

LEASE TO AGENCY

THIS LEASE TO AGENCY dated as of April 15, 2016 (the "Underlying Lease") by and between 354 BROADWAY, LLC, a New York limited liability company having an office for the transaction of business located at 170 West 74th Street, New York, New York 10023 (the "Developer"), as landlord, and the COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 5 Warren Street, Glens Falls, New York, 12801 (the "Agency"), as tenant;

WITNESSETH:

WHEREAS, Title I of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 862 of the Laws of 1971 of the State of New York (the "Act"); and

WHEREAS, the Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of 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, retail or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such agency to lease or sell any or all of its facilities, for the purpose of carrying out any of its corporate purposes and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Act, and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the members of the Agency adopted a resolution on August 17, 2015 (the "Inducement Resolution") pursuant to which the Agency agreed to consider undertaking a development project (the "Project") for the benefit of the Developer consisting of the following: (i) the acquisition of an interest in a certain commercial parcel of land located at 354 Broadway in the Town of Fort Edward, County of Washington, State of New York (the "Land"); (ii) the construction and equipping of a 40,315 +/- square foot supermarket located on the Land (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used

in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Developer, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended, since the Project includes a retail component the resolution was adopted subject to the approval of the Counties of Warren and Washington; and

WHEREAS, the approvals of the Chief Executive Officers of the Counties of Warren and Washington have been received; and

WHEREAS, by further resolution adopted by the members of the Agency on February 17, 2016 (the "Closing Resolution"), the Agency determined to grant the financial assistance to the Developer and to enter into a lease agreement (the "Lease Agreement") between the Agency and the Developer and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"); and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Developer will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project, and (B) the Agency will lease the Project Facility to the Developer; and

WHEREAS, the Lease Agreement grants to the Developer certain options to acquire the Project Facility from the Agency; and

WHEREAS, the Developer desires to convey to the Agency the leasehold interest created pursuant to this Underlying Lease on the terms and conditions set forth in this Underlying Lease; and

WHEREAS, it is the intention of the parties hereto that the leasehold interest created pursuant to this Underlying Lease and the Developer's leasehold interest in the Project Facility created by the Lease Agreement shall not merge; and

WHEREAS, all things necessary to constitute this Underlying Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Underlying Lease have in all respects been duly authorized by the Agency and the Developer.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:

ARTICLE I DEFINITIONS

SECTION 1.1. DEFINITIONS. The following words and terms used in this Underlying Lease shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

"Act" means Title I of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 862 of the 1971 Laws of the State, constituting Section 890-c of the General Municipal Law of the State, as amended from time to time.

"Agency" means (A) the Counties of Warren and Washington Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which the Counties of Warren and Washington Industrial Development Agency or its successors or assigns may be a party.

"Applicable Laws" means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Project Facility and as if the Developer and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

"Assignment to Developer" means the assignment from the Agency to the Developer, which assignment is intended to convey to the Developer, upon certain terminations of the Lease Agreement, all title and interest of the Agency in the Project Facility, including the leasehold interest created pursuant to the Underlying Lease.

"Authorized Representative" means the person or persons at the time designated to act in behalf of the Agency or the Developer, as the case may be, by written certificate furnished to the Agency or the Developer, as the case may be, containing the specimen signature of each such person and signed on behalf of (A) the Agency by its Chairman or Vice-Chairman or such other person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Developer by any officer or such other person as may be authorized in writing by the members of the Developer to act on behalf of the Developer.

"Basic Documents" means the Underlying Lease, the Lease Agreement, the Payment in Lieu of Taxes Agreement, the Mortgage and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

"Business Day" means a day on which banks located in Warren and Washington Counties,

New York are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

"Closing" means the closing at which the Basic Documents are executed and delivered by the Developer and the Agency.

"Closing Date" means the date of the Closing.

"Closing Resolution" means the resolution duly adopted by the Agency on February 17, 2016 authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

"Developer" means 354 Broadway, LLC, a New York limited liability company, and its successors and assigns.

