

275 OAK DRIVE LLC

and

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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FIRST AMENDMENT TO PILOT AGREEMENT

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Dated as of June 26, 2019

**FIRST AMENDMENT TO  
PILOT AGREEMENT**

THIS FIRST AMENDMENT TO PILOT AGREEMENT (this "Amendment") dated as of June 26, 2019 (the "Effective Date"), by and among the NASSAU COUNTY 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 an office at One West Street, 4th floor, Mineola, NY 11501 (the "Agency"), and 275 OAK DRIVE LLC, a limited liability company organized and existing under the laws of the State of New York, having an office at 900 Long Ridge Road, Stamford, CT 06902 (the "Company").

**RECITALS**

WHEREAS, on or about October 6, 2008, the 275 Oak Drive LLC (the "Company") and Nestle Waters North America Inc. (the "Sublessee") (the Company and the Sublessee, collectively, the "Applicants") presented an application for financial assistance (as amended on October 14, 2008, the "Original Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Original Project") consisting, inter alia, of the following: (A) (1) acquisition of an interest in an approximately 3.56 acre parcel of land located at 275-280 Oak Drive, Syosset, New York (the "Land"), (2) renovations to an approximately 54,416 square foot existing building, together with related improvements, on the Land (collectively, the "Building") and (3) the acquisition and installation therein and thereon of certain fixtures, machinery and equipment (the "Original Equipment"), all of the foregoing for use by the Applicants as a zone sales headquarters and as a sales office for its home and office distribution business and as a distribution center (collectively, the "Original Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes and real property taxes (but not including special assessments and ad valorem levies) (the "Original Financial Assistance"); (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company, the Sublessee, or such other entity as may be designated by the Applicants and agreed upon by the Agency; and (D) the sublease of the Project Facility by the Sublessee, the Company or such other entity as may be designated by the Applicants and agreed upon by the Agency; and

WHEREAS, the above referenced Original Project Facility was initially and is currently owned, operated and/or managed by the Applicants or such other entity as may be designated by the Applicants and agreed upon by the Agency. The Applicants received the 2008 Financial Assistance with respect to the 2008 Project Facility from the Agency; and

WHEREAS, the Applicants presented an application for additional financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting, inter alia, of the following: (A)(1) retention of an interest in the Land), (2) renovations to the Building and (3) the acquisition and installation therein and thereon of certain fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Sublessee as a zone sales headquarters and as a sales office for its home

and office distribution business and as a distribution center (collectively, the "Project Facility"); (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes and real property taxes (but not including special assessments and ad valorem levies) (the "Financial Assistance"); (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company, the Sublessee, or such other entity as may be designated by the Applicants and agreed upon by the Agency; and (D) the sublease of the Project Facility by the Sublessee, the Company or such other entity as may be designated by the Applicants and agreed upon by the Agency; and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement dated as of December 1, 2008 (the "PILOT Agreement"), by and between the Company and the Agency, the Company agreed to make certain payments in lieu of real property taxes with respect to the Premises (as such term is defined in the PILOT Mortgage, as hereinafter defined) and the improvements thereon, and such obligation is secured by a certain Mortgage and Assignment of Leases and Rents, dated as of December 1, 2008 (the "PILOT Mortgage"), made by the Agency and the Company, as mortgagors, in favor of the County of Nassau, as mortgagee (in such capacity, the "PILOT Mortgagee"), pursuant to which the Agency and the Company granted a first mortgage lien on the Land and the improvements thereon to the PILOT Mortgagee;

WHEREAS, the members of the Agency approved the proposed Project and the additional Financial Assistance pursuant to a resolution adopted on May 16, 2019 and authorized the Agency *inter alia*, to enter into this Amendment; and

WHEREAS, the Agency and the Company wish to amend the PILOT Agreement to provide for partial additional abatement from real property taxes for the benefit of the Company comprising a portion of the Financial Assistance;

#### AGREEMENTS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Agency mutually covenant, warrant and agree as follows:

1. Amendments:

- a. Subsection (B) (1) of Section 2 of the PILOT Agreement is amended and restated in its entirety to read as follows:

"(B) PILOT Payments. (1) From the PILOT Commencement Date through and including the last day of the twentieth (20th) fiscal tax year thereafter (such date, the "PILOT Expiration Date"), the Company shall make payments in lieu of real property taxes and assessments levied and/or assessed by the Taxing Entities against the Facility (collectively, the "PILOT Payments") subject to apportionment based upon the different PILOT Commencement Date for the different Taxing Entities as follows, subject to the provisions of Section 2(B)(3) hereof:

(a FT Year 1) for the fiscal tax year commencing on the PILOT Commencement Date, \$114,083.00;

(b FT Year 2) for the fiscal tax year commencing on the 1st anniversary of the PILOT Commencement Date, \$114,083.00;

(c FT Year 3) for the fiscal tax year commencing on the 2nd anniversary of the PILOT Commencement Date, \$114,083.00;

(d FT Year 4) for the fiscal tax year commencing on the 3rd anniversary of the PILOT Commencement Date, \$117,506.00;

(e FT Year 5) for the fiscal tax year commencing on the 4th anniversary of the PILOT Commencement Date, \$121,031.00;

