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CITY OF MECHANICVILLE AND TOWN OF STILLWATER  
INDUSTRIAL DEVELOPMENT AGENCY

AND

BEST AVENUE VENTURES, LLC

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**PAYMENT IN LIEU OF TAX AGREEMENT**

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DATED AS OF FEBRUARY 27, 2023

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## PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of February 27, 2023 (the "Agreement") by and between the CITY OF MECHANICVILLE AND TOWN OF STILLWATER INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York and having its office at the Municipal Building, 36 North Main Street, Mechanicville, New York 12118 (the "Agency"), and BEST AVENUE VENTURES, LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 211 N. Main Street, Mechanicville, New York 12118 (the "Company");

### WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, being Title I of Article 18-A of the General Municipal Law, Chapter 24, of the Consolidated Laws of the State of New York, as amended (the "Enabling Act"), authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for, among other things, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities; and

WHEREAS, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 582 of the Laws of 1978 of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and improve their standard of living; and

WHEREAS the Company has previously submitted an application (the "Application") to the Agency requesting that the Agency undertake a project (the "Project") consisting of (A) (1) the acquisition of a leasehold interest in approximately 1.74 acre parcel of land located at 5 Best Avenue (formerly 3 and 5 Best Avenue) in the Town of Stillwater, New York constituting Tax Parcel No. 262.-1-17 (formerly 262.-1-4.2 and 262.-1-4.122), as more particularly described on Schedule "A-1" attached hereto and a sub-leasehold interest in approximately 1.54 acres of land located at Best Avenue Rear and 211 North Main Street (formerly 211 North Main Street), in the Town of Stillwater and constituting a portion of Tax Parcel Nos. 262.-1-18 and 262.-1-19 (formerly 260-1-4.14 and 260-1-4.12), as more particularly described on Schedule "A-2" attached hereto (collectively, the "Land") (2) the demolition, reconstruction and construction on the Land of improvements including the construction of an approximately 66,000 square foot warehouse facility to be leased to DeCrescente Distributing Company, Inc. (the "Tenant") and used in its beverage distribution operations (the "Facility"); and (3) the acquisition and installation therein of certain machinery and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); and (B) the financing of all or a portion of the costs of the foregoing, and (C) the providing by the Agency of certain "financial assistance" (as defined in the Act) in the form of exemptions from state and local sales tax and real property taxes; and

WHEREAS, the Project Facility will be acquired by the Agency and leased to the Company pursuant to the terms of a certain lease agreement of even date herewith (as such may be amended or supplemented from time to time, the "Lease Agreement"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is not required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, supervision or control or upon its activities; and

WHEREAS, pursuant to the provision of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of real estate taxes with respect to the Project Facility in the amounts and in the manner hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

DEFINITION OF TERMS. All words and terms used herein and not otherwise defined herein shall have the meanings assigned to such words and terms in the Lease Agreement.

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS AND WARRANTIES OF COMPANY. The Company represents and warrants that:

(A) Power: is a limited liability company duly formed, validly existing and in good standing under the laws of the State and possesses full power and authority to enter into this Lease Agreement and the other Leasing Documents to which it is a party and to carry out its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the transactions contemplated hereby have been duly authorized by all necessary member action.

(B) Authorization: Neither the execution and delivery of this Agreement, the consummation by the Company of the transactions contemplated hereby nor the fulfillment by the Company of or compliance by the Company with the provisions of this Agreement will (1) result in a breach of or conflict with any of the terms, conditions or provisions of the Company's article or organization or operating agreement or of any agreement, instrument, order or judgment to which the Company is a party or by which the Company is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which it or any of its Property may be bound or affected, or (3) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign), having jurisdiction over the Company or any of the Property of the Company.

(C) Governmental Consent: No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition precedent to the execution, delivery or performance of this Agreement by the Company or as a condition precedent to the consummation by the Company of the transactions contemplated hereby.

SECTION 1.02. REPRESENTATIONS AND WARRANTIES OF THE AGENCY. The Agency represents and warrants that:

(A) Power: The Agency is duly established under the provisions of the Act and has the power to enter into this Agreement and to carry out its obligations hereunder. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Agreement.

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

(C) Governmental Consent: To the knowledge of the Agency no consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Agency is required as a condition precedent to the execution, delivery or performance of this Agreement by the Agency or as a condition precedent to the consummation by the Agency of the transactions contemplated hereby.

