

THIRD AMENDED AND RESTATED LEASE AGREEMENT

THIS THIRD AMENDED AND RESTATED LEASE AGREEMENT (this "Lease"), made as of the 26th day of August, 2020, by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices at 548 Broadway, Monticello, New York 12701 ("Agency") and MHC 83 (HW PORTFOLIO) LLC, a Delaware limited liability company, having a mailing address of c/o Merit Hill Capital, LP, 41 Flatbush Avenue, Suite 3C, Brooklyn, New York 11217 ("MHC 83") amends and restates that certain Lease, dated June 1, 2003 by and between the Agency and Liberty Storage, L.L.C. ("Liberty Storage"), which was further amended and restated by that certain Amended and Restated Lease Agreement, dated September 1, 2004 by and between the Agency and Liberty Storage, and further amended and restated by that certain Second Amended and Restated Lease Agreement, made as of November 3, 2014 by and between the Agency and Canopy Liberty LLC (the "Canopy Lease").

RECITALS

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

WHEREAS, the Enabling Act 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, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, 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 manufacturing, warehousing, research, commercial 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; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, Chapter 560 of the Laws of 1970 of the State (collectively referred to as the "Act") created the Agency which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, on or about June 16, 2003, Liberty Storage and the Agency closed on a straight lease transaction relating to the multi-phase development of self-storage units (the "Project" or "Facility") on premises located at 1695 Route 52 in the Town of Liberty, County of

Sullivan, State of New York consisting of approximately 9.36± acres of land and identified on the Town of Liberty tax map as Section 30, Block 1, Lot 90.7 ("Land") and in furtherance thereof entered into various agreements including but not limited to a Lease Agreement and a Payment in Lieu of Tax Agreement ("LS 2003 Transaction Documents"); and

WHEREAS, on or about June 16, 2003 Liberty Storage and the Agency entered into an Agent Agreement pursuant to which the Agency appointed Liberty Storage as its Agent to construct the first phase of the project ("LS 2003 Agent Agreement"); and

WHEREAS, on or about September 1, 2004 Liberty Storage applied to the Agency and the Agency approved the construction of additional improvements on the Land and in furtherance thereof entered into various agreements including but not limited to an Amended and Restated Agent Agreement, an Amended and Restated Lease Agreement and an Amended and Restated Payment in Lieu of Tax Agreement ("LS 2004 Transaction Documents" and together with the LS 2003 Transaction Documents and the LS 2003 Agent Agreement, the "LS Project Documents"); and

WHEREAS, on or about November 3, 2014, Liberty Storage transferred, assigned and conveyed to Canopy Liberty LLC ("Canopy") the Project and any and all right, title and interest in and to the LS Project Documents, and Canopy, subject to the terms and conditions of the LS Project Documents, accepted and purchased all of Liberty Storage's right, title and interest in and to the Project and the LS Project Documents; and

WHEREAS, to memorialize the transfer of the Project and the LS Project Documents, Liberty Storage and Canopy entered into an Assignment and Assumption of Amended and Restated Lease Agreement and Related Documents, dated November 3, 2014 ("LS/Canopy Assignment"); and

WHEREAS, contemporaneously with execution of the LS/Canopy Assignment, Canopy and the Agency entered into, among other documents, a Second Amended and Restated Lease Agreement and Second Amended and Restated PILOT Agreement, each dated November 3, 2014, all such documents assumed by Canopy under the LS/Canopy Assignment and all such documents between Canopy and the Agency (collectively, the "Canopy Agency Documents"); and

WHEREAS, Canopy desires to transfer, assign and convey to MHC 83 any right, title and interest in and to the Canopy Agency Documents, and MHC 83, subject to the terms and conditions of the Canopy Agency Documents, desires to accept and purchase all of Canopy's right, title and interest in and to the Canopy Agency Documents; and

WHEREAS, to memorialize the transfer of the Canopy Agency Documents, Canopy and MHC 83 desire to enter into an Assignment and Assumption of Second Amended and Restated Lease Agreement and Related Documents, dated as of the date hereof ("Canopy/MHC 83 Assignment"); and

WHEREAS, contemporaneously with execution of the Canopy/MHC 83 Assignment, the

Agency and MHC 83 will enter into, among other documents, this Lease and a Third Amended and Restated PILOT Agreement, dated as of the date hereof ("PILOT Agreement"); and