"Completion Date" means the earlier to occur of (A) August 31, 2017 or (B) such date as shall be certified by the Developer to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Developer to the Agency as the date of completion of the Project, subject to circumstances beyond the Developer's reasonable control.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

"Event of Default" means, with respect to any particular Basic Document, any event specified as an Event of Default pursuant to the provisions thereof.

"Facility" means a 40,315 +/- square foot supermarket to be constructed on the Land.

"Governmental Authority" means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

"Land" means the parcels of land located 354 Broadway in the Town of Fort Edward, in the County of Warren, State of New York (Tax Map Parcel No: 163.10-1-46.3), as more particularly described on Schedule A attached to the Lease Agreement.

"Lease Agreement" means the lease agreement dated as of April 15, 2016 by and between the Agency, as landlord, and the Developer, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Developer, as said lease agreement may be amended or supplemented from time to time.

"Lender" means the Union Savings Bank, as its interests may appear, in its capacity as

provider of the Loans to the Developer, and their successors and assigns in this capacity.

"Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Developer. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialmen's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For purposes of the Basic Documents, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Loan(s)" means loans in the principal aggregate sum of \$5,419,387.00 to be made by the Lender to the Developer and to be secured by, among other things, the Mortgage.

"Mortgage" means the Building Loan Mortgage and Security Agreement dated as of April 15, 2016, from the Developer and the Agency to the Lender to secure the Loan.

"Net Proceeds" means so much of the gross proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

"Payment in Lieu of Tax Agreement" means the payment in lieu of tax agreement dated as of April 15, 2016 by and between the Agency and the Developer, pursuant to which the Developer has agreed to make or cause to be made payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

"Permitted Encumbrances" means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens, to the extent permitted by Section 8.7 of the Lease Agreement, (C) Liens for taxes, assessments and utility charges, to the extent permitted by Section 6.2(B) of the Lease Agreement, (D) any Lien on the Project Facility obtained through any Basic Document, (E) the Mortgage; (F) any Lien requested by the Developer in writing and consented to by the Agency, which consent of the Agency shall not be unreasonably withheld or delayed, (G) exceptions to title included in the title commitment for the Project Facility issued by Chicago Title Insurance Company under Title No. CT15-30544-ALB, and (H) the Amended and Restated Lease Agreement dated February 25, 2016 by and between Developer and Price Chopper Operating Co., Inc.

"Person" means an individual, partnership, corporation, limited liability company, trust, unincorporated organization or Governmental Authority.

"Plans and Specifications" means the description of the Project appearing in the recital clauses to the Lease Agreement.

"Preliminary Agreement" means the preliminary agreement dated as of February 9, 2016 between the Agency and the Developer with respect to the Project.

"Premises" means the Property leased to the Agency pursuant to the Underlying Lease.

"Project" means the project undertaken by the Agency consisting of (A) (1) the acquisition of a leasehold interest in the Land, (2) the construction of the Facility to constitute a retail facility to be leased by Developer to an operator, (B) the granting of certain Financial Assistance with respect to the foregoing, and (C) the lease of the Project Facility to the Developer pursuant to the Lease Agreement.

"Project Facility" means the Land and the Facility.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Real Property Tax Exemption Form" means a New York State Board of Real Property Services Form RP-412-a relating to the Project Facility.

"SEQRA" means Article Eight of the Environmental Conservation Law of the State and the statewide regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York.

"State" means the State of New York.

"Term" means the term of the Underlying Lease.

"Termination of Lease Agreement" means a termination of lease agreement by and between the Developer, as tenant, and the Agency, as landlord, intended to evidence the termination of the Lease Agreement.

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2(G), 4.1(F), 5.3, 8.2, and 8.8 of the Lease Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents and employees of the Agency for their own account pursuant to Sections 2.2(G), 4.1(F), 5.3, 6.3, 8.2, 10.2(B) and 10.4 of the Lease Agreement, and (C) the right to enforce the foregoing pursuant to Article X of the Lease Agreement.