## ARTICLE II

### COVENANTS AND AGREEMENTS

#### SECTION 2.01. TAX-EXEMPT STATUS OF PROJECT FACILITY.

(A) Assessment of Project Facility: Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto acknowledge that, beginning on March 1, 2023, being the first Taxable Status Date (as defined in the New York State Real property Tax Law) following the acquisition of the Project Facility by the Agency, and continuing for so long thereafter as the Agency shall own or have a controlling interest in the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the “Taxing Entities”, and each of such Taxing Entities being sometimes individually hereinafter referred to as a “Taxing Entity”) as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of title to the Project Facility. The Company shall promptly, following acquisition by the Agency of title to the Project Facility, cooperate to ensure that the Project Facility is assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, and for so long thereafter as the Agency shall own the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The Agency will cooperate with the Company and will take all action as may be necessary (subject to the provisions of Section 3.01 hereof) to preserve the tax exempt status of the Project Facility. The parties hereto acknowledge that the Project Facility shall not be entitled to such exempt status on the tax rolls of any Taxing Entity until the assessment roll corresponding to the Taxable Status Date of March 1, 2023 is prepared and filed. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay to the appropriate Taxing Entity all taxes and assessments lawfully levied and/or assessed by the appropriate Taxing Entity against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the appropriate Taxing Entity.

(B) Special Assessments: The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay to the appropriate Taxing Entity all special assessments and special ad valorem levies lawfully levied and/or assessed by the appropriate Taxing Entity against the Project Facility.

#### SECTION 2.02. PAYMENTS IN LIEU OF TAXES.

(A) Agreement to Make Payments: The Company agrees that it will make annual payments in lieu of real estate taxes with respect to the Project Facility to the Agency in the amounts hereinafter provided for redistribution to the respective Taxing Entities in proportion to the amounts which said Taxing Entities would have received had not the Project Facility been acquired and owned by the Agency.

(B) Amount of Payments in Lieu of Taxes:

(1) Town and County Taxes: (a) Commencing in calendar year 2024 and continuing thereafter through calendar year 2028, on the later to occur of (i) each February 15 and (ii) thirty (30) days following receipt by the Company of an invoice therefor, payments in lieu of tax owing and payable by the Company to the Agency on account of town and county taxes with respect to each appropriate Taxing Entity shall be calculated by multiplying (i) the Assessed Value (as hereinafter defined) of the Land (without regards to

the Facility) as shown on the tax rolls of the Town of Stillwater by (ii) the tax rate or rates of such Taxing Entity applicable to the Project Facility for the current tax year of such Taxing Entity.

(b) Commencing in calendar year 2029 and continuing thereafter through calendar year 2033, on the later to occur of (i) each February 15 and (ii) thirty (30) days following receipt by the Company of an invoice therefor, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency on account of town and county taxes for the Project Facility with respect to each appropriate Taxing Entity in an amount to be determined by adding (x) the Assessed Value of the Land times the tax rate or rates of each such Taxing Entity for the current tax year plus (y)(i) the Assessed Value of the Facility by (ii) the decimal amounts set forth below for the period in question:

<u>Tax Year</u>	<u>Multiplier</u>
2029	.50
2030	.60
2031	.70
2032	.80
2033	.90

with the resulting sum multiplied by the tax rate or rates of each such Taxing Entity for the current tax year.

(c) Commencing in calendar year 2034 and continuing thereafter for such time as this Agreement is in effect, on the later to occur of (i) each February 15 and (ii) thirty (30) days following receipt by the Company of an invoice therefor for such time as this Agreement is in effect, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency on account of town and county taxes for the Project Facility with respect to each appropriate Taxing Entity in an amount to be determined by multiplying (i) the Assessed Value of the Project Facility by (ii) the tax rate or rates of such Taxing Entity applicable to the Project Facility for the current tax year of such Taxing Entity.

(2) School Taxes: (a) Commencing in calendar year 2024 and continuing thereafter through calendar year 2028, on the later to occur of (i) each February 15 and (ii) thirty (30) days following receipt by the Company of an invoice therefor, payments in lieu of tax owing and payable by the Company to the Agency on account of school taxes with respect to each appropriate Taxing Entity shall be calculated by multiplying (i) the Assessed Value (as hereinafter defined) of the Land (without regards to the Facility) as shown on the tax rolls of the Town of Stillwater by (ii) the tax rate or rates of such Taxing Entity applicable to the Project Facility for the current tax year of such Taxing Entity.