WHEREAS, from and after the effective date of the date of transfer of the Project to MHC 83, the Agency proposes to lease the Facility to MHC 83, and MHC 83 desires to rent the Facility from the Agency, upon the terms and conditions hereinafter set forth in this Lease.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

REPRESENTATIONS AND COVENANTS

- 1.1. Representations and Covenants of the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:
- (a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Lease and to carry out its obligations hereunder. Based upon the representations of MHC 83 as to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.
 - (b) The Agency has been duly authorized to execute and deliver this Lease.
 - (c) The Agency has or will take title to the Facility, lease the Facility to MHC 83 pursuant to this Lease and designate MHC 83 as its agent for purposes of the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County of Sullivan and improving their standard of living.
 - (d) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Lease will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.
 - (e) The Agency has been induced to enter into this Lease by the undertaking of MHC 83 to acquire and equip the Facility and the related jobs resulting therefrom in the County of Sullivan, New York.

- (f) All rent and additional rent payments, as provided for in Section 2.6 of the Canopy Lease, payable by Canopy to the Agency have been paid and performed as of the date of this Lease.

1.2. Representations and Covenants of MHC 83. MHC 83 makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) MHC 83 is a limited liability company duly organized, existing and in good standing under the laws of the State of Delaware, has the authority to enter into this Lease and has duly authorized the execution and delivery of this Lease.
- (b) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which it 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 any of the property of MHC 83 under the terms of any such instrument or agreement.
- (c) The leasing of the Facility by the Agency to MHC 83 will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities located within the State.
- (d) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and MHC 83 shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by MHC 83 to comply with the provisions of this subsection (d) and subsection (e) below.
- (e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of MHC 83, threatened in writing, against or affecting MHC 83 in which an adverse result would in any way diminish or adversely impact on MHC 83's ability to fulfill its obligations under this Lease.
- (f) MHC 83 covenants (i) that the Facility will comply in all material respects with all applicable environmental laws and regulations, (ii) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all applicable laws, (iii) MHC 83 will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iv) that no asbestos will be incorporated into or disposed of on the

Facility, except in compliance with all applicable laws, (v) that no underground storage tanks will be located on the Land or in the Facility, except in full compliance at all times with all applicable laws, rules, and regulations, and (vi) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above exists or to the knowledge of MHC 83 is threatened, or anticipated. MHC 83 upon receiving any written information or notice contrary to the representations contained in this Section (f) shall promptly notify the Agency in writing with full details regarding the same. MHC 83 hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its chief executive officer, executive director, directors, officers, employees, members, agents, representatives, and their respective successors and assigns and personal representatives from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or inaccuracy of the representations contained in this Section (f). In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, MHC 83 agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

- (g) MHC 83 covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by the collective bargaining contracts to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively referred to as the "Referral Agencies"). MHC 83 also agrees that it will, except as otherwise provided by the collective bargaining contracts to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

ARTICLE II

FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS

- 2.1. Agreement to Convey to Agency. By Bargain and Sale Deed from Liberty Storage to the Agency, dated June 16, 2003 and recorded in the Sullivan County Clerk's Office on June 18, 2003 in Liber 2586 at Page 022, Liberty Storage conveyed to the Agency a fee interest in the Land. By Assignment and Assumption of Amended and Restated Lease and Related Documents, dated November 3, 2014, Liberty Storage conveyed all of its right, title and interest in and to the furniture, fixtures, machinery and equipment to Canopy. By Assignment and Assumption of Second Amended and Restated Lease and Related

Documents of even date herewith, Canopy conveyed all of its right, title and interest in and to the furniture, fixtures, machinery and equipment to MHC 83. MHC 83 agrees the Agency's interest in the Facility resulting from said conveyances will be sufficient for the purposes intended by this Lease and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability or loss or damage arising out of a defect in title or a lien adversely affecting the Facility and will pay all reasonable expenses incurred by the Agency in defending any action respecting title to or a lien affecting the Facility, unless such defect in title or lien is caused by or on behalf of the Agency.

2.2. Intentionally omitted.

2.3. Demise of Facility. The Agency hereby demises and leases the Facility and the Land to MHC 83 and MHC 83 hereby rents and leases the Facility and the Land from the Agency upon the terms and conditions of this Lease.

