

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

and

SEARING GROUP LLC

AMENDMENT NO. 1 TO SUBLEASE AGREEMENT

Dated as of August 9, 2023

ADDRESS :	101-105 Searing Avenue
VILLAGE:	Mineola
TOWN:	North Hempstead
COUNTY:	Nassau
STATE:	New York
SECTION:	9
BLOCK:	452
LOTS:	509, 511 and 639

AMENDMENT NO. 1 TO SUBLEASE AGREEMENT

THIS AMENDMENT NO. 1 TO SUBLEASE AGREEMENT (this “Amendment”) dated as of August 9, 2023, by and between 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 SEARING GROUP LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an address at 136 Willis Avenue, Mineola, NY 11501 (the “Company”).

WITNESSETH:

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on or about June 29, 2023, the Company entered into a “straight-lease transaction” with the Agency, with respect to a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in an approximately 0.80 acre parcel of land located at 101-105 Searing Avenue, Village of Mineola, Town of North Hempstead, Nassau County, New York (Section: 9; Block: 452; Lots: 509, 511 and p/o 419) (the “Land”), (2) the construction of an approximately 101,600 square foot six-story building (the “Building”) on the Land, together with related improvements to the Land, including on-site parking spaces, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “Equipment”) necessary for the completion thereof (collectively, the “Project Facility”), all of the foregoing for use by the Company as a residential rental facility consisting of approximately 54 residential rental units, at least six (6) of which units shall be workforce housing units; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, sales and use taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Company leased its interest in the Project Facility to the Agency pursuant to a Company Lease Agreement dated as of June 1, 2023 (as amended, modified, supplemented and restated to date, the “Company Lease”) between the Company, as lessor, and the Agency, as lessee; and

WHEREAS, the Agency sub-subleased the Project Facility to the Company pursuant to a Sublease Agreement (Uniform Project Agreement) dated as of June 1, 2023 (as amended, modified, supplemented and restated to date, the “Lease”) between the Agency, as sublessor, and the Company, as sublessee; and

WHEREAS, pursuant to a notification and consent request from the Company received by the Agency on July 13, 2023 (the “Consent Request”), the Company requested that the Agency consent to (i) the amendment of the Lease in certain respects to facilitate the financing of the construction, installation and equipping of the Project Facility by a bank or other financial institution (the “Lender”) that will make a loan secured by, inter alia, one (1) or more mortgages encumbering the Project Facility, and (ii) the execution and delivery by the Agency of an intercreditor agreement between the Agency and the Lender in connection therewith (collectively, the “Proposed Transaction”); and

WHEREAS, no additional Financial Assistance is being requested by the Company with respect to the Proposed Transaction and, therefore, no public hearing of the Agency is required pursuant to Section 859-a of the Act; and

WHEREAS, the members of the Agency approved the Proposed Transaction pursuant to a resolution adopted by the members of the Agency on July 27, 2023;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company and the Agency mutually covenant, warrant and agree as follows:

SECTION 1. DEFINITIONS.

SECTION 1.1 Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Lease.

SECTION 2. AMENDMENTS.

SECTION 2.1 Section 12.19 of the Lease is amended by deleting subsection (D) thereof and replacing it with the following:

“(A) The Agency shall give prompt notice to the Lenders of the termination of this Lease and/or any of the other Transaction Documents by reason of any Event of Default

hereunder or thereunder. In the event of any such termination or in the event a Lender shall foreclose on the Company's interest in the Project Facility pursuant to a Lender Mortgage (or shall accept a deed in lieu thereof), the Agency shall, upon request of such Lender given within thirty (30) days after the earlier of (x) the giving of notice of termination by the Agency or (y) the date of the foreclosure sale or acceptance of the deed in lieu thereof, as applicable, (i) execute and deliver to such Lender, or a wholly-owned subsidiary of such Lender the obligations of which to the Agency are unconditionally guaranteed by such Lender (provided that neither such Lender nor such subsidiary is a Prohibited Person), a new lease of the Project Facility and other applicable Transaction Documents, or (ii) in its reasonable discretion, grant or withhold its consent to a written request of such Lender (accompanied by such information and documentation as the Agency shall reasonably request), that the Agency promptly execute and deliver a new lease of the Project Facility and other applicable Transaction Documents to such Lender's designee or nominee who is not a Prohibited Person, in either case such new lease and other applicable Transaction Documents shall be for the remainder of the term of this Lease upon all the covenants, conditions, limitations and agreements herein and therein contained, provided that such Lender (a) shall pay to the Agency, simultaneously with the delivery of such new lease, all unpaid rents and other charges due and payable under or pursuant to this Lease and the other Transaction Documents up to and including the date of the commencement of the term of such new lease (excluding any Recapture of Benefits) and all reasonable expenses, including, without limitation, attorneys' fees and disbursements and court costs, incurred by the Agency in connection with such Event of Default, the termination of this Lease and/or other Transaction Documents and the preparation of the new lease and/or other transaction documents, and (b) shall cure (within the time periods set forth in this Lease) all defaults existing under this Lease and/or the other Transaction Documents (other than defaults not susceptible of cure by such Lender or its designee or nominee). Any such consent, if given, shall be subject to the Agency's then current rules, policies and procedures."