"Underlying Lease" means this lease to Agency dated as of April 15, 2016 by and between the Developer, as landlord, and the Agency, as tenant, pursuant to which the Developer is conveying a leasehold interest in the Premises to the Agency, as said lease to Agency may be amended or supplemented from time to time.

SECTION 1.2. INTERPRETATION. In this Underlying Lease, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "herein", "hereunder", and any similar terms as used in this Underlying Lease, refer to this Underlying Lease, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Underlying Lease.

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders.

(C) Words importing the singular number shall mean and include the plural number, and vice versa.

(D) Any headings preceding the texts of the several Articles and Sections of this Underlying Lease, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Underlying Lease nor affect its meaning, construction or effect.

(E) Any certificates, letters or opinions required to be given pursuant to this Underlying Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Underlying Lease.

ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE AGENCY. The Agency makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Agency has been duly established under the provisions of the Act and has the power to enter into this Underlying Lease and to carry out its obligations hereunder.

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

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER. The Developer makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(A) The Developer is a limited liability company duly organized and validly existing under the laws of the State of New York is qualified to do business in the State and all other

jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Underlying Lease and carry out its obligations hereunder and has been duly authorized to execute this Underlying Lease. This Underlying Lease and the transactions contemplated hereby have been duly authorized by all necessary action on the part of the directors of the Developer.

(B) Neither the execution and delivery of this Underlying Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Underlying Lease will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the certificate of incorporation or by-laws of the Developer or any order, judgment, agreement or instrument to which the Developer is a party or by which the Developer is bound, or constitute a default under any of the foregoing, or (2) result in the creation or imposition of any Lien of any nature upon any Property of the Developer other than pursuant to the Basic Documents, or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Developer is a party or by which the Developer or any of its Property may be bound or affected, or (4) to the best of the Developer's knowledge, require consent (which has not been heretofore received) under, conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Developer or any of the Property of the Developer.

ARTICLE III LEASE PROVISIONS

SECTION 3.1. LEASE. (A) The Developer hereby demises and leases to the Agency, and the Agency hereby hires and takes leases from the Developer, the Land, as said Land is more particularly described on Schedule A attached hereto, and the improvements hereafter located thereon, including the Facility, (the Land and the Facility being sometimes collectively referred to as the "Premises") for the term set forth in Section 3.2 hereof. The Premises are intended to include all buildings and improvements located on the Land but not to include any personal property or equipment, fixtures, furnishings, machines, building materials, or items of personal property or appurtenances thereto.

(B) It is the intention of the Developer and the Agency that the Agency shall hold leasehold title to Premises. Accordingly, leasehold title to any improvements hereinafter constructed by the Developer on the Land that constitute real property shall vest in the Agency or its successors and assigns as and when the same are constructed thereon.

SECTION 3.2. TERM. (A) The term of this Underlying Lease (the "Term") shall commence as of the dated date hereof and shall expire on the earlier to occur (1) December 31, 2031 or (2) so long as neither the Lease Agreement nor the Developer's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, the termination of the term of the Lease Agreement.

(B) So long as neither the Lease Agreement nor the Developer's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, upon

any termination of this Underlying Lease, the Developer shall prepare and the Agency will execute and deliver to the Developer such instruments as the Developer shall deem appropriate to evidence the release and discharge of this Underlying Lease.

SECTION 3.3. RENT. The rent payable by the Agency under this Underlying Lease shall be one dollar (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged by the Developer.

SECTION 3.4. USE; LEASE AGREEMENT; NON-MERGER. (A) So long as neither the Lease Agreement nor the Developer's right of possession as lessee thereunder have been terminated by the Agency pursuant to Article X thereof, the Agency shall (1) hold and use the Premises only for lease to the Developer under the Lease Agreement and (2) shall not sell or assign its rights hereunder nor the leasehold estate hereby created, except as provided in the Lease Agreement.