2.4. Remedies to be Pursued Against Contractors and Subcontractors and its Sureties. In the event of a default by any contractor, subcontractor or any other person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance, or guaranty, MHC 83 at its expense, either separately or in conjunction with others, may pursue any and all remedies available to them and the Agency, as appropriate, against the contractor, subcontractor, manufacturer, supplier or other person so in default and against such surety for the performance of such contract. MHC 83 in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which is reasonably necessary, and in such events the Agency, at MHC 83's expense, hereby agrees to cooperate fully with MHC 83 and to take all action necessary to effect the substitution of MHC 83 for the Agency (including but not limited to reasonable attorneys' fees) in any such action or proceeding.

2.5. Duration of Lease Term; Quiet Enjoyment.

- (a) The Agency shall deliver to MHC 83 sole and exclusive possession of the Facility (subject to the provisions hereof) and the leasehold estate created hereby shall commence on the date hereof.
- (b) The leasehold estate created hereby shall terminate at 11:59 P.M. on February 15, 2024, or on such earlier date as may be permitted by Section 8.1 hereof.
- (c) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the Lease Term.
- (d) The Agency shall, subject to the provisions hereof, neither take nor suffer nor permit any action, other than pursuant to Articles VII or VIII of this Lease, to prevent MHC 83 during the term of this Lease from having quiet and peaceable

possession and enjoyment of the Facility and will, at the request of MHC 83 and at MHC 83's cost, cooperate with MHC 83 in order that MHC 83 may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

2.6. Rents and Other Consideration. The rental obligations during the Lease Term are hereby reserved and MHC 83 shall pay rent for the Facility as follows:

- (a) On January 1, 2021 and on January 1st of each calendar year thereafter TWO THOUSAND FIVE HUNDRED AND 00/100 (\$2,500.00) Dollars annually.
- (b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the Lease Term, MHC 83 shall pay to the Agency as additional rent, within thirty (30) days of the receipt of written demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) for the reason of the Agency's ownership, or leasing of the Facility and (ii) in connection with the carrying out of the Agency's duties and obligations under this Lease.
- (c) MHC 83 agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event MHC 83 shall fail to timely make any payment required in this Section 2.6, MHC 83 shall pay the same together with interest from the date said payment is due at the rate of twelve percent (12%) per annum.

2.7. Obligations of MHC 83 Hereunder Unconditional. The obligations of MHC 83 to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of MHC 83 and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. MHC 83 agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof or (ii) fail to observe any of its other covenants or agreements in this Lease or (iii) except as provided in Section 8.1 hereof, terminate this Lease for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for MHC 83's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by Condemnation of title to or the use of all or any part of the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease, or otherwise. Subject to the foregoing provisions, nothing contained in this Section 2.7 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease or to affect the right of MHC 83 to seek reimbursement, and in the event the Agency should fail to perform any such agreement, MHC 83 may institute such separate

action against the Agency as MHC 83 may deem necessary to compel performance or recover damages for nonperformance, and the Agency covenants that it will not, subject to the provisions of Section 5.2, take any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights of estates of MHC 83 hereunder, except upon written consent of MHC 83. None of the foregoing shall relieve MHC 83 of its obligations under Section 5.2 hereof.

ARTICLE III

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

3.1. Maintenance and Modifications of Facility By MHC 83.

- (a) MHC 83 shall not abandon the Facility or cause or permit any waste to the Facility. MHC 83 agrees that during the Lease Term it will (i) keep the Facility in reasonably safe condition; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility in a sound and prudent manner; (iv) operate the Facility such that it continues to qualify under the Act and pursuant to the terms contained herein; and (v) MHC 83 will indemnify, defend and hold the Agency harmless from any liability or expenses from the failure by MHC 83 to comply with this subsection (a).
- (b) MHC 83, at its own expense, from time to time may make any structural additions, modifications or improvements to the Facility or any addition, modifications or improvements to the Facility or any part thereof which it may deem desirable for its business purposes and uses that do not adversely affect the structural integrity or impair the operating efficiency of the Facility or substantially change the nature of the Facility. All such structural additions, modifications or improvements so made by MHC 83 shall become a part of the Facility; provided, however, MHC 83 shall not be qualified for a sales and use tax exemption when making said additions, modifications or improvements except to the extent as otherwise provided by law. MHC 83 agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to or other satisfactory interest in, such property.

