

FIRST AMENDMENT TO LEASEBACK AGREEMENT

This First Amendment to Leaseback Agreement (the "First Leaseback Amendment") dated as of December 15, 2022 is entered into by and between **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), a New York public benefit corporation having its office at 584 Phoenix Drive, Rome, New York 13441 and **STD REALTY, LLC**, limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with an address of 20 Burrstone Road, New York Mills, New York 13417 (the "Company"), and amends that certain Leaseback Agreement dated as of December 6, 2018 (the "Leaseback Agreement") entered into by and between the Agency and the Company, a memorandum of which was recorded in the Oneida County Clerk's Office on December 7, 2018 at Instrument Number R2018-001593.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Leaseback Agreement.

Recitals

A. Pursuant to a certain Lease Agreement dated as of December 6, 2018 (the "Lease Agreement"), the Company conveyed to the Agency a leasehold interest in (a) a 19,000± square foot connector building to expand current warehouse space; (b) a 14,250± square foot truck storage garage; (c) loading docks at the existing truck garage and (d) new asphalt truck access drives and stone pavement (collectively the "2018 Improvements"), such 2018 Improvements to be added to an existing 108,000± square foot facility (collectively, the "Existing Improvements"), situated on a 9.37± acre parcel of land located at 20 Burrstone Road, Village of New York Mills, Town of New Hartford, Oneida County, New York (the "Land"), and acquisition and installation of equipment in the Improvements (the "Existing Equipment"), all to be used for the purpose of the wholesale distribution of beer, wine, soda, water, spirits and snacks (the Land, the Existing Improvements and the Existing Equipment referred to collectively as the "Existing Facility"). The Company subleases the Existing Facility to McCraith Beverages, Inc. (the "Sublessee") pursuant to the terms of a Real Estate Lease Agreement dated June 5, 2015 as amended by a First Amendment to Real Estate Lease Agreement dated December 6, 2018 (collectively, the "Sublease Agreement").

B. Pursuant to the Leaseback Agreement, the Company agreed to acquire, construct, renovate and equip the Existing Facility, as agent of the Agency, and the Agency agreed to lease the Existing Facility to the Company for a term commencing as of December 6, 2018 and terminating December 31, 2029.

C. The Company and the Agency previously entered into a payment-in-lieu-of-tax agreement dated as of December 6, 2018 (the "PILOT Agreement") pursuant to which the Company agreed to make payments in lieu of real property taxes on the Existing Facility for the terms of the Lease Agreement and the Leaseback Agreement.

D. The Company now proposes to undertake a certain project consisting of construction of a 23,000± square foot warehouse addition, which will connect the main building at the recycling building to the existing truck garage (the “Addition”) and acquisition and installation of equipment in the Addition (the “Equipment”), all for the purpose of expanding the operations and increasing productivity of the Sublessee (the Addition and the Equipment are referred to collectively as the “2022 Facility” and the construction and equipping of the Addition is referred to as the “2022 Project”), and will lease the Existing Facility together with the 2022 Facility to the Agency pursuant to a First Amended and Restated Lease Agreement dated as of December 15, 2022 (the “First Amended Lease”).

E. The Company has requested that the Agency provide financial assistance in support of the 2022 Project in the form of exemptions from sales and use taxes and a reduction in real property taxes for a period of ten years on the increased assessment resulting from the 2022 Project (the “Financial Assistance”).

F. By resolution dated August 19, 2022, the Agency determined to undertake the 2022 Project and to grant the Financial Assistance requested in connection therewith.

G. The Agency and the Company now desire to amend the Leaseback Agreement to amend the definition of the Facility to add and include the 2022 Facility, and to amend certain other definitions contained in the Leaseback Agreement.

Agreement

In consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency and the Company hereby agree as follows:

1. Amendments to Leaseback Agreement.

(a) The definition of “Addition” is hereby incorporated to mean the 23,000± square foot warehouse addition, which will connect the main building at the recycling building to the existing truck garage, constructed or to be constructed on the Land.

(b) The definition of “Construction Period” is hereby amended to add and include the period (a) beginning on the earlier of (i) the date of commencement of construction, renovation and equipping of the 2022 Facility, which date shall not be prior to June 17, 2022, or (ii) the Closing Date of the 2022 Facility Amendment and (b) ending on the Completion Date.

(c) The definition of “Equipment” is hereby amended to add and include the 2022 Equipment.

(d) The definition of “Facility” is hereby amended to add and include the 2022 Facility.