(B) Contemporaneously with the execution and delivery of this Underlying Lease, the Agency is entering into the Lease Agreement, pursuant to which the Developer as agent of the Agency agrees to undertake and complete the Project and the Agency agrees to lease the Project Facility to the Developer. Pursuant to the Lease Agreement, the Developer, as tenant of the Project Facility under the Lease Agreement, is required to perform all of the Agency's obligations under this Underlying Lease. Accordingly, and notwithstanding anything to the contrary contained in this Underlying Lease, the Developer shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder if any asserted default by the Agency hereunder relates to a failure by the Developer, as tenant of the Project Facility under the Lease Agreement, to perform its corresponding obligations under the Lease Agreement.

(C) Notwithstanding the lease of the Project Facility by the Agency to the Developer pursuant to the Lease Agreement, during the Term of this Underlying Lease, there shall be no merger of this Underlying Lease nor of the leasehold estate created by this Underlying Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Underlying Lease or the leasehold estate created by this Underlying Lease or any interest in this Underlying Lease or in any such leasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (a) this Underlying Lease or the leasehold estate created by this Underlying Lease and (b) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

(D) Upon any termination of the Lease Agreement or the Developer's rights of possession as lessee thereunder pursuant to Article X thereof, the Agency shall have the remedies set forth in the Lease Agreement.

SECTION 3.5. ADDITIONS, ALTERATIONS AND IMPROVEMENTS. Subject to the provisions of the Lease Agreement, the Developer shall have the right, from time to time, to make such changes, additions, improvements and alterations, demolition or new construction, structural or otherwise, to the Premises as the Developer shall deem necessary or desirable.

Leasehold title to improvements that constitute real property now located or hereafter constructed upon the Premises, and any modifications, additions, restrictions, repairs and replacements, thereof, shall be in the Agency during the term of this Underlying Lease, except as otherwise provided in the Lease Agreement.

SECTION 3.6. ASSIGNMENT. So long as neither the Lease Agreement nor the Developer's right of possession as lessee thereunder shall have been terminated by the Agency pursuant to Article X thereof, neither the Agency nor the Developer shall assign or transfer this Underlying Lease, except as otherwise stated herein, nor sublease the whole or any part of the Property leased hereby, except that the Agency may lease the leasehold interest created hereunder to the Developer pursuant to the Lease Agreement. The Agency may enter into the Lease Agreement on the terms provided therein. In the event the Developer desires to assign or transfer this Underlying Lease, the Developer shall make such request in writing to the Agency to obtain the Agency's consent, such consent shall be unreasonably withheld so long as the the Project Facility remains an eligible project pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York, as it may be amended from time to time.

SECTION 3.7. POSSESSION; QUIET ENJOYMENT. (A) Pursuant to the terms of the Lease Agreement, except as otherwise provided therein after the occurrence of an Event of Default thereunder, the Developer has the exclusive right to possess and make improvements to the Premises leased hereby.

(B) The Agency, upon paying the rent and observing and keeping all covenants, warranties, agreements and conditions of this Underlying Lease on the Agency's part to be kept, shall quietly have, hold and enjoy the Premises during the Term of this Underlying Lease, subject to the terms of the Lease Agreement.

SECTION 3.8. LIENS. The Agency shall not, directly or indirectly, create or permit to be created, any mortgage, lien, encumbrance or other charge upon, or pledge of, the Premises or the Agency's interest therein (except for Permitted Encumbrances) without the Developer's prior written consent.

SECTION 3.9. TAXES. (A) It is recognized that, under the provisions of the Act, the Agency is required to pay no taxes upon any property acquired by it or under its jurisdiction or control or supervision. Pursuant to the Lease Agreement, the Developer has agreed to pay all special assessments levied against the Premises and to make payments in lieu of taxes under the terms of a Payment in Lieu of Tax Agreement, dated as of April 15, 2016.