(b) Commencing in calendar year 2029 and continuing thereafter through calendar year 2033, on the later to occur of (i) each February 15 and (ii) thirty (30) days following receipt by the Company of an invoice therefor, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency on account of school taxes for the Project Facility with respect to each appropriate Taxing Entity in an amount to be determined by adding (x) the Assessed Value of the Land times the tax rate or rates of each such Taxing Entity for the current tax year plus (y)(i) the Assessed Value of the Facility by (ii) the decimal amounts set forth below for the period in question:

<u>Tax Year</u>	<u>Multiplier</u>
2023-24	.50
2024-25	.60
2025-26	.70
2026-27	.80
2027-28	.90

with the resulting sum multiplied by the tax rate or rates of the Mechanicville City School District for the current tax year.

(c) Commencing in calendar year 2034 and continuing thereafter for such time as this Agreement is in effect, on the later to occur of (i) each February 15 and (ii) thirty (30) days following receipt by the Company of an invoice therefor for such time as this Agreement is in effect, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency on account of school taxes for the Project Facility with respect to each appropriate Taxing Entity in an amount to be determined by multiplying (i) the Assessed Value of the Project Facility by (ii) the tax rate or rates of such Taxing Entity applicable to the Project Facility for the current tax year of such Taxing Entity.

(3) (a) For purposes of this Section 2.02: (i) the “Assessed Value” of the Land or the Project Facility, as applicable shall be determined by the appropriate officer or officers of the Taxing Entity responsible for assessing properties in each Taxing Entity (said officer or officers being hereinafter collectively referred to as the “Assessor”). The Assessor shall (a) appraise the Project Facility, as applicable, (excluding, where permitted by law, personal property) in the same manner as other similar properties in said Taxing Entity and (b) place a value for assessment purposes upon the Project Facility, as applicable, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes.

(b) If the Company is dissatisfied with the amount of Assessed Value as initially established or as changed, the Company may pursue review of the Assessed Value under Article 7 of the New York State Real Property Tax Law or any other law or ordinance then in effect relating to disputes over assessed valuation of real property in the State of New York, and may take any and all other action available to it at law or in equity, for a period of seven (7) years from the date such Assessed Value is initially established or changed and further **the Company must provide no less than 45 days written notice to the Agency prior to a commencement of a proceeding under Article 7.** IF THE COMPANY FAILS TO PURSUE REVIEW OF (i) THE INITIALLY ESTABLISHED ASSESSED VALUE, DURING THE SEVEN (7) YEAR PERIOD FOLLOWING SUCH ESTABLISHMENT, OR (ii) ANY INCREASE IN ASSESSED VALUE, DURING THE SEVEN (7) YEAR PERIOD FOLLOWING ANY SUCH INCREASE, THE COMPANY SHALL BE DEEMED TO HAVE WAIVED ANY RIGHT TO CONTEST OR DISPUTE SUCH ASSESSED VALUE AT ANY TIME FOR A SEVEN (7) YEAR PERIOD COMMENCING MARCH 1, 2034 NOTWITHSTANDING ANYTHING IN THE NEW YORK STATE REAL PROPERTY TAX LAW TO THE CONTRARY. THIS SEVEN (7) YEAR LIMITATION SHALL APPLY TO EACH AND EVERY ASSESSMENT MADE DURING THE PERIOD THAT THE AGENCY HOLDS TITLE TO THE PROJECT FACILITY, AND SHALL BE FOR THE BENEFIT OF THE AGENCY AND THE OTHER TAXING ENTITIES. The Agency hereby irrevocably appoints the Company its attorney-in-fact and agent (coupled with an interest) for the purpose of commencing any proceeding, preparing and filing all documents and taking any and all other actions required to be taken by Agency, necessary or desirable, in the opinion of the Company, to contest or dispute any Assessed Value within such periods; provided, however, that the Agency shall incur no expense or liability in connection with any action taken or omitted to be taken by its attorney-in-fact and agent.

(c) The Company will file with the appropriate officer the filing required under Section 412-a (2) of the Real Property Tax Law of New York State on or before March 1, 2023. THE COMPANY ACKNOWLEDGES THAT THE FAILURE TO FILE SUCH FORM BY THE DATE INDICATED WILL RESULT IN A NULLIFICATION OF THE TERMS OF THIS AGREEMENT.

