
402 EAST 83RD REALTY LLC,
a limited liability company organized and existing under the laws of the State of New York,
having an office at 402 East 83rd Street, Brooklyn, New York 11236, as Company

and

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY,
a corporate governmental agency constituting a body corporate and politic
and a public benefit corporation of the State of New York,
duly organized and existing under the laws of the State of New York,
having its principal office at 110 William Street, New York, New York 10038, as Agency

COMPANY LEASE AGREEMENT

Dated as of January 1, 2016

New York City Industrial Development Agency
2016 Foodsaver New York, Inc. Project

Affecting the Land generally known by the street address
402 East 83rd Street, Brooklyn, New York 11236
Block 7918 and Lot 111,

in the County of Kings,
City and State of New York
as more particularly described in
Exhibit A to this Company Lease Agreement
on the Official Tax Map of Kings County

Record and Return to:
Gonzalez Saggio & Harlan LLP
747 Third Avenue, Suite 1101
New York, New York 10017
Attention: Stephen Adnopo, Esq.

COMPANY LEASE AGREEMENT

THIS COMPANY LEASE AGREEMENT, made and entered into as of the date set forth on the cover page hereof (this “**Company Lease**”), by and between the entity identified on the cover page hereof as the Company, party of the first part, and the entity indicated on the cover page hereof as the Agency, party of the second part (capitalized terms used in this Company Lease and not defined herein shall have the respective meanings assigned to such terms in the Agency Lease Agreement referred to below):

WITNESSETH:

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, 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 purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by the Agency Act for the benefit of the City and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Company and with the Sublessee for the Project to be located at the Facility Address; and

WHEREAS, to facilitate the Project, the Agency, the Company and the Sublessee have entered into negotiations to enter into a Straight-Lease Transaction pursuant to which (i) the Company will lease the Facility Realty to the Agency pursuant to this Company Lease, (ii) the Agency will sublease the Facility Realty, and lease the Facility Personalty, to the Company pursuant to a certain Agency Lease Agreement, dated as of even date herewith, between the Agency and the Company (as the same may be amended or supplemented, the “**Lease Agreement**”), and (iii) the Company will sub-sublease the Facility Realty, and sublease the Facility Personalty, to Foodsaver New York, Inc., a corporation organized and existing under the laws of the State of New York (the “**Sublessee**”), pursuant to a certain Sublease Agreement, dated as of even date herewith, between the Company and the Sublessee (as the same may be amended or supplemented, the “**Sublease Agreement**”); and

WHEREAS, in furtherance of the Straight-Lease Transaction, the Agency adopted its Inducement Resolution and its Authorizing Resolution inducing and authorizing the undertaking of the Project, the lease of the Facility Realty by the Company to the Agency, the sublease of the Facility Realty and the lease of the Facility Personalty by the Agency to the

Company, and the sub-sublease of the Facility Realty and the sublease of the Facility Personalty by the Company to the Sublessee; and

WHEREAS, the provision by the Agency of Financial Assistance to the Company and the Sublessee through a Straight-Lease Transaction has been determined to be necessary to induce the Sublessee to remain and expand its operations within the City and not otherwise relocate the same outside of the City; and if the Agency does not provide such Financial Assistance, the Sublessee could not feasibly proceed with the Project; and

WHEREAS, the cost of the Project is being financed in accordance with the Project Finance Plan;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

In this Company Lease, unless the context otherwise requires:

(a) The following terms shall have the respective meanings in this Company Lease:

Authorizing Resolution shall mean the resolution of the Agency adopted on April 14, 2015 providing for Financial Assistance and authorizing the Project Documents to which the Agency is a party.

Company shall mean 402 East 83rd Realty LLC, a limited liability company organized and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Company under Section 8.9 or 8.20 of the Lease Agreement.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

Facility shall mean, collectively, the Facility Personalty and the Facility Realty.

Facility Personalty shall mean the Exempt Personalty, described in Exhibit B – “Description of the Facility Personalty”, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the provisions of Sections 3.6 and 6.4 of the Lease Agreement, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in Section 3.6 of the Lease Agreement.

Facility Realty shall mean, collectively, the Land and the Improvements.

Improvements shall mean (i) all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date and erected or situated on the Land; (ii) any other buildings, structures, foundations, related facilities, fixtures and other improvements constructed or erected on the Land throughout the term of the Lease Agreement; and (iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

Inducement Resolution shall mean the resolution of the Agency adopted on April 14, 2015 inducing the Project.