(e) The definition of "Improvements" is hereby amended to add and include the Addition.

(f) The definition of "Job Creation Agreement 2022" is hereby added to mean the Job Creation and Recapture Agreement dated as of December 15, 2022 by and among the Agency, the Company and the Sublessee.

(g) The definition of "Lease Agreement" is hereby revised to mean the First Amended and Restated Lease Agreement dated as of December 15, 2022 from the Company to the Agency.

(h) The definition of "Project" is hereby amended to add and include the 2022 Project.

(i) The definition of "PILOT Agreement" is hereby amended to mean the First Amended and Restated PILOT Agreement dated as of December 15, 2022 by and between the Agency and the Company.

(j) By virtue of updating the definitions within the Leaseback Agreement, said definitions are incorporated throughout all Transaction Documents.

2. Lease Term. The duration of the Lease Term as described in Section 2.5(b) is hereby extended to terminate at midnight on December 31, 2033.

3. Rent. Section 2.6(a) shall be amended to read as follows:

(a) The Company shall pay basic rent for the Existing Facility as follows: Seven Hundred Fifty Dollars (\$750.00) per year commencing on the Closing Date and on the First Business Day of each and every January thereafter through January 1, 2029. The Company shall pay basic rent for the 2022 Facility as follows: Seven Hundred Fifty Dollars (\$750.00) per year commencing on the Closing Date of the 2022 Facility and on the First Business Day of each and every January thereafter during the extended term of this Leaseback Agreement

4. Employment Obligation. Section 1.2(h) is hereby amended to read as follows:

(h) In its Application for Financial Assistance dated June 6, 2018 and amended on July 11, 2018 and November 2, 2018, the Company represented that the Sublessee will create fourteen (14) full time equivalent positions at the Facility prior to the conclusion of the third year of the Lease Term, retain the existing ninety-three (93) full time equivalent positions at the Facility and maintain all for the duration of the Lease Term as a result of undertaking the Facility (the "Existing Employment Obligation"). In its Application for Financial Assistance dated June 3, 2022, the Company projected that, as a result of the 2022 Project, the Company represented that the Company and/or the Sublessee will retain 128 full time equivalent ("FTE") positions at the Facility for the duration of the Lease Term and create an additional 10 FTEs at the Facility by the end of the third

extended lease year (the "Employment Obligation"). The Company acknowledges that the financial assistance granted by the Agency in connection with the Existing Facility is conditioned upon the Company or the Sublessee achieving the 2018 Employment Obligation, and the financial assistance granted by the Agency in connection with the 2022 Facility is conditioned upon the Company or the Sublessee achieving the Employment Obligation.

5. Insurance. Section 3.4 of the Leaseback Agreement is omitted and replaced in its entirety as follows:

Section 3.4 Insurance Required.

At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, the Company shall, at its sole cost and expense, maintain or cause to be maintained (and cause the Sublessees to maintain, where appropriate) insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in New York State. The Insurance carrier must have at least an A- (excellent) rating by A. M. Best. Company shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) **Property Insurance:** Insurance against loss or damage by fire, lightning and other casualties customarily insured against in an all risk policy with special form perils, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) **Workers' Compensation & Employers Liability Insurance and Disability Benefits Insurance** and each other form of insurance that the Company or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or any permitted sublessee who are located at or assigned to the Facility. Statutory New York limits shall apply to these policies. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Facility.

(c) **General Liability Insurance** protecting the Agency, the Company and the owner of the Facility (if the Company is not the owner) against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or occurrence with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Comprehensive Automobile Liability Insurance including all owned, non-owned and hired autos with a

limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage) protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage, and Umbrella Liability Insurance of not less than \$5,000,000 per occurrence. This coverage shall also be in effect during the Construction Period.

(d) During the Construction Period (and for at least two years thereafter in the case of Products and Completed Operations as set forth below), the Company shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation & employer's liability and disability benefits insurance both with statutory limits in accordance with applicable law.

(ii) Comprehensive general liability providing coverage for:
Premises and Operations
Products and Completed Operations
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The annual aggregate shall apply per project. The contractor's general liability policy shall include coverage for the contractor and any of the additional insureds for any operations performed on residential projects including single or multi-family housing, residential condominiums, residential apartments and assisted living facilities.

(iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iv) Umbrella Liability with limits of \$5,000,000 per occurrence and \$5,000,000 annual aggregate.

