

GREEN-FLAGG, LLC

and

TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Town of Islip Industrial Development Agency
(Green-Flagg, LLC 2014 Facility)

Dated as of February 1, 2014

Town of Islip, Bay Shore School District, Suffolk County

Property Addresses: 61 West Main Street and 14 Park Avenue, Bay Shore,
Town of Islip, Suffolk County, New York

Lot Numbers: 0500-419.00-01.00-050.1 and 045.1

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of February 1, 2014 (this "**PILOT Agreement**"), is by and between GREEN-FLAGG, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its office at 5 Shore Lane, Bay Shore, New York 11706 (the "**Company**"), and TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 40 Nassau Avenue, Islip, New York 11751 (the "**Agency**").

W I T N E S S E T H:

WHEREAS, the Agency was created by Chapter 47 of the Laws of 1974 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the "**Act**"); and

WHEREAS, the Agency has agreed to assist in the acquisition of approximately 0.27 acre parcel of land located at 61 W. Main and 14 Park Avenue, Bay Shore, New York (the "**Land**") and the construction, renovation and equipping thereon of two buildings totaling approximately 30,000 square feet, containing thirty-two (32) residential units and approximately 6,558 square feet of commercial space (collectively, the "**Improvements**" and the "**Equipment**"; and, together with the Land, the "**Facility**"), to be leased by the Agency to the Company for further sublease by the Company to future tenants not yet determined (collectively, the "**Sublessees**"), for use as office space and light manufacturing; and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency, and the Agency desires to rent the Land and the Improvements from the Company pursuant to the terms of a certain Company Lease Agreement dated as of February 1, 2014 (the "**Company Lease**"), by and between the Company and the Agency; and

WHEREAS, the Company has agreed to transfer title to the Agency title to the Equipment pursuant to the terms of a Bill of Sale, dated the Closing Date (the "**Bill of Sale**"); and

WHEREAS, the Agency has agreed to sublease and lease the Facility to the Company pursuant to the Lease Agreement, dated as of February 1, 2014 (the "**Lease Agreement**"), between the Agency and the Company, such that the Agency shall have a subleasehold and leasehold interest in the Facility throughout the Lease Term (as such term is defined in the Lease Agreement); and

WHEREAS, the Agency and the Company have entered into a Recapture Agreement, dated as of February 1, 2014 (the "**Recapture Agreement**"), pursuant to which the Agency has the right to recapture certain economic benefits and assistance granted to the Company upon the terms and conditions set forth in the Recapture Agreement; and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes and assessments imposed upon real property owned by it, or under its jurisdiction or control or supervision other than special ad valorem levies, special assessments and service charges against real property located in the Town of Islip (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments in lieu of taxes and such assessments by the Company to the Town of Islip, Suffolk County, any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located in the Town of Islip, Suffolk County, Bay Shore School District and appropriate special districts (hereinafter the "**Taxing Authorities**") in which any part of the Facility is or is to be located;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the covenants herein contained, it is mutually agreed as follows:

1. (a) As long as the Lease Agreement is in effect, the Company agrees to make payments of real property taxes and payments in lieu of all real estate taxes and assessments (in addition to paying all special ad valorem levies, special assessments and service charges against real property located in the Town of Islip (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) which are or may be imposed for special improvements or special district improvements) which would be levied upon the Facility as if the Facility was not leased by the Company to the Agency (the "**Taxes on the Facility**"). The amounts of such payments and method for calculation are set forth herein.

(b) After the effective date of this PILOT Agreement and until the provisions of paragraph 1(c) become effective to the Facility, the Company shall pay, as payments in lieu of taxes and assessments, one hundred percent (100%) of the taxes and assessments which would be levied upon the Facility by the respective Taxing Authorities.

(c) Commencing, at the sole option and discretion of the Company, at the earlier of (i) the first fiscal tax year of the Taxing Authorities following the first taxable status date after the issuance of a certificate of occupancy to the Company for the Facility by the appropriate governmental entity, or (ii) written notice from the Company to the Agency setting forth the effective date for commencement of the payments in accordance with Exhibit A hereto (which effective date can be no later than the date set forth in (i) above), the Company shall pay, as payments in lieu of taxes and assessments, the amounts set forth on Exhibit A attached hereto and made a part hereof. The Company covenants at all times to cause to be maintained at the Facility the number of full time equivalent employees as agreed upon pursuant to Section 8.13 of the Lease Agreement.

(d) The Company shall pay, or cause to be paid, the amounts set forth in paragraphs 1(b) and (c) above, as applicable, after receipt of tax bills from the Agency or the

Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate tax bill, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided herein. Payments shall be made directly to the Taxing Authorities. Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one month delinquent. Anything contained in this paragraph (d) to the contrary notwithstanding, the Company shall have the obligation to make or cause to be made all annual payments to the respective Taxing Authorities required by this paragraph (other than payments of penalties, if any) in two equal semi-annual installments on or prior to January 10 and May 31 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term.

(e) During the term of this PILOT Agreement, the Company shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Facility for special improvements or special district improvements.

(f) In the event that any structural addition shall be made to the building or buildings included in the Facility subsequent to the "Completion Date" (as such term is defined in the Lease Agreement), or any additional building or improvement shall be constructed on the real property described on Exhibit B hereto (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company agrees to make additional payments in lieu of taxes to the Taxing Authorities in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company and not the Agency times the assessment or assessments established for that tax year by the Town of Islip. All other provisions of this PILOT Agreement shall apply to this obligation for additional payments.