(4) Additional Amounts in Lieu of Taxes: Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land (such structural additions and additional buildings and other structures being hereinafter referred to as “Additional Facilities”), the Company agrees to make additional annual payments in lieu of property taxes (such additional payments being hereinafter collectively

referred to as “Additional Payments”) to the Receivers of Taxes with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the “Normal Tax”) which would be payable to each Taxing Entity if such Additional Facilities were owned by the Company and not the Agency by multiplying (a) the additional Assessed Value of such Additional Facilities determined pursuant to subsection (B)(3) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each calendar year during the term of this Agreement (commencing in the calendar year when such Additional Facilities first appear on the assessment roll of any Taxing Entity), the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Agreement shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to such Additional Facilities for such calendar year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

SECTION 2.03. INTEREST. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with late fees and interest thereon equal to the greater of (A) any late fees and interest which would be applicable with respect to each Taxing Entity were the Project Facility owned by the Company and not the Agency and (B) the late fees and interest prescribed by subsection (5) of Section 874 of the General Municipal Law of the State of New York (or any successor statute thereto).



## ARTICLE III

### LIMITED OBLIGATION OF THE AGENCY

#### SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY.

(A) No Recourse: All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenants or agreement contained in this Agreement, or otherwise based upon or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement, it being expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(B) Limited Obligation: The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the City of Mechanicville and Town of Stillwater, New York, and neither the State of New York nor the City of Mechanicville and Town of Stillwater, New York shall be liable thereon, and further such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) Further Limitation: Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company satisfactory to the Agency to defend and hold harmless the Agency against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV

### EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events (hereinafter an “Event of Default”) shall constitute a default under this Agreement:

(A) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement and continuance of said failure for a period of ten (10) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed by it hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period, and the Company shall have commenced action to cure the breach of such covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for a period not to exceed sixty (60) days from the date of receipt by the Company of such notice; or

(C) Any warranty or representation by the Company contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement and such falsity or incorrectness has a material adverse affect on the Company’s ability to perform its obligations under this Agreement.

SECTION 4.02. REMEDIES ON DEFAULT. Whenever any Event of Default shall have occurred and be continuing with respect to this Agreement, the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement including, without limitation, the exercise by the Agency of the remedy set forth in subsections (A)(3) and (A)(4) of Section 10.2 of the Lease Agreement. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of the State of New York, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY’S FEES AND EXPENSES. If an Event of Default should occur and be continuing under this Agreement and the Agency should employ attorneys or incur other reasonable expenses for the collection of any amounts due and payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor by the Agency, reimburse the Agency for the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE.

(A) No Remedy Exclusive: Notwithstanding anything to the contrary contained herein, no remedy herein conferred upon or reserved to the Agency or the Company is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay: No delay or omission in exercising any right or power accruing upon the occurrence of an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required: In order to entitle the Agency to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(D) No Waiver: In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

#### SECTION 5.01. TERM OF AGREEMENT.

(A) General: This Agreement shall become effective and the obligations of the Company and the Agency shall arise absolutely and unconditionally upon the execution and delivery of this Agreement by the Company and the Agency. This Agreement shall continue to remain in effect until the termination of the Lease Agreement in accordance with its terms.

(B) Extended Term: In the event that (1) if title to the Project Facility shall be conveyed to the Company, (2) if on the date on which the Company obtains title to the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities solely as a result of the Agency's prior ownership of the Project Facility, and (3) if the fact of obtaining title shall not immediately obligate the Company to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of New York (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Agreement shall remain in full force and effect but only to the extent set forth in this sentence and the Company shall be obligated to make payments to the Agency in amounts equal to the Normal Tax which would be due from the Company if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENT OF AGREEMENT. This Agreement may not be amended, changed, modified, altered, supplemented or terminated unless such amendment, change, modification, alteration or termination is in writing and unless signed by the party against which enforcement of the amendment, change, modification, alteration, supplement or termination shall be sought.

SECTION 5.05. NOTICES. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery (including, but not limited to, overnight delivery) or (B) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery. The address to which notices, certificates and other communications hereunder shall be delivered are as follows:

(A) TO THE AGENCY:

City of Mechanicville and Town of Stillwater Industrial Development Agency  
Municipal Building  
36 North Main Street  
Mechanicville, New York 12118  
Attention: Chairperson

WITH A COPY TO:

Lemery Greisler LLC  
60 Railroad Place  
Suite 502  
Saratoga Springs, New York 12866  
Attention: James A. Carminucci, Esq.