3.2. Installation of Additional Equipment. MHC 83 from time to time may install additional furniture, fixtures, machinery, and equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such furniture, fixtures, machinery, and equipment or other personal property shall not become, or be deemed to become, a part of the Facility. MHC 83 from time to time may remove or permit the removal of such furniture, fixtures, machinery and equipment or other personal property; provided that any such removal of such furniture, fixtures, machinery, equipment or other personal property shall not adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended and provided further that if any damage is occasioned to the Facility by such removal, MHC 83 agrees to promptly repair such damage at its own expense.

3.3. Taxes, Assessments and Utility Charges.

- (a) MHC 83 agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully

assessed or levied against or with respect to the Facility and any machinery, equipment or with respect to the Facility and any machinery, equipment or other property installed or brought by MHC 83 therein or thereon, including without limiting the generality of the foregoing any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all payments under the PILOT Agreement; (iii) all utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, MHC 83 shall be obligated under this Lease to pay only such installments as are required to be paid during the Lease Term.

- (b) MHC 83, at its own expense and in its own name or in the name of the Agency, but only with prior written notice to the Agency, may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, MHC 83 may, with prior written notice to the Agency, permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Agency reasonably requests payment prior to settlement.

3.4. Insurance Required. At all times throughout the Lease Term MHC 83 shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

- (a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by MHC 83.
- (b) Worker's Compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or MHC 83 is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of MHC 83 who are located at or assigned to the Facility.
- (c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by MHC 83 under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon MHC 83 by any

applicable Worker's Compensation Law; and a blanket excess liability policy in the amount not less than \$2,000,000, protecting MHC 83 against any loss or liability or damage for personal injury or property damage.

3.5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 3.4 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by MHC 83 (and reasonably satisfactory to the Agency) and authorized to write such insurance in the State. Such insurance may be written with deductible amounts not exceeding \$2,500.00. All policies evidencing such insurance shall provide for (i) payment of the losses of MHC 83 and the Agency as their respective interest may appear, and (ii) at least thirty (30) days written notice of the cancellation thereof to MHC 83 and the Agency.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the Lease Term. Prior to expiration of the policy evidenced by said certificates, MHC 83 shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease.

3.6. Application of Net Proceeds of Insurance. The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

(a) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof; and

(b) the net proceeds of the insurance required by Section 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

3.7. Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If MHC 83 fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the Agency may pay such tax, assessment or other governmental charge or the premium for such insurance. MHC 83 shall, on demand, reimburse the Agency for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum.

ARTICLE IV

DAMAGE, DESTRUCTION AND CONDEMNATION

4.1. Damage or Destruction.

- (a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:
 - (i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility;
 - (ii) there shall be no abatement or reduction in the amounts payable by MHC 83 under this Lease; and
 - (iii) except as otherwise provided in subsection (b) of this Section 4.1, MHC 83 shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by MHC 83 and may use insurance proceeds for all such purposes.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of MHC 83's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

- (b) MHC 83 shall not be obligated to replace, repair, rebuild or restore the Facility, and the net proceeds of the insurance shall not be applied as provided in subsection (a) of this Section 4.1, if MHC 83 shall exercise its option to terminate this Lease pursuant to Section 8.1 hereof.
- (c) MHC 83 may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

4.2. Condemnation.

- (a) If at any time during the term of this Lease Term the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by MHC 83 under this Lease. The Agency shall not have any interest whatsoever in any condemnation award, and MHC 83 shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, MHC 83 shall promptly:

- (i) restore the Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation; or

- (ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Facility subject to Agency consent.

The Facility, as so restored, or the substitute facility, whether or not requiring the expenditure of MHC 83's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

- (b) MHC 83 shall not be obligated to restore the Facility or acquire a substitute facility, and the net proceeds of any condemnation award shall not be applied as provided in Section 4.2(a), if MHC 83 shall exercise its option to terminate this Agreement pursuant to Section 8.1 hereof.
 - (c) The Agency shall cooperate fully with MHC 83 in the handling and conduct of any condemnation proceeding with respect to the Facility. In no event shall the Agency voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Facility without the written consent of MHC 83.
 - (d) MHC 83 hereby waives the provisions of Real Property Law Section 227 or any law of like import now or hereafter in effect.
- 4.3. Condemnation of MHC 83-Owned Property. MHC 83 shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Facility.