2. In the event that the Agency's leasehold interest in the Facility or any part thereof is transferred from the Agency to the Company at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Town of Islip, Suffolk County, Bay Shore School District, any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located, or appropriate special districts, as the case may be, by such taxable status date, the Company hereby agrees to pay, at the first time taxes or assessments are due following the taxable status date on which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time the Company took title until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this PILOT Agreement by the Agency,

or the Company to the respective Taxing Authorities relating to any period of time after the date of termination of the Agency's leasehold interest in the Facility. The provisions of this Paragraph 2 shall survive the termination or expiration of the Lease Agreement. Any rights the Company may have against its designee are separate and apart from the terms of this Paragraph 2, and this Paragraph 2 shall survive any transfer from the Agency to the Company.

3. In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act or other legislative change or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void; provided, however, there shall be deducted from amounts due after such declaration or final judgment any amounts previously paid pursuant to this PILOT Agreement by the Agency or the Company to the respective Taxing Authorities relating to any period of time after the date of such declaration or final judgment.

4. In the event the Company shall enter into a subsequent PILOT agreement or PILOT agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company hereunder, which are inconsistent with such future PILOT agreement or PILOT agreements, shall be superseded and shall, to such extent, be null and void.

5. As long as this PILOT Agreement is in effect, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, judicial review of an assessment of the real estate with respect to the Facility and the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency shall request the Assessor of the Town of Islip, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities, such complaining party shall not be entitled to receive a refund or refunds of the payments in lieu of taxes paid pursuant to this PILOT Agreement. In that event, such complaining party shall be entitled to receive a credit against future payments in lieu of taxes and assessments to be paid pursuant to this PILOT Agreement, as and when collected by the Agency or the affected tax jurisdictions as defined in Section 854 of the General Municipal Law, as amended (as the case may be), in an amount equal to any refund that such complaining party would be entitled to receive if such complaining party were the owner of the Facility and the Additional Facilities; provided, however, that the Agency shall have no obligation to provide a credit against any payments in lieu of taxes or assessments which it has remitted to any of the respective Taxing Authorities before the date the Agency receives written notice from the complaining party that it seeks a credit. In no event shall the Agency be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. If the Company

receives a reduction in assessment in the last year of the Lease Agreement after they have made their final payments in lieu of taxes, the Company acknowledges that they shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Facility which will be due after the Facility is returned to the tax rolls. The Company hereby agrees that they will notify the Agency if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or shall have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with any reassessment of the Facility, reduction of taxes with respect to the Facility or tax certiorari proceedings with respect to the Facility.

6. The Company, in recognition of the benefits provided under the terms of this Agreement, including, but not limited to, the formula for payments in lieu of taxes set forth in Exhibit A hereto, and for as long as the Lease Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the General Municipal Law) to the Facility. The Company, however, reserves any such rights with respect to all special ad valorem levies, special assessments and service charges levied against the Facility as referred to in paragraph 1(e) and the Additional Facilities as referred to in paragraph 1(f) and with respect to the assessment and/or exemption of the Additional Facilities.

7. Reserved.

8. Except as otherwise provided herein, any notice required to be given under this PILOT Agreement shall be deemed to have been duly given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, return receipt requested, or reputable overnight delivery service, addressed to the respective parties hereto at their respective addresses specified below or such other addresses as either party may specify in writing to the other:

The Agency:

Town of Islip Industrial Development Agency
40 Nassau Avenue
Islip, New York 11751
Attention: Executive Director

With a copy to:

Islip Town Attorney's Office
Town Hall
655 Main Street
Islip, New York 11751
Attention: John R. Dicioccio, Esq.

The Company:

Green-Flagg, LLC
5 Shore Road
Bay Shore, New York 11706
Attention: Manager

With a copy to:

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP
The Omni
333 Earle Ovington Blvd., Suite 1010
Uniondale, New York 11553
Attention: Daniel P. Deegan, Esq.

To the Lender (so long as its Mortgage remains outstanding):

The Bridgehampton National Bank
15 Frowein Road, Suite A-3
Center Moriches, New York 11934
Attention: William J. Newham, Vice President

With a copy to:

Farrell Fritz, P.C.
1320 RXR Plaza
Uniondale, New York 11556-1320
Attention: Christopher P. Daly, Esq.

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third business day after mailing with respect to certified mail and one Business Day after mailing with respect to overnight mail.

9. Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Company under this PILOT Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Company's defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any or all of the Company's obligations hereunder. No waiver, amendment, release or modification of this PILOT Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Company or receipt by the Agency of a lesser amount than or different manner from the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any checks or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this PILOT Agreement or otherwise provided at law or in equity.

10. This PILOT Agreement shall become effective as of the first taxable status date of the Town of Islip after the date the Agency acquires a leasehold interest in the Facility. All taxes, assessments, special assessments, service charges, special ad valorem levies or similar tax equivalents due or to become due based upon prior taxable status dates shall be paid by the Company when due. Upon termination of the Lease Agreement, this PILOT Agreement shall terminate.