(B) In the event that (1) the Agency's leasehold interest in the Premises shall be terminated, (2) on the date on which the Developer takes possession of the Premises and the Agency's interest is terminated, the Premises continues to be assessed as exempt upon the assessment roll of any one or more of any taxing entities, and (3) the fact of obtaining title to the Agency's interest in the Premises shall not immediately obligate the Developer to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real

Property Tax Law), then, under those circumstances, the Developer shall be obligated to make payments in lieu of taxes to the respective receivers of taxes in amounts equal to those amounts which would be due from the Developer as real property taxes with respect to the Premises if the Premises were owned by the Developer and not the Agency until the first tax year in which the Developer shall appear on the tax rolls of the various taxing entities having jurisdiction over the Premises as the legal owner of record of the Agency's interest in the Premises.

SECTION 3.10. MAINTENANCE. Pursuant to the Lease Agreement, during the term of this Underlying Lease, the Developer has agreed, at the Developer's sole cost and expense, to keep and maintain or cause to be kept and maintained the Premises and all improvements now or hereafter located thereon in good order and condition, subject to reasonable wear and tear, and make or cause to be made all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. The Agency will have no responsibility with respect to the foregoing.

SECTION 3.11. CONDEMNATION. Subject to the provisions of the Lease Agreement, in the event of a total, substantial or partial taking by eminent domain or for any public or quasi public use under any statute (or voluntary transfer or conveyance to the condemning agency under threat of condemnation), the Agency shall be entitled to its costs and expenses incurred with respect to the Premises (including any unpaid amounts due pursuant to the Basic Documents and the costs of participating in such condemnation proceeding or transfer), and thereafter the Agency shall not participate further in any condemnation award.

SECTION 3.12. SPECIAL COVENANTS. **NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS"**. THE DEVELOPER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR THAT THE PROJECT FACILITY OR ANY PART THEREOF IS OR WILL BE SUITABLE FOR THE AGENCY'S PURPOSES OR NEEDS. THE AGENCY SHALL ACCEPT LEASEHOLD TITLE TO THE PROJECT FACILITY "AS IS" WITHOUT RECOURSE OF ANY NATURE AGAINST THE DEVELOPER FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY ARE MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE DEVELOPER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

SECTION 4.1 DEFAULT. (A) Any one or more of the following events shall constitute an "Event of Default" under this Underlying Lease:

- (1) The failure of the Agency (or the Developer on behalf of the Agency) to pay the rent due pursuant to this Underlying Lease within fifteen (15) days after written notice to the Agency specifying the nature of such default; or

(2) The failure of the Agency (or the Developer on behalf of the Agency) to observe and perform any covenant, condition or agreement on its part to be performed (other than as referred to in paragraph (1) above) and continuance of such failure for a period of thirty (30) days after written notice to the Agency specifying the nature of such default; provided that if by reason of the nature of such default the same cannot be remedied within thirty (30) days, failure of the Agency (or the Developer on behalf of the Agency), to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence.

(B) Notwithstanding the provisions of Section 4.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Underlying 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 Underlying Lease of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the 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. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of government authority or any civil or military authority, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities. It is agreed that the settlement of strikes, lockouts 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 or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 4.2 REMEDIES ON DEFAULT. Whenever any Event of Default hereunder by one party hereto shall have occurred and be continuing for more than fifteen (15) days after written notice of default by the other party the other party may enforce the provisions of this Underlying Lease and may enforce and protect its right by a suit or suits in equity or at law for (1) the specific performance of any covenant or agreement contained herein or (2) any other appropriate legal or equitable remedy.