(f FT Year 6) for the fiscal tax year commencing on the 5th anniversary of the PILOT Commencement Date, \$124,662.00;

(g FT Year 7) for the fiscal tax year commencing on the 6th anniversary of the PILOT Commencement Date, \$130,895.00;

(h FT Year 8) for the fiscal tax year commencing on the 7th anniversary of the PILOT Commencement Date, \$137,440.00;

(i FT Year 9) for the fiscal tax year commencing on the 8th anniversary of the PILOT Commencement Date, \$144,312.00; and

(j FT Year 10) for the fiscal tax year commencing on the 9th anniversary of the PILOT Commencement Date, \$151,527.00. – **FOR THE AVOIDANCE OF DOUBT SUCH PAYMENT BEING THE PILOT PAYMENT FOR THE 2018/19 School Tax Year and 2019 GENERAL TAX YEAR; and**

(a FT Year 11) for the fiscal tax year commencing on the 10<sup>th</sup> anniversary of the PILOT Commencement Date, \$154,558.00 - **FOR THE AVOIDANCE OF DOUBT SUCH PAYMENT BEING THE PILOT PAYMENT FOR THE 2019/20 School Tax Year and 2020 GENERAL TAX YEAR; and;**

(b FT Year 12) for the fiscal tax year commencing on the 11<sup>th</sup> anniversary of the PILOT Commencement Date, \$157,649.00;

(c FT Year 13) for the fiscal tax year commencing on the 12<sup>th</sup> anniversary of the PILOT Commencement Date, \$160,802.00;

(d FT Year 14) for the fiscal tax year commencing on the 13<sup>th</sup> anniversary of the PILOT Commencement Date, \$164,018.00;

(e FT Year 15) for the fiscal tax year commencing on the 14th anniversary of the PILOT Commencement Date, \$167,298.00;

(f FT Year 16) for the fiscal tax year commencing on the 15th anniversary of the PILOT Commencement Date, \$170,644.00;

(g FT Year 17) for the fiscal tax year commencing on the 16th anniversary of the PILOT Commencement Date, \$174,057.00;

(h FT Year 18) for the fiscal tax year commencing on the 17th anniversary of the PILOT Commencement Date, \$177,538.00;

(i FT Year 19) for the fiscal tax year commencing on the 18th anniversary of the PILOT Commencement Date, \$181,089.00; and

(j FT Year 20) for the fiscal tax year commencing on the 19th anniversary of the PILOT Commencement Date, \$184,711 – **FOR THE AVOIDANCE OF DOUBT SUCH PAYMENT BEING THE PILOT PAYMENT FOR THE 2028/29 School Tax Year and 2029 GENERAL TAX YEAR**

2. Representations, Covenants and Warranties. All terms, conditions, covenants, representations and warranties of the Company contained in the PILOT Agreement, except as expressly modified hereby, are hereby adopted, ratified and confirmed by the Company as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Amendment. Provided further that the Agency and the Company expressly recognizes that the PILOT Mortgage continues to secure the Secured Obligations, as such term is defined in the PILOT Mortgage that includes the PILOT Obligations (as such term is defined in the PILOT Mortgage) that includes the additional PILOT Payments provided for herein.

7. Governing Law. This Amendment, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the laws of the State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

8. Successors and Assigns. The Company and the Agency, shall include the legal representatives, successors and assigns of those parties. This Amendment shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

9. Counterparts. This Amendment may be executed in any number of counterparts and by the Company and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Amendment.

10. Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

11. Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the PILOT Agreement, the terms and provisions of this Amendment shall govern.

12. Entire Agreement. This Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings, and agreements between such parties with respect to such transaction.

(Remainder of Page Intentionally Left Blank – Signature Pages Follow)


IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
**Harry Coghlan**  
Chief Executive Officer / Executive Director

**275 OAK DRIVE LLC, A NEW YORK  
LIMITED LIABILITY COMPANY**

By: **345 UNDERHILL L.L.C.**  
**SOLE MEMBER**

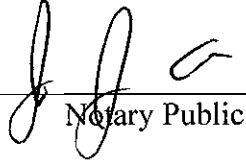
By:   
Name: *Stacy Finkelstein*  
Title: *Authorized Signatory*

*(Signature Page to First Amendment to PILOT)*

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

On the 26<sup>th</sup> day of June, 2019, before me, the undersigned, personally appeared **Harry Coghlan**, 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.

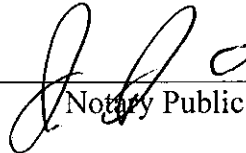
JOHN J ANZALONE  
NOTARY PUBLIC STATE OF NEW YORK  
SUFFOLK COUNTY  
LIC# 02AN6256008 20  
COMM. EXP. MARCH 12, 20

  
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Notary Public

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

On the 26<sup>th</sup> day of June, 2019, before me, the undersigned, personally appeared Stacy Finkelstein, 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.

JOHN J ANZALONE  
NOTARY PUBLIC STATE OF NEW YORK  
SUFFOLK COUNTY  
LIC# 02AN6256008 26  
COMM. EXP. MARCH 12, 20

  
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Notary Public