11. Whenever the Company fails to comply with any provision of this PILOT Agreement, the Agency may, but shall not be obligated to, take whatever action at law or in equity 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 PILOT Agreement. The Agency agrees to notify the Company in writing of any failure by the Company to comply with any provision of this PILOT Agreement within thirty (30) business days after the Agency becomes aware of such failure and shall provide the Company with the opportunity to cure such failure within thirty (30) days after receipt by the Company of such notice.

12. This PILOT Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

13. The Company agrees to hold the Agency harmless from and against any liability arising from any default by the Company in performing its obligations hereunder or any expense incurred under this PILOT Agreement, including any expenses of the Agency, including without limitation reasonable attorneys' fees.

14. This Agreement may be modified only by written instrument duly executed by the parties hereto.

15. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, heirs, distributees and assigns.

16. If any provision 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 provision 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.

17. The failure or breach by the Company to pay amounts due and owing under this Agreement on the date when due, beyond applicable notice and cure periods, or to promptly and fully perform any of its obligations hereunder shall constitute an Event of Default under this Agreement. Upon the occurrence and continuation of any Event of Default hereunder and subject to paragraph 11 above, this Agreement shall terminate and the Agency shall reconvey the Facility to the Company pursuant to Section 10.2(a)(ii) of the Lease Agreement and subject to the provisions of the Recapture Agreement.

18. The Company and the Agency hereby agree that the obligations and liabilities of the Company hereunder are the absolute and unconditional obligations and liabilities of


the Company and not the obligations and liabilities of any officer, director, shareholder or employee of the Company, and that no officer, director, shareholder or employee of the Company shall have any obligation or liability hereunder.

19. This PILOT Agreement shall cover the real property located on Exhibit B attached hereto.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the date first written above.

GREEN-FLAGG, LLC

By: 
Name: Robert L. Whitney
Title: Managing Member

**TOWN OF ISLIP INDUSTRIAL
DEVELOPMENT AGENCY**


By: 
Name: William G. Mannix
Title: Executive Director

EXHIBIT A

Formula for In-Lieu-of-Taxes Payment: Town of Islip (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Bay Shore School District, Suffolk County and Appropriate Special Districts

Definitions

X = \$109,800.00.

Y = increase in assessment above X resulting from the acquisition, renovation and equipping of the Facility.

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Islip (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

Payment

Tax Year (following first taxable status date after the election by Company, more specifically set forth in paragraph 1(c) of the PILOT Agreement)

Formula

1	100% normal tax on X and 0% normal tax on Y
2	100% normal tax on X and 10% normal tax on Y
3	100% normal tax on X and 20% normal tax on Y
4	100% normal tax on X and 30% normal tax on Y
5	100% normal tax on X and 40% normal tax on Y
6	100% normal tax on X and 50% normal tax on Y
7	100% normal tax on X and 60% normal tax on Y
8	100% normal tax on X and 70% normal tax on Y
9	100% normal tax on X and 80% normal tax on Y
10	100% normal tax on X and 90% normal tax on Y
11 and thereafter	100% normal tax on X and 100% normal tax on Y

EXHIBIT B

Legal Description of Real Property

Old Republic National Title Insurance Company

Title Number: **FN-10726-NY-1**

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SCHEDULE A DESCRIPTION

As to Lot 043.000

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

BEGINNING at the southeast corner thereof in the northerly side of Main Street, later known as the Montauk Highway, at a point where the same is intersected by the westerly side of Park Avenue, the said point of beginning being marked by a locust stake, and from said point running by the westerly side of Park Avenue North 39 degrees 38 minutes West 100 feet to a stake, and land formerly of August Crum Young, now of Most;

RUNNING THENCE by said land at right angles to Park Avenue South 50 degrees 22 minutes West 44.70 feet to a stake;

THENCE along land now or formerly of Stephen Kabatnik parallel to Park Avenue South 39 degrees 38 minutes East 105.15 feet to a stake in the northerly side of the said Montauk Highway;

THENCE by said highway, North 43 degrees 48 minutes East 45 feet to the place of BEGINNING.

As to Lot 044.001

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

BEGINNING at a point on the westerly side of Park Avenue distant 112 feet northerly from the corner formed by the intersection of the westerly side of Park Avenue with the northerly side of west Main Street;

RUNNING THENCE along land now or formerly of Julius Most South 50 degrees 22 minutes 00 seconds West 118 feet;

THENCE North 39 degrees 38 minutes 00 seconds West 40.00 feet;

THENCE North 50 degrees 22 minutes East 118 feet to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue South 39 degrees 38 minutes East 40 feet to the point or place of BEGINNING.

As to Lot 049.000

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

BEGINNING at a point on the westerly side of Park Avenue distant 100 feet northerly from the westerly side of Park Avenue and the northerly side of Montauk Highway;

Old Republic National Title Insurance Company

Title Number: **FN-10726-NY-1**

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RUNNING THENCE South 50 degrees 22 minutes 00 seconds West, 118 feet, more or less;

THENCE North 39 degrees 38 minutes 00 seconds West 12 feet;

THENCE North 50 degrees 22 minutes 00 seconds East, 118 feet, more or less to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue, South 39 degrees 38 minutes 00 seconds East, 12 feet to the point or place of BEGINNING.

As to Lot 050.000

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

BEGINNING at a point on the northerly side of Montauk Highway distant 105.63 feet westerly from the intersection of the northerly side of Montauk Highway and the westerly side of Park Avenue;

RUNNING THENCE North 39 degrees 35 minutes 49 seconds West, 105 feet more or less to a right of way;

THENCE along said right of way South 50 degrees 22 minutes 22 seconds West 12 feet more or less to the dividing line between lots 050.000 and 051.000 on the tax map of the County of Suffolk as the tax map existed on 6/1/2007.