SECTION 4.3. 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 Underlying 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. In order to entitle the Agency to exercise any remedy reserved to it in this Article IV, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 4.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event either party should default under any of the provisions of this Underlying Lease and the other

party 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 the defaulting party herein contained, the defaulting party shall, on demand therefor, pay to the other party the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 4.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the 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 V MISCELLANEOUS

SECTION 5.1. SURRENDER. (A) The Agency shall, on the last day of the Term of this Underlying Lease or on the last day of any earlier termination of the Term of this Underlying Lease, surrender and deliver the Premises and all buildings, improvements, alterations, equipment and fixtures located thereon to the possession and use of the Developer without delay and in good order, condition and repair, except for reasonable wear and tear.

(B) On the last day of the Term of this Underlying Lease or on the last day of any earlier termination of the Term of this Underlying Lease, title to all buildings, improvements and alterations located on the Premises shall automatically, and without the need of any further or additional instrument, vest in the Developer, subject to no liens being created by the Agency or consented to by the Agency, except for Permitted Encumbrances. Notwithstanding the foregoing, upon the reasonable request of the Developer, the Agency shall execute and deliver to the Developer a memorandum of the Lease Agreement (the "Memorandum of Lease") to be recorded to confirm this vesting of title.

SECTION 5.2. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by an affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE DEVELOPER:

354 Broadway, LLC
170 West 74th Street
New York, New York 10023

Attention: David Kaplan

WITH A COPY TO:

Meltzer, Lippe, Goldstein & Breitstone, LLP
190 Willis Avenue
Mineola, New York 11501
Attention: Gary M. Meltzer, Esq.

IF TO THE AGENCY:

Counties of Warren and Washington Industrial Development Agency
5 Warren Street
Glens Falls, New York 12801
Attention: Chairman

WITH A COPY TO:

FitzGerald Morris Baker Firth, P.C.
16 Pearl Street
Glens Falls, New York 12801
Attention: Kara I. Lais, Esq.

(C) The Agency or the Developer may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications to the Agency or the Developer, as the case may be, shall be sent.

SECTION 5.3. APPLICABLE LAW. This Underlying Lease shall be governed exclusively by the applicable laws of the State.

SECTION 5.4. BINDING EFFECT. This Underlying Lease shall inure to the benefit of, and shall be binding upon, the Agency and the Developer and their respective successors and assigns; provided, that, except as provided elsewhere herein, the interest of the Agency in this Underlying Lease may not be assigned, sublet or otherwise transferred without the prior written consent of the Developer.

SECTION 5.5. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Developer to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining provisions hereof and shall in no way affect the validity of the other provisions of this Underlying Lease.

SECTION 5.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Underlying Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 5.7. EXECUTION OF COUNTERPARTS. This Underlying Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.8. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Underlying Lease have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Underlying Lease.

SECTION 5.9. NO RECOURSE; SPECIAL OBLIGATION. (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Developer) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Developer) and employees of the Agency shall not be liable personally hereon or 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.

(B) The obligations and agreements of the Agency contained herein and in the other Basic Documents shall not constitute or give rise to an obligation of the State of New York or the Counties of Warren and Washington, New York, and neither the State of New York nor the Counties of Warren and Washington, New York shall be liable hereon or thereon and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility.

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under the other Basic Documents shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Developer) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Developer) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Developer) and employees against all liability expected to be incurred as a result of

compliance with such request.

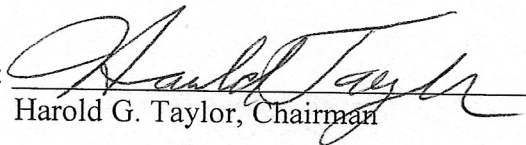
SECTION 5.10. RECORDING. The Agency and the Developer agree that this Underlying Lease (or a memorandum thereof) shall be recorded by the Agency in the appropriate office of the County Clerk of Warren County, New York.

SECTION 5.11. STATEMENT OF INTENT. Notwithstanding anything in this Underlying Lease to the contrary, it is the intention of the parties that the Developer shall retain title to all equipment, fixtures, furnishings, machines, building materials and items of personal property or appurtenances thereto at the Project Facility.