(e) A policy or policies of flood insurance in the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

Section 3.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 3.4 hereof shall provide for at least thirty (30) day's prior written notice of the restriction, cancellation or modification thereof to the Agency. The policies evidencing the insurance required by Section 3.4(c) hereof shall name the Agency and the owner of the Facility (if the Company is not the owner) as additional insured on a primary & non-contributory basis. All policies evidencing the insurance required by Sections 3.4(d)(ii) (iii) and (iv) shall name as additional insured the Agency, Company and the owner of the Facility (if the Company is not the owner) on a primary and non-contributory basis for the ongoing construction phase and for two years following completion during the completed operations phase. The policies under Section 3.4 (a) shall contain appropriate waivers of subrogation. The policies under Section 3.4 (b),(c),(d) shall contain waivers of subrogation in favor of the Agency, the Company and the owner of the Facility (if the Company is not the owner).

(b) All policies or certificates (or binders) of insurance required by Sections 3.4 hereof shall be submitted to the Agency on or before the Closing Date. Attached to the certificate of insurance shall be a copy of the additional insured endorsement from the Company's General Liability policy. The Company shall deliver to the Agency before the renewal date of each policy a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 3.4 hereof and complying with the additional requirements of Section 3.5(a) hereof. Prior to the expiration of each such policy, the Company shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Leaseback Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Leaseback Agreement as the Agency may from time to time reasonably require.

The Agency shall be named as additional insured as follows:

Oneida County Industrial Development Agency, ISAOA
584 Phoenix Drive
Rome, New York 13441

6. *Prevailing Wage.* A new Section 5.13 is added as follows:

Section 5.13 Prevailing Wage. The Company acknowledges that the Agency's Financial Assistance is considered to be public funds under Section 224-a of the New

York State Labor Law (“Prevailing Wage Requirements”). The Agency has determined that the Financial Assistance amounts to \$397,483.00 in the aggregate. If the Company or the Sublessee determines that the 2022 Project is considered to be a “covered Project” under the Prevailing Wage Requirements, the Company acknowledges it obligated under Subdivision 8(a) of the Prevailing Wage Requirements to certify under penalty of perjury within five (5) days of commencement of construction work whether the 2022 Project is subject to the provisions of the Prevailing Wage Requirements. Compliance with Prevailing Wage Requirements, if required, is wholly the obligation of the Company, and failure to comply may result in a stop-work order

7. Recapture. Section 7.6 is hereby amended to read as follows:

The financial assistance granted by the Agency in connection with the Existing Facility and the lease of the Existing Facility are subject to a Jobs Creation and Recapture Agreement dated as of December 6, 2018 (the “Jobs Creation Agreement”) by and among the Agency, the Company and the Sublessee, which is incorporated herein by reference. The financial assistance granted by the Agency in connection with the 2022 Facility and the lease of the 2022 Facility are subject to a Jobs Creation and Recapture Agreement dated as of December 15, 2022 (the “2022 Jobs Creation Agreement”) by and among the Agency, the Company and the Sublessee, which is incorporated herein by reference.

8. Ratification. Except as expressly amended hereby, the Leaseback Agreement is in all respects ratified and confirmed, and the terms, provisions and conditions thereof shall be deemed to remain in full force and effect.

9. Counterparts. This First Leaseback Amendment may be executed in duplicate counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10. Effective Date. This First Leaseback Amendment shall be effective as of December 15, 2022.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

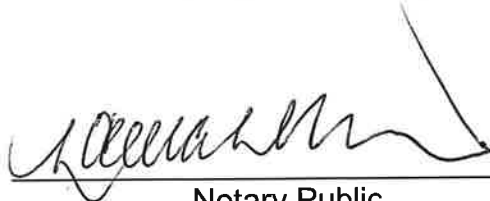
IN WITNESS WHEREOF, the parties have executed and delivered this First Amendment to Leaseback Agreement as of the day and year first above written.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
David C. Grow
Chairman

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONEIDA)

On the 7th day of December 2022 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, 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



SECOND SIGNATURE PAGE OF
FIRST AMENDMENT TO LEASEBACK AGREEMENT
(STD REALTY, LLC FACILITY)

STD REALTY, LLC

By: 
Susan McCraith Szuba
Member

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONEIDA)

On the 14th day of December 2022 before me, the undersigned a notary public in and for said state, personally appeared **Susan McCraith Szuba**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

CAROL A. PARKER
Notary Public, State of New York
Qualified in Oneida County
Commission Expires 7/31/20 26
Reg. # 01PA6045733