THENCE southerly along said dividing line 104 feet more or less to the northerly side of Montauk Highway;

THENCE easterly along the northerly side of Montauk Highway North 56 degrees 10 minutes 00 seconds East to the point or place of BEGINNING.

Overall (Tentative New Lot 050.001)

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

BEGINNING at the southeast corner thereof in the northerly side of Main Street, later known as the Montauk Highway and South Country Road, at a point where the same is intersected by the westerly side of Park Avenue, the said point of beginning being marked by a locust stake, and from said point;

RUNNING THENCE along the northerly side of Main Street, later known as the Montauk Highway and South Country Road, South 43 degrees 48 minutes 00 seconds West, 45.00 feet to land now or formerly of MurrayB Inc.;

THENCE along said land now or formerly of MurrayB Inc., North 39 degrees 38 minutes 00 seconds West 105.15 feet to land now or formerly of Floramar Inc.;

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THENCE along said land now or formerly of Floramar Inc., South 50 degrees 22 minutes 00 seconds West, 60.43 feet;

THENCE still along said land now or formerly of Floramar Inc., South 39 degrees 35 minutes 49 seconds West, 105.22 feet to the northerly side of Main Street, later known as the Montauk Highway and South Country Road;

THENCE along the northerly side of Main Street, later known as the Montauk Highway and South Country Road, South 56 degrees 10 minutes 00 seconds West, 12 feet, more or less to land now or formerly of the County of Suffolk;

THENCE along said land now or formerly of the County of Suffolk, North 39 degrees 38 minutes 00 seconds West, 156 feet, more or less, to land now or formerly of Floramar Inc.;

THENCE along said land now or formerly of Floramar Inc., North 50 degrees 22 minutes 00 seconds East, 117 feet, more or less to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue, South 39 degrees 38 minutes 00 seconds East, 152.00 feet to the corner, the point or place of BEGINNING.

As to Lot 044.003

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

BEGINNING at a point on the westerly side of Park Avenue distant 152 feet northerly from the corner formed by the intersection of the westerly side of Park Avenue with the northerly side of West Main Street;

RUNNING THENCE along a tie line along land now or formerly of Julius Most South 50 degrees 22 West 129 feet, more or less, to the southwesterly side of land now or formerly of the County of Suffolk and the northerly corner of the premises about to be described the true point or place of beginning;

THENCE still along land now or formerly of Julius Most, later of the Town of Islip, South 50 degrees 22 minutes West 13 feet, more or less;

THENCE South 57 degrees 41 minutes 15 seconds East, 42 feet, more or less, to land now or formerly of the County of Suffolk;

THENCE along the same, North 39 degrees 38 minutes 00 seconds west, 40 feet, more or less, to the point or place of BEGINNING.

As to lot 045.000

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

BEGINNING at a point on the westerly side of Park Avenue, distant northerly 152.00 feet as measured along the westerly side of Park Avenue from the northerly side of West Main Street

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(Montauk Highway), which point is also the northeast corner of land formerly of most, later Floramar, Inc.;

THENCE by said land of Floramar, Inc. South 50 degrees 22 minutes West 227.45 feet to the middle line of Crum's Brook;

THENCE by said middle line of the brook North 49 degrees 29 minutes 30 seconds West about 0.50 feet to land of the Town of Islip;

THENCE by said land North 50 degrees 22 minutes East about 227.50 feet to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue South 39 degrees 38 minutes East 0.50 feet to the point of BEGINNING.

OVERALL (Tentative New Lot 045.001)

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

BEGINNING at a point on the westerly side of Park Avenue, distant northerly 152.00 feet as measured along the westerly side of Park Avenue from the northerly side of West Main Street (Montauk Highway), which point is also the northeast corner of land formerly of most, later Floramar, Inc.;

THENCE by said land of Floramar, Inc. South 50 degrees 22 minutes West 129 feet, more or less;

THENCE along land now or formerly of the County of Suffolk, South 39 degrees 38 minutes 00 seconds East, 40 feet, more or less,

THENCE North 57 degrees 41 minutes 15 seconds West, 42 feet, more or less, to land now or formerly of Many 85W LLC;

THENCE by said land of Many 85W LLC, South 50 degrees 22 minutes West 85.45 feet to the middle line of Crum's Brook;

THENCE by said middle line of the brook North 49 degrees 39 minutes 30 seconds West about 0.50 feet to land of the Town of Islip;

THENCE by said land North 50 degrees 22 minutes East about 227.50 feet to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue South 39 degrees 38 minutes East 0.50 feet to the point of BEGINNING.

FOR CONVEYANCING ONLY: TOGETHER with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.

12. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Recapture Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Recapture Agreement or any part thereof.

13. Governing Law. This Recapture Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

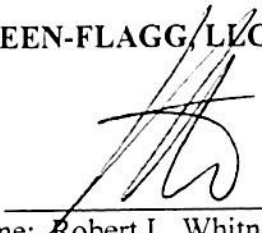
14. Section Headings. The headings of the several Sections in this Recapture Agreement have been prepared for convenience of reference only and shall not control, or affect the meaning of or be taken as an interpretation of any provision of this Recapture Agreement.

15. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Recapture Agreement or any matters whatsoever arising out of or in any way connected with this Recapture Agreement.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)


IN WITNESS WHEREOF, the Company has caused this Recapture Agreement to be duly executed and delivered as of the day and year first above written.

GREEN-FLAGG/LLC

By: 
Name: Robert L. Whitney
Title: Managing Member

ACCEPTED:

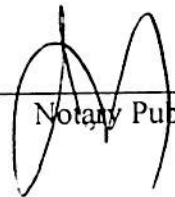
**TOWN OF ISLIP INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: William G. Mannix
Title: Executive Director

Recapture Agreement
Signature Page 1 of 2

STATE OF NEW YORK)
 : SS:
COUNTY OF NASSAU)

On the 27th of February in the year 2014, before me, the undersigned, personally appeared **Robert L. Whitney**, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public

JAMES JOYCE
Notary Public, State of New York
No. 01J090-6112
Commission Expires January 13, 2015

STATE OF NEW YORK)
 : SS:
COUNTY OF NASSAU)

On the 26th day of February in the year 2014, before me, the undersigned, personally appeared **William G. Mannix**, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

ELIZABETH A. WOOD
Notary Public, State of New York
Registration # 01WO6103025
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 12/15/2015



Notary Public

Recapture Agreement
Signature Page 2 of 2

EXHIBIT A

REAL PROPERTY DESCRIPTION

Old Republic National Title Insurance Company

Title Number: FN-10726-NY-1

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SCHEDULE A DESCRIPTION

As to Lot 043.000

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

BEGINNING at the southeast corner thereof in the northerly side of Main Street, later known as the Montauk Highway, at a point where the same is intersected by the westerly side of Park Avenue, the said point of beginning being marked by a locust stake, and from said point running by the westerly side of Park Avenue North 39 degrees 38 minutes West 100 feet to a stake, and land formerly of August Crum Young, now of Most;

RUNNING THENCE by said land at right angles to Park Avenue South 50 degrees 22 minutes West 44.70 feet to a stake;

THENCE along land now or formerly of Stephen Kabatnik parallel to Park Avenue South 39 degrees 38 minutes East 105.15 feet to a stake in the northerly side of the said Montauk Highway;

THENCE by said highway, North 43 degrees 48 minutes East 45 feet to the place of BEGINNING.

As to Lot 044.001

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

BEGINNING at a point on the westerly side of Park Avenue distant 112 feet northerly from the corner formed by the intersection of the westerly side of Park Avenue with the northerly side of west Main Street;

RUNNING THENCE along land now or formerly of Julius Most South 50 degrees 22 minutes 00 seconds West 118 feet;

THENCE North 39 degrees 38 minutes 00 seconds West 40.00 feet;

THENCE North 50 degrees 22 minutes East 118 feet to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue South 39 degrees 38 minutes East 40 feet to the point or place of BEGINNING.

As to Lot 049.000

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

BEGINNING at a point on the westerly side of Park Avenue distant 100 feet northerly from the westerly side of Park Avenue and the northerly side of Montauk Highway;

Old Republic National Title Insurance Company

Title Number: **FN-10726-NY-1**

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RUNNING THENCE South 50 degrees 22 minutes 00 seconds West, 118 feet, more or less;

THENCE North 39 degrees 38 minutes 00 seconds West 12 feet;

THENCE North 50 degrees 22 minutes 00 seconds East, 118 feet, more or less to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue, South 39 degrees 38 minutes 00 seconds East, 12 feet to the point or place of BEGINNING.

As to Lot 050.000

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

BEGINNING at a point on the northerly side of Montauk Highway distant 105.63 feet westerly from the intersection of the northerly side of Montauk Highway and the westerly side of Park Avenue;

RUNNING THENCE North 39 degrees 35 minutes 49 seconds West, 105 feet more or less to a right of way;

THENCE along said right of way South 50 degrees 22 minutes 22 seconds West 12 feet more or less to the dividing line between lots 050.000 and 051.000 on the tax map of the County of Suffolk as the tax map existed on 6/1/2007.

THENCE southerly along said dividing line 104 feet more or less to the northerly side of Montauk Highway;

THENCE easterly along the northerly side of Montauk Highway North 56 degrees 10 minutes 00 seconds East to the point or place of BEGINNING.

Overall (Tentative New Lot 050.001)

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

BEGINNING at the southeast corner thereof in the northerly side of Main Street, later known as the Montauk Highway and South Country Road, at a point where the same is intersected by the westerly side of Park Avenue, the said point of beginning being marked by a locust stake, and from said point;

RUNNING THENCE along the northerly side of Main Street, later known as the Montauk Highway and South Country Road, South 43 degrees 48 minutes 00 seconds West, 45.00 feet to land now or formerly of MurrayB Inc.;

THENCE along said land now or formerly of MurrayB Inc., North 39 degrees 38 minutes 00 seconds West 105.15 feet to land now or formerly of Floramar Inc.;

Old Republic National Title Insurance Company

Title Number: **FN-10726-NY-1**

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THENCE along said land now or formerly of Floramar Inc., South 50 degrees 22 minutes 00 seconds West, 60.43 feet;

THENCE still along said land now or formerly of Floramar Inc., South 39 degrees 35 minutes 49 seconds West, 105.22 feet to the northerly side of Main Street, later known as the Montauk Highway and South Country Road;

THENCE along the northerly side of Main Street, later known as the Montauk Highway and South Country Road, South 56 degrees 10 minutes 00 seconds West, 12 feet, more or less to land now or formerly of the County of Suffolk;

THENCE along said land now or formerly of the County of Suffolk, North 39 degrees 38 minutes 00 seconds West, 156 feet, more or less, to land now or formerly of Floramar Inc.;

THENCE along said land now or formerly of Floramar Inc., North 50 degrees 22 minutes 00 seconds East, 117 feet, more or less to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue, South 39 degrees 38 minutes 00 seconds East, 152.00 feet to the corner, the point or place of BEGINNING.