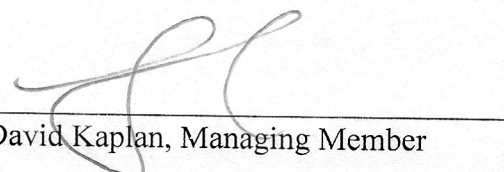
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Agency and the Developer have caused this Underlying Lease to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first above written.

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY, Agency

BY: 
Harold G. Taylor, Chairman

354 Broadway, LLC, the Developer

BY: 
David Kaplan, Managing Member

STATE OF NEW YORK)
) SS
COUNTY OF WARREN)

On the 7th day of April in the year 2016, before me, the undersigned, a notary public in and for said state, personally appeared **Harold G. Taylor** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Kara I. Laiss
Notary Public

STATE OF NEW YORK)
) SS
COUNTY OF ~~WARREN~~ Washington)

KARA I. LAIS
Notary Public, State of New York
Saratoga Co. #02LA6105701
Commission Expires Feb. 17, 2020

On the 15th day of April in the year 2016, before me, the undersigned, a notary public in and for said state, personally appeared **David Kaplan** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

David Kaplan
Notary Public

KARA I. LAIS
Notary Public, State of New York
Saratoga Co. #02LA6105701 20
Commission Expires Feb. 17, 2020

SCHEDULE A DESCRIPTION

ALL that certain plot, piece or parcel of land situated in the TOWN OF FORT EDWARD County of Washington, State of New York, and being more particularly bounded and described as follows:

INDEX # 17864

NAME: DVL, INC

DESCRIPTION: 354 Broadway 454 Supermarket Grand Union Sub Lot B acres 5.94

TAX MAP NO: 533089; 163.10-1-46.3

SAID PREMISES ARE ALSO DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN piece or parcel of land, situate lying and being in the Town of Fort Edward, County of Washington and State of New York, more particularly bounded and described as follows:

BEGINNING at an iron pipe in the ground on the Easterly line of U.S. Route 4 (Upper Broadway) at the Southwest corner of lands of Franchise Realty Interstate Corp. said point of beginning being also 325.01 feet South of the South line of Orsola Avenue as measured along the Easterly line of U.S. Route 4 and runs thence South 76 degrees 49 minutes East along the South line of Franchise Realty Interstate Corp. a distance of 200.0 feet, thence North 12 degrees 37 minutes East along the East line of said lands a distance of 200.0 feet to the Southerly bounds of a lot sub-division, thence South 76 degrees 49 minutes East along said south line a distance of 293.80 feet, thence South 21 degrees 20 minutes West a distance of 18.44 feet, thence South 68 degrees 48 minutes East a distance of 125.50 feet, thence South 52 degrees 00 minutes 30 seconds East across the Southerly bounds of Caputo Avenue, a distance of 52.33 feet, thence South 68 degrees 56 minutes East a distance of 125.0 feet to the Westerly line of lands of School District 9, thence South 21 degrees 06 minutes 30 seconds West along said Westerly line a distance of 94.64 feet to a stone monument, thence South 21 degrees 19 minutes West continuing along said Westerly line a distance of 443.26 feet to the Southerly line of lands of the Grantor herein, thence North 83 degrees 44 minutes West along said Southerly line a distance of 105.65 feet to the Southeast corner of lands of Agway Inc., thence North 12 degrees 37 minutes 30 seconds East along the East line of Agway Inc. lands a distance of 186.65 feet to the Northeast corner thereof, thence North 76 degrees 49 minutes West along the Northerly line of lands of Agway Inc. a distance of 600.0 feet to the Easterly line of U.S. Route 4 (Upper Broadway), thence North 12 degrees 37 minutes East along the Easterly line of U.S. Route 4 a distance of 233.47 feet to the point and place of beginning. Containing 6.8 acres +/- of land, all as shown on a survey and map prepared by Richard Danskin P.C.