(B) TO THE COMPANY:

Best Avenue Ventures, LLC  
211 North Main Street  
Mechanicville, New York 12118  
Attention: Edward R. Keis, Chief Financial Officer

WITH A COPY TO:

O'Connell & Aronowitz, P.C.  
54 State Street  
Albany, New York 12207  
Attention: Jeffrey A. Siegel, Esq.

provided, that the Agency and the Company may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

SECTION 5.06. BINDING EFFECT. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance.

SECTION 5.09. ASSIGNMENT. With the exception of an assignment by the Company of its rights under this Agreement to CMD Realty, LLC, a New York limited liability company as provided in the Lease Agreement, this Agreement may not be assigned by the Company absent the prior written consent of the Agency.

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

CITY OF MECHANICVILLE AND TOWN OF  
STILLWATER INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Sally Herrick, Chairperson

BEST AVENUE VENTURES, LLC

By: \_\_\_\_\_  
Edward R. Keis, CFO

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF SARATOGA        )

On the 7th day of February, in the year 2023, before me, the undersigned, a notary public in and for said state, personally appeared **Sally Herrick** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF SARATOGA        )

On the 27th day of February, in the year 2023, before me, the undersigned, a notary public in and for said state, personally appeared **Edward R. Keis**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

SCHEDULE "A-1"

LEASEHOLD PREMISES

**LOT B  
A PORTION OF LANDS NOW OR FORMERLY OF  
BEST AVENUE VENTURES, LLC  
TOWN OF STILLWATER, COUNTY OF SARATOGA, STATE OF NEW YORK  
AREA = 1.74± ACRES OF LAND**

All that certain tract, piece or parcel of land situate in the Town of Stillwater, County of Saratoga, State of New York, lying generally West of U.S. Route 4 – N.Y.S. Route 32 (Hudson Avenue) and Southwesterly of Best Avenue, being Lot B as shown on a map entitled "Lot Line Adjustment Map Between Lands Now Or Formerly Of The City Of Mechanicville And The Town Of Stillwater Industrial Development Agency Tax Map ID Nos. 262.00-1-4.110, 262.00-1-4.14, 262.38-1-7, 262.38-1-5 And 262.00-1-4.121 And Best Avenue Ventures, LLC, Tax Map ID Nos. 262.00-1-4.2 And 262.00-1-4.122," prepared by C.T. Male Associates, Engineering, Surveying, Architecture, Landscape Architecture & Geology, D.P.C., dated July 19, 2021, last revised December 10, 2021, and filed in the Saratoga County Clerk's Office on December 27, 2021 as Map Instrument No. M2021267, and being more particularly bounded and described as follows:

COMMENCING at the point of intersection of the Northwesterly highway boundary of U.S. Route 4 – N.Y.S. Route 32 (Hudson Avenue) with the Southwesterly road boundary of Best Avenue; thence from said point of commencement North 45 deg. 48 min. 00 sec. West 195.47 feet along the Southwesterly road boundary of Best Avenue to the true Point of Beginning and runs thence from said point of beginning along the division line between said Lot B on the Northwest and Lot A as shown on the above described filed map on the Southeast, South 44 deg. 12 min. 00 sec. West 68.63 feet to its point of intersection with the division line between said Lot B on the Northeast and North and the lands now or formerly of CMD Realty, LLC as described in Instrument No. 2022007536 on the Southwest and South; thence along the last mentioned division line the following two (2) courses: 1) North 45 deg. 48 min. 00 sec. West 143.60 feet to a point; and 2) North 78 deg. 35 min. 48 sec. West 223.46 feet to its point of intersection with the division line between said Lot B on the Northeast and said Lot A on the Southwest; thence along the last mentioned division line North 45 deg. 48 min. 00 sec. West 184.49 feet to its point of intersection with the division line between said Lot B on the Southeast and the lands now or formerly of the Boston and Maine Railroad on the Northwest; thence along the last mentioned division line North 22 deg. 55 min. 00 sec. East 203.55 feet to the most Northerly corner of said Lot B; thence along the Northeasterly line of said Lot B and continuing along the first herein mentioned Southwesterly road boundary of Best Avenue South 45 deg. 48 min. 00 sec. East 589.81 feet to the point or place of beginning and containing 1.74 acres of land, more or less.

Subject to a New York State Electric and Gas right-of-way as shown on the above mentioned filed map.