As to Lot 044.003

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

BEGINNING at a point on the westerly side of Park Avenue distant 152 feet northerly from the corner formed by the intersection of the westerly side of Park Avenue with the northerly side of West Main Street;

RUNNING THENCE along a tie line along land now or formerly of Julius Most South 50 degrees 22 West 129 feet, more or less, to the southwesterly side of land now or formerly of the County of Suffolk and the northerly corner of the premises about to be described the true point or place of beginning;

THENCE still along land now or formerly of Julius Most, later of the Town of Islip, South 50 degrees 22 minutes West 13 feet, more or less;

THENCE South 57 degrees 41 minutes 15 seconds East, 42 feet, more or less, to land now or formerly of the County of Suffolk;

THENCE along the same, North 39 degrees 38 minutes 00 seconds west, 40 feet, more or less, to the point or place of BEGINNING.

As to lot 045.000

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

BEGINNING at a point on the westerly side of Park Avenue, distant northerly 152.00 feet as measured along the westerly side of Park Avenue from the northerly side of West Main Street

Old Republic National Title Insurance Company

Title Number: **FN-10726-NY-1**

Page **4**

(Montauk Highway), which point is also the northeast corner of land formerly of most, later Floramar, Inc.;

THENCE by said land of Floramar, Inc. South 50 degrees 22 minutes West 227.45 feet to the middle line of Crum's Brook;

THENCE by said middle line of the brook North 49 degrees 29 minutes 30 seconds West about 0.50 feet to land of the Town of Islip;

THENCE by said land North 50 degrees 22 minutes East about 227.50 feet to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue South 39 degrees 38 minutes East 0.50 feet to the point of BEGINNING.

OVERALL (Tentative New Lot 045.001)

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

BEGINNING at a point on the westerly side of Park Avenue, distant northerly 152.00 feet as measured along the westerly side of Park Avenue from the northerly side of West Main Street (Montauk Highway), which point is also the northeast corner of land formerly of most, later Floramar, Inc.;

THENCE by said land of Floramar, Inc. South 50 degrees 22 minutes West 129 feet, more or less;

THENCE along land now or formerly of the County of Suffolk, South 39 degrees 38 minutes 00 seconds East, 40 feet, more or less,

THENCE North 57 degrees 41 minutes 15 seconds West, 42 feet, more or less, to land now or formerly of Many 85W LLC;

THENCE by said land of Many 85W LLC, South 50 degrees 22 minutes West 85.45 feet to the middle line of Crum's Brook;

THENCE by said middle line of the brook North 49 degrees 39 minutes 30 seconds West about 0.50 feet to land of the Town of Islip;

THENCE by said land North 50 degrees 22 minutes East about 227.50 feet to the westerly side of Park Avenue;

THENCE along the westerly side of Park Avenue South 39 degrees 38 minutes East 0.50 feet to the point of BEGINNING.

FOR CONVEYANCING ONLY: TOGETHER with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.

GREEN-FLAGG, LLC

to

TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY
(TOWN OF ISLIP, NEW YORK)

RECAPTURE AGREEMENT

Dated as of February 1, 2014

Town of Islip Industrial Development Agency
(Green-Flagg, LLC 2014 Facility)

Property Addresses: 61 West Main Street and 14 Park Avenue, Bay Shore,
Town of Islip, Suffolk County, New York

Lot Numbers: 0500-419.00-01.00-050.1 and 045.1

Record and return to:
Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604
Attention: Jessica Cocco, Esq.

RECAPTURE AGREEMENT

THIS RECAPTURE AGREEMENT, made and entered into as of February 1, 2014 (this "**Recapture Agreement**"), is from GREEN-FLAGG, LLC, a limited liability company, organized and existing under the laws of the State of New York, having an address at 5 Shore Lane, Bay Shore, New York 11706 (the "**Company**"), to the TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 40 Nassau Avenue, Islip, New York 11751 (the "**Agency**").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York;

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**");

WHEREAS, the aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living;

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act and Chapter 47 of the Laws of 1974 of the State, as amended (collectively, the "**Act**"), the Agency was created and is empowered to undertake the providing, financing and leasing of the Facility defined below;

WHEREAS, the Agency has agreed to assist in the acquisition of approximately 0.27 acre parcel of land located at 61 W. Main and 14 Park Avenue, Bay Shore, New York (the "**Land**") and the construction, renovation and equipping thereon of two buildings totaling approximately 30,000 square feet, containing thirty-two (32) residential units and approximately 6,558 square feet of commercial space (collectively, the "**Improvements**" and the "**Equipment**"; and, together with the Land, the "**Facility**"), to be leased by the Agency to the Company for further sublease by the Company to future tenants not yet determined (collectively, the "**Sublessees**"), for use as office space and light manufacturing; and