EXCEPTING THEREFROM that parcel conveyed to Pizzagates, Inc. by deed dated November 7, 2003 and recorded November 12, 2003 in Liber 951 page 319, described as follows:

All that certain piece or parcel of land situate, lying and being in the Town of Fort Edward, County of Washington and the State of New York, more particularly bounded and described as follows:

BEGINNING at a point in the easterly bounds of Upper Broadway at the southwest corner of the lands conveyed to Franchise Realty Interstate Corporation by deed dated August 13, 1976 and recorded in book 455 of deeds at page 767; running from thence South 75 degrees, 25 minutes and 21 seconds East, along the southerly bounds thereof, a distance of 197.78 feet to the southeast corner thereof; thence running through the lands of the grantor herein the following three courses and distances:

1. South 75 degrees, 25 minutes and 21 seconds East, a distance of 31.22 feet;
2. South 13 degrees, 59 minutes and 17 seconds West, a distance of 172.04 feet;
3. North 75 degrees, 24 minutes and 46 seconds West, a distance of 229.00 feet to the easterly bounds of Upper Broadway; thence running along the same, North 13 degrees, 59 minutes and 17 seconds East, a distance of 172.00 feet to the point and place of beginning, containing 0.90 acres of land to be the same more or less.

Said premises are more modernly described as follows:

All that piece or parcel of land situate in the Town of Fort Edward, County of Washington and the State of New York, bounded and described as follows:

Beginning at a point located along the easterly line of Upper Broadway (N.Y.S. Route 4), said point being the intersection formed by said east line of Upper Broadway with the division line between the lands now or formerly of MHW Properties, LLC (Book 861, Page 186) on the south and the lands now or formerly of the County of Washington (Book 3178, Page 318) on the north; thence in a northerly direction and along the aforesaid Upper Broadway, North 12° 45' 00" East, 61.03 feet to a point; thence in an easterly, northerly and westerly direction and along the lands now or formerly of J. Larry Fugate, Trustee (Book 3062, Page 181), the following three courses: 1) South 76° 49' 25" East, 227.20 feet to a point; 2) North 12° 34' 38" East, 172.04 feet to a point and 3) North 76° 50' 00" West 31.22 feet to a point; thence in a northerly direction and along the lands now or formerly of Franchise Realty Interstate Corporation (Book 455, Page 767), North 12° 37' 00" East, 199.73 feet to a point; thence in an easterly direction and along the lands now or formerly of Maynard (Book 509, Page 16), lands of Mylott (Book 931, Page 258), lands of Melucci (Book 3131, Page 170), lands of Winter (Book 920, Page 89), lands of Miner (Book 653, Page 96), lands of Derby (Book 353, Page 461), lands of Aiken (Book 800, Page 25), lands of Trombley (Book 852, Page 350), the southerly end of Caputo Avenue and the lands now or formerly of Porier (Book 3232, Page 3), the following five courses: 1) South 76° 50' 00" East, 294.55 feet to a point; 2) South 21° 09' 00" West, 18.46 feet to a point; 3) South 68° 51' 28" East, 125.10 feet to a point; 4) South 51° 31' 34" East, 62.15 feet to a point and 5) South 68° 54' 48" East, 125.00 feet to a point; thence in a southerly direction and along the westerly line of the lands now or formerly of the Trustees of Union Free School District No. 9, the following two courses: 1) South 21° 06' 30" West, 93.83 feet to a point and 2) South 21° 19' 00" West, 443.26 feet to a point; thence in a westerly direction and along the aforesaid lands of School District No. 9 and also along the lands now or formerly of Wilmer McKinney (Book 2784, Page 158), North 83° 44' 00" West, 105.65 feet to a point; thence in a northerly and westerly direction and along the aforesaid lands of MHW Properties, LLC, the following two courses: 1) North 12° 37' 30" East, 186.65 feet to a point and 2) North 76° 49' 00" West, 596.23 feet to the point or place of beginning. Containing in all 5.93 acres of land being more or less.