Subject to any other covenants, rights-of-way, easements, or restrictions of record.

C.T. MALE ASSOCIATES

Donald E. Albrecht, P.L.S.

February 14, 2023  
DEA/amb  
C.T. Male Project No. 12.2329  
Dwg. No. 21-0429

SCHEDULE "A-2"

SUB-LEASEHOLD PREMISES

**PROPOSED LEASE DESCRIPTION**  
**A PORTION OF LANDS NOW OR FORMERLY OF**  
**BEST AVENUE VENTURES, LLC**  
**AND A PORTION OF THE LANDS NOW OR FORMERLY OF THE**  
**CITY OF MECHANICVILLE AND THE TOWN OF STILLWATER**  
**INDUSTRIAL DEVELOPMENT AGENCY**  
**TOWN OF STILLWATER**  
**COUNTY OF SARATOGA, STATE OF NEW YORK**  
**AREA = 1.54± ACRES OF LAND**

All that certain tract, piece or parcel of land situate in the Town of Stillwater, County of Saratoga, State of New York, lying generally Westerly of U.S. Route 4 – N.Y.S. Route 32 (Hudson Avenue) and generally Southwesterly of Best Avenue, and being more particularly bounded and described as follows:

COMMENCING at the point of intersection of the Northwesterly highway boundary of U.S. Route 4 – N.Y.S. Route 32 (Hudson Avenue) with the Southwesterly road boundary of Best Avenue; thence from said point of commencement along said Southwesterly road boundary of Best Avenue North 45 deg. 48 min. 00 sec. West 347.56 feet to its point of intersection with the division line between the lands now or formerly of Best Avenue Ventures, LLC as described in Instrument No. 2021004940 (Parcel I) on the Southeast and the lands now or formerly of Best Avenue Ventures, LLC as described in Instrument No. 2021004940 (Parcel II) on the Northwest; thence South 44 deg. 12 min. 00 sec. West along the last mentioned division line 85.24 feet to the true point of beginning and runs thence from said Point of Beginning along the new concrete foundation wall as field located on December 27, 2021 and through the said lands now or formerly of Best Avenue Ventures, LLC as described in Instrument No. 2021004940 (Parcel I), in part, and the lands now or formerly of the City of Mechanicville and the Town of Stillwater Industrial Development Agency as described in Book 1414 of Deeds at Page 653, in part, the following two (2) courses: 1) South 78 deg. 33 min. 50 sec. East 7.52 feet to a point; and 2) South 11 deg. 24 min. 52 sec. West 274.09 feet to a point at the Northeast corner of an existing warehouse building; thence continuing through the said lands now or formerly of the City of Mechanicville and the Town of Stillwater Industrial Development Agency as described in Book 1414 of Deeds at Page 653 along the North and East face of said existing warehouse building the following three (3) courses: 1) North 78 deg. 33 min. 56 sec. West 152.61 feet to a point; 2) North 11 deg. 20 min. 11 sec. East 148.36 feet to a point; and 3) North 78 deg. 35 min. 11 sec. West 200.00 feet to a point at the Northwest corner of said existing warehouse building; thence along the new concrete foundation wall as field located on December 27, 2021 and through the said lands now or formerly of the City of Mechanicville and the Town of Stillwater Industrial Development Agency as described in Book 1414 of Deeds at Page 653 the following four (4) courses: 1) North 78 deg. 35 min. 11 sec. West 2.41 feet to a point; 2) North 11 deg. 54 min. 44 sec. East 2.36 feet to a point; 3) South 74 deg. 06 min. 27 sec. East 0.98 feet to a point; and 4) North 11 deg. 27 min. 53 sec. East 123.53 feet to a point; thence along the new concrete foundation wall continuing through the said lands now or formerly of the City of Mechanicville and the Town of Stillwater Industrial Development Agency as described in Book 1414 of Deeds at Page 653, in part, and the said lands now or formerly of Best Avenue Ventures, LLC as described in Instrument No. 2021004940 (Parcel II), in part, South 78 deg. 33 min. 50 sec. East 346.60 feet to the point or place of beginning and containing 1.54 acres of land, more or less.

Subject to any covenants, rights-of-way, easements, or restrictions of record.

C.T. MALE ASSOCIATES

Donald E. Albrecht, P.L.S.

January 3, 2022  
Revised: February 10, 2023  
DEA/amb  
C.T. Male Project No. 12.2329  
Dwg. No. 21-0228