ARTICLE V

SPECIAL COVENANTS

- 5.1. No Warranty of Condition or Suitability by the Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR MHC 83'S PURPOSES OR NEEDS.
- 5.2. Hold Harmless Provisions. MHC 83 hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold harmless the Agency, its chief executive officer, executive director, directors, officers, employees, members, agents, representatives, and their respective successors and assigns and personal representatives from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency's financing, constructing, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of

action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or its chief executive officer, executive director, directors, officers, employees, members, agents, representatives, and their respective successors and assigns and personal representatives and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing obligations of MHC 83 shall remain in full force and effect after the termination of this Lease.

- 5.3. Right to Inspect the Facility. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable written notice to inspect the Facility. The Agency shall honor and comply with any reasonable restricted access policy of MHC 83 relating to the Facility.
- 5.4. Agreement to Provide Information. MHC 83 agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without delay, such information concerning MHC 83, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation.
- 5.5. Books of Record and Account; Financial Statements. MHC 83 at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of MHC 83 relating to the Facility.
- 5.6. Compliance With Orders, Ordinances, Etc.
 - (a) MHC 83 agrees that it will, throughout the Lease Term, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.
 - (b) Notwithstanding the provisions of subsection (a) of this Section 5.6, MHC 83 may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, MHC 83 may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. MHC 83 shall give prompt notice of the foregoing to the Agency.
- 5.7. Discharge of Liens and Encumbrances.

- (a) MHC 83 shall not permit or create or suffer to be permitted or created any lien upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.
 - (b) Notwithstanding the provisions of subsection (a) of this Section 5.7, MHC 83 may in good faith contest any such lien. In such event, MHC 83, with the prior written notice to the Agency may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify MHC 83 to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency thereby causing a lien to be removed.
- 5.8. Depreciation, Deductions and Investment Tax Credit. MHC 83 shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Internal Revenue Code and to any investment credit pursuant to Section 38 of the Internal Revenue Code with respect to any portion of the Facility which constitutes "Section 38 Property".

ARTICLE VI

RESTRICTION ON SALE; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

6.1. Restriction on Sale of Facility

- (a) Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to lenders designated by MHC 83 ("Lender") under a mortgage, security agreement and/or assignment of leases and rents in a form acceptable to the Agency, Lender and MHC 83, for purposes of refinancing the Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Lease, without the prior written consent of MHC 83, which consent shall not be unreasonably withheld or delayed. Under no circumstances shall the Agency be required to mortgage, grant a security interest in or assign its rights to receive the rentals described in Section 2.6 or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 herein (collectively referred to as "Unassigned Rights").

6.2. Removal of Equipment.

- (a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of

equipment. In any instance where MHC 83 determines that any item of equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, MHC 83 may remove such item of equipment from the Facility (provided MHC 83 shall not do any damage to the Facility) and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part.

- (b) The Agency shall execute and deliver to MHC 83 all instruments necessary or appropriate to enable MHC 83 to sell or otherwise dispose of any such item of equipment. MHC 83 shall pay any costs (including reasonable attorneys' fees) incurred in transferring title to and releasing any item of equipment removed pursuant to this Section 6.2.
- (c) The removal of any item of equipment pursuant to this Section 6.2 shall not entitle MHC 83 to any abatement of or diminution of the rents payable under Section 2.6 hereof.

6.3. Maintaining Existence and Assignment and Subleasing.

- (a) MHC 83 agrees during the Lease Term, it will maintain its existence, will not dissolve, liquidate or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it, without the prior written consent of the Agency which consent will not be unreasonably withheld or delayed in each instance.
- (b) Except for leasing storage units in the ordinary course of business, this Lease may not be assigned in whole or in part, and the Facility may not be subleased, in whole or in part, without the prior written consent of the Agency in each instance. A transfer in excess of 50% of the equity voting interests of MHC 83 or any other material change the management of MHC 83 shall be deemed an assignment and require the prior written consent of the Agency. Any assignment or subleases shall be on the following conditions, as of the time of each assignment and sublease:
 - (i) no assignment or sublease shall relieve MHC 83 from primary liability for any of its obligations hereunder;
 - (ii) the assignee or sublessee shall assume the obligations of MHC 83 hereunder to the extent of the interest assigned or subleased;
 - (iii) MHC 83 shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption; and
 - (iv) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act.

- (c) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 6.3, MHC 83 at its cost shall furnish to the Agency with an opinion, in form and substance satisfactory to the Agency as to items (i), (ii) and (iv) above.