SECTION 2.2 Exhibit K to the Lease is amended by deleting the paragraph titled "PILOT Mortgage and Subordination" and replacing it with the following:

"PILOT Mortgage and Subordination. This Mortgage (including all amounts advanced thereunder and all renewals, replacements and modifications thereof) shall be subject and subordinate to the PILOT Agreement and the PILOT Mortgage (as such capitalized terms are defined in the [Project Agreement]). In no event shall the execution and delivery of this Mortgage by the Agency be deemed to include a grant by the Agency to Mortgagee of a mortgage or lien upon or a security interest in or to any of the Agency's Unassigned Rights."

SECTION 2.3 By its execution of this Amendment, the Agency acknowledges and agrees that the entity listed below shall be a "Lender" for all purposes under the Lease and that the Agency has received notice of such party's notice address set forth below:

"Flagstar Bank, N.A.
NYCB Plaza
102 Duffy Avenue

Hicksville, New York 11801
Attention: Michael P. Scarola, First Vice President"

SECTION 3. CONDITIONS.

SECTION 3.1 Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof, of the following conditions precedent:

(A) the execution and delivery by the Company and the Agency of an original or counterpart originals of this Amendment;

(B) the Company shall deliver such other consents, waivers, documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment;

(C) all other documents and legal matters in connection with this Amendment and the transactions contemplated by the Lease as amended by this Amendment, shall be satisfactory in form and substance to the Agency; and

(D) the Company shall pay the Agency's consent and amendment fee in the amount of \$750 and shall pay all reasonable fees and expenses (including reasonable attorneys' fees and expenses) incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the transactions contemplated hereby.

SECTION 4. MISCELLANEOUS.

SECTION 4.1 Representations and Warranties.

(A) All terms, conditions, covenants, representations and warranties of the Company contained in the Lease and the other Transaction Documents, except as expressly modified hereby, are ratified, confirmed and reaffirmed 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.

(B) The Company represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(C) The Company represents and warrants to the Agency that no Event of Default or Recapture Event specified in the Lease or in any of the other Transaction Documents has occurred and is continuing and no event has occurred and is continuing which with notice or lapse of time or both would become an Event of Default or Recapture Event specified in the Lease or in any of the other Transaction Documents. The Company acknowledges and agrees that nothing in

this Amendment or in any document, instrument or agreement executed in connection with this Amendment shall constitute a waiver by the Agency of any default, Event of Default or Recapture Event under the Lease or any of the other Transaction Documents.

SECTION 4.2 Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the Lease as amended by this Amendment shall be satisfactory in form and substance to the Agency.

SECTION 4.3 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other documents furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 4.4 Reference to Lease. The Lease, the other Transaction Documents, and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Lease, as amended hereby, are hereby amended so that any reference to the "Lease" or the "Lease Agreement" in the Lease, the other Transaction Documents or such other agreements, documents or instruments executed in connection with the Lease shall mean a reference to the Lease, as amended hereby.

SECTION 4.5 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.

SECTION 4.6 Successors and Assigns. The Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties.

SECTION 4.7 Counterparts; Electronic Transmission. 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. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or email shall be effective as delivery of a manually executed counterpart of this Amendment. This Amendment may be modified only by a written agreement signed by Authorized Representatives of the Company and the Agency. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or email shall be effective as delivery of a manually executed counterpart of this Amendment. This Amendment may be modified only by a written agreement signed by Authorized Representatives of the Company and the Agency.

SECTION 4.8 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.

SECTION 4.9 Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment shall govern.

SECTION 4.10 No Waiver. The execution and delivery of this Amendment by the Agency does not and shall not be construed to mean that there are no defaults or events of default under the Lease or any other Transaction Document or that any such defaults or events of default have been, are hereby, or shall be waived by the Agency.

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SECTION 4.11 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.

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

Company:

SEARING GROUP LLC

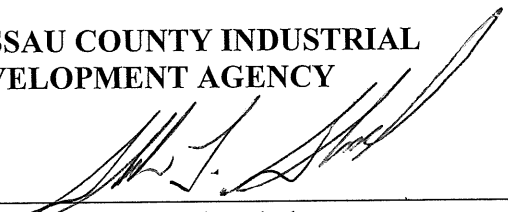
By: _____


Doron Pergament
Manager

Agency:

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____


Sheldon L. Shrenkel
Chief Executive Officer / Executive Director

[Signature Page to Amendment No. 1 to Sublease Agreement]

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

On the 9 day of August, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Doron Pergament, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

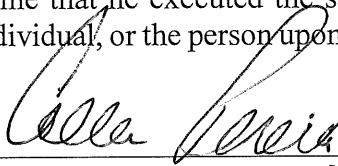


Notary Public

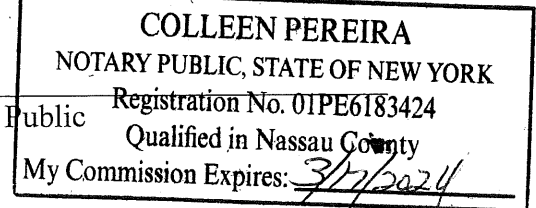
ILANA B. SACHER
Notary Public - State of New York
No 01SA6093176
Qualified in Suffolk
Commission Expires Sept. 2, 2023

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

On the 9th day of August, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Sheldon L. Shrenkel, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public



[Acknowledgment Page to Amendment No. 1 to Sublease Agreement]