (CR 101), 160.61 feet to the northerly line of land of the Metropolitan Transportation Authority (Long Island Railroad), said point being 223 ± feet easterly measured at a right angle from station 269+06+;

Thence South 82°58'07" West, along said northerly line of land of the 07" West, along said northerly line of land of the West, along said northerly line of land of the Metropolitan Transportation Authority (Long Island Railroad), 130.35 feet to the Point or Place of Beginning.

EXHIBIT E: MEMORANDUM OF SALE
[SEE ATTACHED]

AFTER RECORDING, RETURN TO:

c/o OmniTRAX, Inc.
252 Clayton Street, 4th Floor
Denver, CO 80206
Attention:
Email:

**MEMORANDUM OF AMENDED AND RESTATED LEASE, FREIGHT RAIL
EASEMENT, AND RIGHT OF FIRST REFUSAL**

THIS MEMORANDUM OF AMENDED AND RESTATED LEASE, FREIGHT RAIL EASEMENT, AND RIGHT OF FIRST REFUSAL (this “Memorandum”) is made and entered into as of _____, 2026, by and between **Brookhaven Logistics Center, LLC**, a Delaware limited liability company (“Landlord”), and **Sunrise Industrial Rail, LLC**, a Colorado limited liability company (“Tenant”).

Recitals

This Memorandum is made with respect to the following facts:

A. Landlord owns that certain real property described on Exhibit A attached hereto (the “Land”), and (ii) all buildings and improvements now or hereafter located on the Land, including the short-line railroad terminal, tracks, switches, signals, crossings, communication lines, poles, auxiliary tracks, and other similar improvements or fixtures (the “Improvements” and, collectively with the Land, the “Premises”)

B. Pursuant to that certain Amended and Restated Industrial Lease dated as of _____, 2025, by and between Landlord and Tenant (the “Lease”), as amended and restated from the original Industrial Lease dated as of _____, 2025, Landlord has demised and leased to Tenant, and Tenant has leased from Landlord, the Premises, and Landlord has granted to Tenant a permanent, exclusive freight rail operating easement over the Rail Line (as defined in the Lease). Except for those terms expressly defined in this Memorandum, all initially capitalized terms will have the meanings stated for such terms in the Lease.

C. Landlord and Tenant now desire to provide record evidence of Tenant’s leasehold interest in the Premises, Tenant’s permanent, exclusive freight rail easement over the Rail Infrastructure, and Tenant’s rights to purchase all or a portion of the Premises.

Memorandum

In consideration of the mutual promises and agreements set forth in the Lease and in this Memorandum, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Demise. Landlord hereby demises and leases the Premises to Tenant, and Tenant hereby accepts such demise and lease, to have and to hold for the Term and upon the terms and conditions set forth in the Lease.
2. Term. The Commencement Date is _____, 2025, and the initial Expiration Date (prior to the Extended Term) is _____, 2036.
3. Options to Renew. Subject to and in accordance with Section 2(b) of the Lease, Tenant will have the right to extend the Term for one additional five (5)-year Extended Term.
4. Tenant's Purchase Option and Right of First Refusal. Commencing on _____, 2028 and expiring on _____, 2033 (the "Option Period"), Tenant will have the right to purchase the Premises for a set purchase price on the terms set forth in Sections 45. Additionally, during the Option Period, Tenant will have a right of first refusal to purchase the Premises on the terms set forth in Section 46 of the Lease.
5. Freight Rail Easement. Pursuant to Article 47 of the Lease, Landlord has granted to Tenant a permanent, exclusive freight rail operating easement over the Rail Line (as defined in the Lease) for providing common carrier freight rail services over the Rail Line (the "Freight Rail Easement"). The Freight Rail Easement runs with the land and survives the expiration or earlier termination of the Lease.
6. Other Provisions. In addition to those terms referred to above, the Lease contains numerous other terms, covenants, conditions and provisions which affect the Property, and notice is hereby given that reference should be had to the Lease directly with respect to the details of such other terms, covenants, conditions and provisions. This Memorandum does not alter, amend, modify or change the Lease in any respect and is executed by the parties hereto for the purpose of recordation in the real property records of the county in which the Property is located to give notice of, and to confirm, the Lease and all of its terms to the same extent as if all such terms were fully set forth herein. In the event of any conflict between the provisions of this Memorandum and those of the Lease, the provisions of the Lease will control.
7. Recordation. Tenant may record this Memorandum in the Records.
8. Counterparts. This Memorandum may be executed in counterparts, each of which will be deemed a duplicate original.

[signature pages follow]

PUBLIC

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the date first set forth above.

LANDLORD:

BROOKHAVEN LOGISTICS CENTER, LLC,
a Delaware limited liability company

By: NPD Management, LLC, its Administrative Manager

By: _____
Nathaniel Hagedorn, Manager

STATE OF _____)

_____) ss.
COUNTY OF _____)

The foregoing Memorandum of Lease was signed and acknowledged before me this ____ day of _____, 2026, by _____ as Manager of NPD Management, LLC, Administrative Manager of Brookhaven Logistics Center, LLC.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

[signatures continue on following page]

PUBLIC

TENANT:

SUNRISE INDUSTRIAL RAIL, LLC, a Colorado
limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)

_____) ss.
COUNTY OF _____)

The foregoing Memorandum of Lease was signed and acknowledged before me this ____ day of
_____, 2026, by _____ as _____ of SUNRISE
INDUSTRIAL RAIL, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

Exhibit A
to Memorandum of Lease
LEGAL DESCRIPTION OF THE LAND

Parcel I (SBL No. 200-704.00-2-36.001 which has been retired and is now known as SBL No. 200-704.00-2-36.002)

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- (4) Along the arc of a curve bearing to the left having a radius of 982.00 feet a distance of 151.99 feet to the southerly side of the Long Island Expressway at the point or place of BEGINNING.

Parcel II (SBL No. 200-704.00-2-43)

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Thence South 05° 33' 18" East, along the easterly line of Sills 18" East, along the easterly line of Sills East, along the easterly line of Sills Road (CR 101), 146.24 feet to the northerly line of Old Town Road, said point being distant 145 ± feet easterly measured at a right angle from station 279+31±;

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Parcel III (SBL No. 200-704.00-2-42)

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Thence North 25°27'58" East 107.36 feet, to the easterly line of Sills 58" East 107.36 feet, to the easterly line of Sills East 107.36 feet, to the easterly line of Sills Road (CR 101), said point being distant 125.19 feet easterly measured at a right angle from station 270+26±;

Thence South 05°27'58" East, along the easterly line of Sills 58" East, along the easterly line of Sills East, along the easterly line of Sills Road (CR 101), 160.61 feet to the northerly line of land of the Metropolitan Transportation Authority (Long Island Railroad), said point being 223 ± feet easterly measured at a right angle from station 269+06+;

Thence South 82°58'07" West, along said northerly line of land of the 07" West, along said northerly line of land of the West, along said northerly line of land of the Metropolitan Transportation Authority (Long Island Railroad), 130.35 feet to the Point or Place of Beginning.

Certificate of Service

I certify that I have this September 14, 2026, served copies of this document upon all parties of record in this proceeding, by email.

/s/ Jason D. Tutrone