ARTICLE VII

DEFAULT

7.1. Events of Default Defined.

- (a) Each of the following shall be an "Event of Default" under this Lease:
 - (i) If MHC 83 fails to pay the amounts required to be paid pursuant to Section 2.6 or 3.3 or 3.7 of this Lease and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to MHC 83; or
 - (ii) If there is any purposeful, willful and knowing breach by MHC 83 of any of its other agreements or covenants set forth in this Lease; or
 - (iii) If there is any failure by MHC 83 to observe or perform any other covenant, condition or agreement required by this Lease to be observed or performed and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to MHC 83, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, MHC 83's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence; or
 - (iv) If any representation or warranty of MHC 83 contained in this Lease is incorrect in any material respect; or
 - (v) Any default by MHC 83 under the PILOT Agreement.
- (b) Notwithstanding the provisions of 7.1 (a), if by reason of *force majeure* either party hereto shall be unable in whole or in part to carry out its obligations under this Lease and if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease of the party giving such notice, so far as it is affected by such *force majeure*, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section

7.1. Notwithstanding anything to the contrary in this subsection (b), an event of *force majeure* shall not excuse, delay or in any way diminish the obligations of MHC 83 to or make the payments required by Section 2.6, Section 3.3 and Section 3.7 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, and to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections 5.2, 5.4, 5.5, 5.6 and 5.7. The term "*force majeure*" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of its departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lock-outs and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

7.2. Remedies on Default. Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

- (i) Declare, by written notice to MHC 83, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 2.6 hereof and (ii) the sums under Sections 3.3 and 3.7 and (iii) all other payments due under this Lease.
- (ii) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.
- (iii) Take any other action at law or in equity which may appear necessary or desirable including, without limitation, to seek and obtain damages and specific performance or other monetary or equitable relief, and to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of MHC 83 under this Lease.
- (iv) Terminate this Lease and reconvey the Facility to MHC 83. Such termination is in addition to all other rights and remedies available to the

Agency hereunder and without mitigation of such rights and remedies. Such termination may be accomplished by conveying title to the Land by quitclaim deed, as well as title to the Facility and equipment, all as determined by the Agency, from the Agency to MHC 83 and the recording of said deed in the Sullivan County Clerk's Office shall be deemed to be delivery thereof. MHC 83 hereby appoints the Chairman, Vice-Chairman and Chief Executive Officer of the Agency, each acting individually as its attorney-in-fact for the limited purpose of signing any forms which must necessarily accompany the deed in order for the deed to be recorded. MHC 83 acknowledges that the foregoing appointment is coupled with an interest and is irrevocable.

- 7.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- 7.4. Agreement to Pay Attorneys' Fees and Expenses. In the event MHC 83 should default under any of the provisions of this Lease and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of MHC 83 herein contained, or for obtaining other relief, MHC 83 shall, on demand therefor, pay to the Agency, the reasonable fees of such attorneys and such other expenses so incurred.
- 7.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VIII

EARLY TERMINATION OF AGREEMENT; OBLIGATIONS OF COMPANY

- 8.1. Early Termination of Agreement.
- (a) MHC 83 shall have the option at any time to terminate this Lease upon filing with the Agency a certificate signed by an authorized representative of MHC 83 stating MHC 83's intention to do so pursuant to this Section 8.1 and upon compliance with the requirements set forth in Section 8.2 hereof.
- (b) The Agency shall have the option at any time to terminate this Lease and to demand

immediate payment in full of the rental reserved and unpaid as described in Section 2.6 hereof, the sums due under Sections 3.3 or 3.7, and all other payments due under this Lease, upon written notice to MHC 83 of the occurrence of an Event of Default hereunder.

- 8.2. Obligation to Purchase Facility. Upon termination of this Lease in accordance with Section 2.5, 7.2 or Section 8.1 hereof, MHC 83 shall purchase the Facility and the Land from the Agency for the purchase price of One (\$1.00) Dollar plus all rental reserved and unpaid as described in Section 2.6 hereof, the sums due under Sections 3.3 and 3.7 hereof, and all other sums due under this Lease ("Termination Payment"). MHC 83 shall exercise its obligation to purchase by giving written notice to the Agency and paying said amount to the Agency.
- 8.3. Conveyance on Purchase. At the closing of any purchase of the Facility pursuant to Section 8.2 hereof, the Agency shall, upon receipt of the Termination Payment, deliver to MHC 83 all necessary documents to reflect a transfer by quitclaim deed of a fee interest:
- (a) to convey to MHC 83 title to the Facility and the Land being purchased, as such Facility and the Land exists, subject only to the following:
 - (i) any liens to which title to the Facility was subject when conveyed to the Agency,
 - (ii) any liens created at the request of MHC 83 or to the creation of which MHC 83 consented or in the creation of which MHC 83 acquiesced,
 - (iii) any liens resulting from the failure of MHC 83 to perform or observe any of the agreements on its part contained in this Lease; and
 - (b) to release and convey to MHC 83 all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance or condemnation awards with respect to the Facility (specifically excluding all rights of the Agency hereunder including its rights to indemnification hereunder).