WHEREAS, the Company proposes to lease the Land and the Improvements to the Agency, and the Agency desires to rent the Land and the Improvements from the Company

pursuant to the terms of a certain Company Lease Agreement dated as of February 1, 2014 (the "**Company Lease**"), by and between the Company and the Agency; and

WHEREAS, the Company proposes to transfer title to the Agency title to the Equipment pursuant to a Bill of Sale, dated the Closing Date (the "**Bill of Sale**"); and

WHEREAS, the Agency proposes to sublease and lease the Facility to the Company, and the Company desires to rent the Facility from the Agency upon the terms and conditions set forth in the Lease Agreement, dated as of February 1, 2014 (the "**Lease Agreement**"), by and between the Agency and the Company; and

WHEREAS, in order to define the Company's obligations regarding payments-in-lieu-of taxes, the Agency and the Company will enter into a Payment-in-Lieu-of-Tax Agreement, dated as of February 1, 2014 (the "**PILOT Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Agency has conferred on the Company in connection with the acquisition, construction, equipping, financing and leasing of the Facility certain benefits, tax exemptions and other financial assistance more particularly described in Section 1(b) hereof, consisting of, among other things, sales and use tax exemptions on the acquisition, construction and equipping of the Facility and real property tax abatements (pursuant to the PILOT Agreement), and, if requested, mortgage recording tax exemptions;

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the PILOT Agreement and the Lease Agreement, that the Company provide assurances with respect to the recapture of benefits granted under the PILOT Agreement, the Lease Agreement and the other Agency agreements on the terms herein set forth.

AGREEMENT

1. Recapture of Agency Benefits. (a) It is understood and agreed by the parties hereto that the Agency is entering into the Lease Agreement and the PILOT Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

- (i) If there shall occur a Recapture Event after February 27, 2014, but on or before December 31, 2016, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);
- (ii) If there shall occur a Recapture Event on or after January 1, 2017, but on or before December 31, 2019, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy-five percent (75%) of the Recaptured Benefits;

- (iii) If there shall occur a Recapture Event on or after January 1, 2020 but on or before December 31, 2021, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event on or after January 1, 2022 but on or before December 31, 2023, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty-five percent (25%) of the Recaptured Benefits; and
- (v) If there shall occur a Recapture Event after December 31, 2023, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by the PILOT Agreement, the Sales Tax Letter, dated February 27, 2014, delivered by the Agency to the Company in connection with the Facility (the "**Sales Tax Letter**") and the Lease Agreement including, but not limited to, an amount equal to 100% of:

(i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency (the "**Mortgage Recording Tax Exemption**"); and

(ii) sales or use tax exemptions with respect to the Facility regarding the Sales Tax Letter (the "**Sales Tax Benefits**"); and

(iii) real property tax abatements granted under the PILOT Agreement less the abatements, if any, which would have been granted under Section 485-b of the Real Property Tax Law or under any other law or regulation (except, however, for the exemption provided under Title 1 of Article 18-A of the General Municipal Law) with respect to the Facility (the "**Real Property Abatements**");

which amounts from time to time shall be payable directly to the Agency or to the State if New York if so directed by the Agency.

(c) The term "Recapture Event" shall mean any of the following events:

(1) A termination of the Lease Agreement and the PILOT Agreement as a result of a default by the Company under the PILOT Agreement (other than as described in clauses 5, 7 or 8 below) which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(2) A termination of the Lease Agreement and the PILOT Agreement as a result of the occurrence and continuation of an Event of Default under the Lease Agreement (other than as described in clause 5, 7 or 8 below) which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(3) The Facility shall cease to be a "project" within the meaning of the Act, as in effect on the Closing Date through the act or omission of the Company; or

(4) The sale (other than pursuant to an assignment of the Lease Agreement as approved by the Agency pursuant to Section 9.3 of the Lease Agreement) or closure of the Facility and/or departure of the Company from the Town of Islip, except as due to casualty, condemnation or force majeure as provided below; or

(5) Failure of the Company to create or cause to be maintained the number of full time equivalent ("FTE") jobs at the Facility as defined in Section 8.13 of the Lease Agreement, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions. It is further provided that the Company may not actually provide the FTE jobs at the Facility, but rather shall sublease the Facility to tenants of the Company, and that the Company's obligation with regard to creating or causing to be maintained FTE jobs includes (a) using all reasonable efforts to lease up the Facility, and (b) including provisions in all subleases requiring any tenants to comply with the provisions of the Lease Agreement applicable to them; or

(6) Any significant and adverse deviation from the material information and data provided to the Agency in the Company's application for assistance which would constitute a significant diminution of the Company's activities in, or commitment to, the Town of Islip; or

(7) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the reason or reasons that non-compliance with subsection (5) above shall have occurred and is continuing for any of the following reasons: (i) a subtenant has or subtenants have vacated, or are in the process of vacating, the Facility prior to the expiration of their respective Sublease and such subtenant does not sublet their demised space or permit the Company to relet such demised space for the remaining term of such subtenant's Sublease; (ii) a subtenant has or subtenants have vacated the Facility upon the expiration of their respective Sublease and the Company is exercising reasonable business efforts to sublet the vacated demised premises; and (iii) upon an Event of Default by a subtenant under a Sublease, or a Tenant Agency Compliance Agreement, the Company has terminated, or is using commercially reasonable efforts to terminate, the respective Sublease and has evicted, or is using commercially reasonable efforts to evict, such Tenant and the Company is exercising its commercially reasonable efforts to sublet such demised premises upon such eviction.