Land shall mean that certain lot, piece or parcel of land in the Borough of Brooklyn, being Block 7918 and Lot 111, generally known by the street address 402 East 83rd Street, Brooklyn, New York 11236, New York, all as more particularly described in Exhibit A - "Description of the Land", together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 8.10(c) of the Lease Agreement.

Organizational Documents shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

Person shall mean an individual or any Entity.

Project shall mean the acquisition of an approximately 25,800 square foot industrial building located on an approximately 21,800 square foot parcel of land located at 402 East 83rd Street, Brooklyn, New York 11236, being Block 7918, Lot 111, all for the wholesale processing and distribution of meat, seafood, and other food products and related supplies.

Project Documents shall mean this Company Lease, the Lease Agreement, the Sublease Agreement, the Guaranty Agreement, each Mortgage and each Mortgage Note.

Sublease Agreement shall mean that certain Sublease Agreement, dated as of even date herewith, between the Company, as sublessor, and the Sublessee, as sublessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Sublessee shall mean Foodsaver New York, Inc., a corporation organized and existing under the laws of the State of New York, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Sublessee under Section 8 of the Sublease Agreement.

(b) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Company Lease, refer to this Company Lease, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the Commencement Date.

(c) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(d) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(e) Any headings preceding the texts of the several Articles of this Company Lease, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Company Lease, nor shall they affect its meaning, construction or effect.

(f) Unless the content indicates otherwise, references to designated “Exhibits”, “Appendices,” “Articles”, “clauses” and other subdivisions are to the designated Exhibits, Appendices, Articles, clauses and other subdivisions of or to this Company Lease.

(g) The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”.

(h) The word “will” shall be construed to have the same meaning and effect as the word “shall”.

(i) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein).

(j) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person’s successors and assigns or such Person’s successors in such capacity, as the case may be.

ARTICLE II

The Company makes the following representations and warranties:

(a) The Company is an Entity of the type, and duly organized under the laws of the state, set forth on the cover page of this Company Lease, is validly existing and in good standing under the laws of its state of organization, is duly qualified to do business and in good standing under the laws of the State, is not in violation of any provision of the Company’s Organizational Documents, has the requisite power and authority to own its property and assets,

to carry on its business as now being conducted by it and to execute, deliver and perform this Company Lease and each other Project Document to which it is or shall be a party.

(b) The execution, delivery and performance of this Company Lease and each other Project Document to which the Company is or shall be a party and the consummation of the transactions herein and therein contemplated will not (x) violate any provision of law, any order of any court or agency of government, or any of the Company's Organizational Documents, or any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is bound or to which it or any of its property is subject, (y) be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or (z) result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) The Company has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Commencement Date in connection with the execution and delivery of this Company Lease and each other Project Document to which it shall be a party or in connection with the performance of its obligations hereunder and under each of the Project Documents.

(d) This Company Lease and the other Project Documents to which the Company is a party (x) have been duly authorized by all necessary action on the part of the Company, (y) have been duly executed and delivered by the Company, and (z) constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

(e) Pursuant to this Company Lease, the Company has vested the Agency with a valid leasehold estate in the Facility Realty.

(f) There is no action or proceeding pending or, to the best of the Company's knowledge, after diligent inquiry, threatened by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under this Company Lease or any other Project Document to which it is or shall be a party.

ARTICLE III

The Company does hereby lease to the Agency, and the Agency hereby leases from the Company, the Land described in Exhibit A, including all improvements thereto (but excluding the Lessee's Property and any Existing Facility Property released pursuant to Section 3.6 of the Lease Agreement), for the term herein provided and for use as provided in the Lease Agreement. It is the intention of the Company and the Agency that a leasehold estate in all improvements to the Facility Realty hereafter made by the Company shall vest in the Agency as and when the same are effected. Accordingly, the Company and the Agency agree that the Agency shall hold a leasehold estate in all improvements hereafter made by the Company to the

Facility Realty (but excluding the Lessee's Property and any Existing Facility Property released pursuant to Section 3.6 of the Lease Agreement).

ARTICLE IV

The term of this Company Lease shall commence on January 5, 2016 (the "**Commencement Date**") and expire on the earliest of (i) 11:59 p.m. (New York City time) on June 30, 2041, (ii) such earlier date as may be provided in accordance with the terms of the Lease Agreement or (iii) the termination of the Lease Agreement as provided therein.

ARTICLE V

The sole rental hereunder shall be the single sum of ten dollars (\$10), receipt of which is hereby acknowledged by the Company.

ARTICLE VI

The Company hereby delivers possession to the Agency of the Facility Realty.

The use of the Facility, and all other rights, duties, liabilities and obligations of the Company and the Agency with respect thereto, and the use, operation, leasing and financing of the Facility, not provided for in this Company Lease, shall be as set forth in the Lease Agreement.