ARTICLE IX

GENERAL PROVISIONS

- 9.1. Notices. All notices provided for by this Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given, or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid and properly

addressed to the following:

If to the Agency:

County of Sullivan Industrial Development Agency
548 Broadway
Monticello, New York 12701
Attn: Chief Executive Officer

with a copy to:

GARIGLIANO LAW OFFICES, LLP
449 Broadway, P.O. Drawer 1069
Monticello, New York 12701-1069
Attn: Agency General Counsel

To MHC 83:

MHC 83 (HW Portfolio) LLC
c/o Merit Hill Capital, LP
41 Flatbush Avenue, Suite 3C
Brooklyn, New York 11217
Attn: Liz Raun Schlesinger

with a copy to:

Reed Smith LLP
599 Lexington Avenue
New York, New York 10022-7650
Attn: Joseph M. Marger, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section.

- 9.2. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Agency, MHC 83 and its respective permitted successors and assigns.
- 9.3. Waiver. No waiver of any of the provisions of this Lease shall be deemed to or shall constitute a waiver or any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- 9.4. Severability. If any provision of this Lease shall be determined to be illegal and unenforceable by any court of law or any competent governmental or other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this Lease without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this Lease.
- 9.5. Governing Law, Venue. This Lease shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein. The parties hereby designate a court of proper jurisdiction located in Sullivan County, New York as the exclusive venue for resolution of any disputes which may arise

under or by reason of this Agreement.

- 9.6. Survival of Obligations. The obligations of MHC 83 to make payments required by Sections 2.6, 3.3, 3.7, all other payments due under this Lease and all indemnities shall survive any termination or expiration of this Lease.
- 9.7. Section Headings Not Controlling. The headings of the several sections in this Lease have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Lease.
- 9.8. Recording and Filing. This Lease or a memorandum thereof, shall be recorded or filed, as the case may be, in the Office of the Clerk of Sullivan County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.
- 9.9. Merger of Agency.
- (a) Notwithstanding anything to the contrary or otherwise contained in this Lease, nothing in this Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of title to the entire Facility to any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.
 - (b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to MHC 83. The Agency shall furnish such additional information with respect to any such transaction as MHC 83 may reasonably request.
- 9.10. No Recourse; Special Obligation. Notwithstanding anything to the contrary contained herein, the obligations and agreements of the Agency contained herein and in any other agreement executed by the Agency and in any other instrument or document supplemental thereto executed in connection herewith or therewith shall be deemed the obligation and agreements of the Agency, and not of any chief executive officer, executive director, directors, officers, employees, members, agents, representatives, and their respective successors and assigns and personal representatives in his or her individual capacity, and the chief executive officer, executive director, directors, officers, employees, members, agents, representatives, and their respective successors and assigns and personal representatives of the Agency shall not be liable personally thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any

transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State, the County of Sullivan, or any of the taxing jurisdictions and neither the State, the County of Sullivan, or any of the taxing jurisdictions 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 a limited obligation of the Agency payable solely from revenues derived from the sale of the Facility.

- 9.11. Entire Agreement. This Lease together with the PILOT Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and negotiations between them. This Lease may not be amended in any respect except by a written amendment expressly referring to this Lease and executed by the parties to be bound thereby.

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70305-048v2

IN WITNESS WHEREOF, the Agency and MHC 83 have caused this Lease to be executed in its respective names, all as of the date first above written.

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY



By: Edward T. Sykes, Chief Executive Officer

MHC 83 (HW Portfolio) LLC


By: Elizabeth Raun Schlesinger
Title: Authorized Signatory

3rd A&R Lease

IN WITNESS WHEREOF, the Agency and MHC 83 have caused this Lease to be executed in its respective names, all as of the date first above written.

MHC 83:

MHC 83 (HW PORTFOLIO) LLC,
a Delaware limited liability company

By: 

Name: Elizabeth Raun Schlesinger

Title: Authorized Signatory