(8) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct,

immediate result of (i) a taking or condemnation by governmental authority of all or part of the Facility, or (ii) the inability of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates has diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof, or (iii) the period of any rebuilding, restoration or replacement after the occurrence of a Loss Event; or

(9) Failure to comply with the Agency's Construction Wage Policy attached to the Lease Agreement; or

(10) The Company uses the Sales Tax Letter to receive exemptions from sales and use tax on the acquisition, construction and equipping of the Facility in excess of \$135,000, the amount authorized by the Agency, and such amount is not repaid within ten (10) days after notification by the Agency is delivered to the Company; provided, however, that the foregoing shall constitute a Recapture Event with respect to the amount in excess of the approved Sales Tax Benefits only. It is further provided that failure to repay the amount in excess of the approved Sales Tax Benefits within thirty (30) days after the date such payment is due shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year, the number of FTEs located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice thereof, notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company within thirty (30) days of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(e) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(f) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, legal fees, incurred with the recovery of all amounts due under this Recapture Agreement, from amounts received by the Agency pursuant to this Recapture Agreement.

2. Obligations Unconditional.

(a) The obligations of the Company under this Recapture Agreement shall be absolute and unconditional and shall remain in full force and effect until the PILOT Agreement and the Lease Agreement have expired or been terminated or the Lease

Agreement has been assigned with the consent of the Agency, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, whether or not with notice to or the consent of the Company.

(b) It is hereby expressly agreed that the Company's obligations under this Recapture Agreement are not limited in any manner except as expressly set forth herein, and the Company shall be liable for the payment of all recapture amounts with respect to the entire Facility.

3. Condition to Reconveyance of Facility. The parties hereto agree that the Agency shall have no obligations to terminate and surrender its leasehold interest in Facility to the Company pursuant to the Lease Agreement until all payments to the Agency and the Taxing Jurisdictions under Sections 5.3, 11.2 and 11.3 of the Lease Agreement, under the PILOT Agreement and hereunder have been paid in full. If such payments are not paid in full by the Company within ninety (90) days of the date when due and owing, then the Agency shall offer the Agency's interest in the Facility for sale pursuant to the Agency's Real Property Disposition Policy adopted pursuant to the Public Authorities Accountability Act.

4. Recordation of Recapture Agreement. The parties hereto agree that this Recapture Agreement shall be recorded as a lien against the Facility and as a covenant and restriction running with the Land until this Recapture Agreement has been discharged by the Agency or the Facility re-conveyed to the Company.

5. Terms Defined. All of the capitalized terms used in this Recapture Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

6. Directly or Indirectly. Where any provision in this Recapture Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

7. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Recapture Agreement to the Agency regardless of any investigation made by the Agency.

8. Binding Effect. This Recapture Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties.

9. Notices. All notices, certificates and other communications under this Recapture Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, addressed as follows or to such other address as any party may specify in writing to the other:

The Company:

Green-Flagg, LLC
5 Shore Road
Bay Shore, New York 11706
Attention: Manager

With a copy to:

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP
The Omni
333 Earle Ovington Blvd., Suite 1010
Uniondale, New York 11553
Attention: Daniel P. Deegan, Esq.

To the Agency:

Town of Islip Industrial Development Agency
40 Nassau Avenue
Islip, New York 11751
Attn: Executive Director

To the Lender (so long as its Mortgage remains outstanding):

The Bridgehampton National Bank
15 Frowein Road, Suite A-3
Center Moriches, New York 11934
Attention: William J. Newham, Vice President

With a copy to:

Farrell Fritz, P.C.
1320 RXR Plaza
Uniondale, New York 11556-1320
Attention: Christopher P. Daly, Esq.

A duplicate copy of each communication hereunder by the Company shall be given to the Agency.

10. Entire Understanding; Counterparts. This Recapture Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Amendments. No amendment, change, modification, alteration or termination of this Recapture Agreement shall be made except in writing upon the written consent of the Company and the Agency.

EXHIBIT D

Form of Proposed PILOT Benefits (Double 485-b)

Formula for In-Lieu-of-Taxes Payment: Town of Islip (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Bay Shore School District, Suffolk County and Appropriate Special Districts

Definitions

X = assessment equal to \$[] per acre.

Y = increase in assessment above X resulting from the acquisition, construction and equipping of the Facility.

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property located in the Town of Islip (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

Payment

Tax Year (following first taxable status date after the election by Company, more specifically set forth in paragraph 1(c) of the PILOT Agreement)

Formula

1	100% normal tax on X and 0% normal tax on Y
2	100% normal tax on X and 10% normal tax on Y
3	100% normal tax on X and 20% normal tax on Y
4	100% normal tax on X and 30% normal tax on Y
5	100% normal tax on X and 40% normal tax on Y
6	100% normal tax on X and 50% normal tax on Y
7	100% normal tax on X and 60% normal tax on Y
8	100% normal tax on X and 70% normal tax on Y
9	100% normal tax on X and 80% normal tax on Y
10	100% normal tax on X and 90% normal tax on Y
11 and thereafter	100% normal tax on X and 100% normal tax on Y