ARTICLE VII

The Company covenants and agrees that, so long as the Lease Agreement shall be in full force and effect, the Agency shall have, hold and enjoy a valid leasehold estate in the Facility Realty during the term hereof (subject to Permitted Encumbrances), and the Company shall from time to time take all necessary action to that end.

Neither the Agency nor the Company shall assign or transfer this Company Lease nor sublease the whole or any part of the Facility Realty, nor subject this Company Lease to any lien, claim, mortgage or encumbrance (other than Permitted Encumbrances) in any manner, nor sell, assign, convey or otherwise dispose of the Facility Realty or any part thereof, during the term of this Company Lease, in any manner, to any Person, except (i) that the Agency will sublease the Facility Realty and lease the Facility Personalty to the Company pursuant to the Lease Agreement, (ii) that the Company will sub-sublease the Facility Realty and sublease the Facility Personalty to the Sublessee pursuant to the Sublease Agreement, (iii) that the Company may effect an assignment of this Company Lease pursuant to Section 8.9 of the Lease Agreement, (iv) that the Company may grant certain rights-of-way, easements, permits or licenses with respect to the Facility Realty, or effect the release of certain unimproved portions of the Land, pursuant to Section 8.10 of the Lease Agreement, (v) that the Company may effect a Transfer or Merger pursuant to Section 8.20 of the Lease Agreement, (vi) that the Company may effect the removal of items of fixtures from the Facility Realty pursuant to Section 3.6 of the Lease Agreement, and (vii) that the Company, the Sublessee and the Agency will grant mortgage

liens on and security interests in their respective interests in the Facility Realty pursuant to each Mortgage.

ARTICLE VIII

Except for the Lease Agreement, this Company Lease contains the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior negotiations and agreements are merged in this Company Lease. This Company Lease shall only be changed, modified or discharged in whole or in part by a written instrument executed by the Company and the Agency. No consent or approval of the Company shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Company. No consent or approval of the Agency shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Agency.

ARTICLE IX

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as provided in Section 11.5 of the Lease Agreement.

ARTICLE X

This Company Lease shall be governed by, and construed and enforced in accordance with, the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

The terms of this Company Lease are and shall be binding upon and inure to the benefit of the Agency and the Company and their respective successors and assigns.

If any one or more of the provisions of this Company Lease shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Company Lease shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

This Company Lease shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Company relating to the Facility, other than the Lease Agreement or any other Project Document.

ARTICLE XI

This Company Lease shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

ARTICLE XII

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Company Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Company Lease on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Company under the Lease Agreement.

All covenants, stipulations, promises, agreements and obligations of the Company contained in this Company Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Company, and not of any director, officer, manager, partner, employee or agent of the Company in his individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any director, officer, manager, partner, employee or agent of the Company.

ARTICLE XIII

This Company Lease is and shall be subject and subordinate in all respects to any Mortgage and to such mortgage liens and security interests so created thereby; provided, however, that nothing in any Mortgage shall impair the Agency's ability to enforce its rights hereunder against the Company.

ARTICLE XIV

The Agency and the Company agree that this Company Lease shall be recorded, or caused to be recorded, by the Agency (at the sole cost and expense of the Company) in the appropriate Office of the Register of The City of New York.

IN WITNESS WHEREOF, the Company has caused its name to be subscribed hereto by its Authorized Representative, and the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, all being done as of the year and day first above written.

402 EAST 83RD REALTY LLC

By: 

Orin Tucker
President

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Shin Mitsugi
Deputy Executive Director

STATE OF NEW YORK
COUNTY OF NEW YORK

)
: ss.:
)

On the 5 day of January, in the year two thousand sixteen, before me, the undersigned, personally appeared Orin Tucker, 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



STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On the 29 day of December, in the year two thousand 15, before me, the undersigned, personally appeared Shin Mitsugi, 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.

FRANCES TUFANO
Notary Public, State of New York
No. 01TU5080131
Qualified in Queens County
Commission Expires June 16, 2019



Notary Public/Commissioner of Deeds

Exhibit A

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York bounded and described as follows:

BEGINNING at a point on the corner formed by the intersection of the Southeasterly side of Chase Court with the southwesterly side of East 83rd Street;

THENCE southwesterly along the southeasterly side of Chase Court, 220 feet;

THENCE southeasterly parallel with East 83rd Street, 100 feet;

THENCE northeasterly parallel with Chase Court, 220 feet to the southwesterly side of East 83rd Street;

THENCE northwesterly along the southwesterly side of East 83rd Street, 100 feet to the point or place of BEGINNING.