

**Board Members:**

Charley Bible  
Shannon Coleman Egle  
Paul Fortunato  
Tiffany Gardner  
Mike George  
Terry Henley  
J. Ford Little  
Lou Moran, III  
Alvin Nance  
Lisa Rottmann  
Anthony Wise



**The Industrial Development Board of the County of Knox**

Regular Meeting  
Tuesday, February 28, 2023, 4:00 p.m.  
17 Market Square, #201  
Knoxville, Tennessee 37902

**AGENDA**

- I. Call to Order
- ACTION** II. Approval of Minutes from Previous Meeting  
A) Regular Meeting – January 10, 2023
- ACTION** III. Review and Consideration of Waiver of Closing Fee for Previously Approved Amendment to the Lease Agreement with Fresenius USA Manufacturing, INC. located at 5105 South National Drive, Knoxville, Tennessee, 37914.
- ACTION** IV. Review and Consideration of a Resolution approving extension of PILOT Lease closing deadline for Beehive Industries, LLC and Lexington-Simmons, LLC.
- ACTION** V. Review and Consideration of a Resolution approving extension of PILOT lease closing deadline for Axle Logistics, LLC and Blueprint Group, LLC.
- ACTION** VI. Review and Consideration of a Resolution approving PILOT Leases for a Payment-In-Lieu-of-Tax (PILOT) transaction with Averitt Express, Inc. located at 5105 South National Drive, Knoxville, Tennessee, 37914.
- VII. Election of Board Officers, Committee Appointments and Appointment to Greater Knoxville Foreign Trade Zone Advisory Council
- VIII. Old Business
- IX. New Business
- X. Adjourn

**MINUTES OF THE REGULAR MEETING OF  
THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX**

January 10, 2023, 4:00 p.m.

The regular meeting of the Board of Directors of The Industrial Development Board of the County of Knox (the “Industrial Development Board” or “Board”) was held on Tuesday, January 10, 2023, at 4:00 p.m., pursuant to notice duly provided to the Directors and the public. The meeting was held at the offices of the Knoxville Chamber and The Development Corporation of Knox County located at 17 Market Square, #201, Knoxville, Tennessee, 37902.

The following Directors were present at the meeting, Paul Fortunato (Chair), Dr. Anthony Wise, Alvin Nance, Terry Henley, Mike George, Lisa Rottmann, Lou Moran, III, and J. Ford Little.

Also in attendance were Mike Odom (The Development Corporation), Mac McWhorter (Knoxville Chamber), Karen Kakanis (Knoxville Chamber), Doug Lawyer (Knoxville Chamber), R. Christopher Trump (Legal Counsel – Egerton, McAfee, Armistead & Davis, P.C.), Katrina Vargas (Paralegal - Egerton, McAfee, Armistead & Davis, P.C.), Walter Crawford (Development Manager - Averitt), Rhona Otto (Workforce and Training Development - Averitt), Bobby Matthews (Ryan Consulting), and Blayne Chance (public observer).

I. Paul Fortunato, the Board’s Chair, called the Industrial Development Board meeting to order. The Agenda of the Industrial Development Board meeting is attached hereto as Exhibit A.

The Industrial Development Board then discussed the following matters and took the following actions as noted:

II. Review/Approve Minutes from Previous Meeting. The Chair of the meeting asked if there were any changes to the minutes of the regular meeting held on November 8, 2022.

Upon a motion by Lou Moran, and a second by Anthony Wise, the minutes of the November 8, 2022, meeting were unanimously approved. A copy of the minutes are attached hereto as Exhibit B.

III. Review and Approval of Finance Report as of December 31, 2022. The Chair recognized Karen Kakanis who addressed the Board and presented the financial report as of December 31, 2022, (“Financial Report”), reviewing with the Board the Balance Sheet with Prior Year Comparison, Budget Variance Report, and Income Statement with Prior Year Comparison. Discussion was had.

Upon a motion by Alvin Nance and a second by Mike George, the Financial Report as of December 31, 2022, was unanimously accepted. A copy of the financial statements as presented during the report are attached hereto collectively as Exhibit C.

IV. Review and Consideration of a Resolution regarding the application of Averitt Properties, Inc./Averitt Express, Inc. for a Payment-In-Lieu-of-Tax (PILOT) transaction for the proposed construction for expansion of their current facility located at 10207 Cogdill Rd.,

Knoxville, Tennessee, 37932 (Parcel Nos 131-08801, 131-08001, 131-081, 131-08101, and 131-082).

The Chair introduced Mac McWhorter who gave an overview of the project and introduced Walter Crawford from Averitt to provide further detail. Mr. Crawford provided additional information concerning the expansion project and explained that Averitt desires to continue growth in its business in the area and, thus to remain in Knox County. Mr. McWhorter explained that the proposed PILOT will have a 4-year term with a 50% property tax abatement and that such incentive will have a 1.3-year payback based upon the economic benefits Knox County will receive from the project. He stated that the new jobs will be comprised primarily of dock associates and shuttle or “line-haul” drivers which are largely domiciled in Knox County and will be Knox County taxpayers. Rhonda Otto mentioned that the project is anticipated to provide 175 jobs when one also considers the construction related jobs which will be added. Ms. Otto stated that Averitt anticipates that 85% of the subcontractors to be hired for the expansion project will be local subcontractors. Lisa Rottmann stated that the Board may want to consider incentivizing the use of local contractors for projects such as this.

Upon a motion by Terry Henley and a second by Lisa Rottmann, the Resolution regarding the application of Averitt Properties, Inc./Averitt Express, Inc. for a Payment-In-Lieu-of-Tax was unanimously approved. A copy of the Resolution is attached hereto as Exhibit D.

V. Review and Consideration of a Resolution regarding Lease Agreement for a Payment-In-Lieu-of-Tax (PILOT) transaction with Blueprint Group/Axle Logistics, LLC for the proposed new construction of a 71,000 sq ft corporate office building to be located at 849 N. Central St/0 Bernard St., Knoxville, Tennessee, 37917. The Chair recognized Chris Trump who addressed the Board regarding the proposed Resolution and the form of lease agreement to be approved pursuant to such Resolution. Mr. Trump also stated that staff for the Board have recommended that the closing fee required by the Board’s policies and procedures for PILOTs be waived.

Upon a motion by Lou Moran and a second by Terry Henley, the Resolution regarding Lease Agreement for a Payment-In-Lieu-of-Tax transaction with Blueprint Group/Axle Logistics, LLC, and the waiver of the closing fee was unanimously approved. A copy of the Resolution is attached hereto as Exhibit E.

VI. Review and Consideration of a Resolution regarding Lease Agreement for a Payment-In-Lieu-of-Tax (PILOT) transaction with Beehive Industries, LLC for the proposed new construction of an approximately 62,000 sq ft building for manufacturing to be located at 10505 Murdock Dr., Knoxville, Tennessee, 37932 (Parcel ID 118173). The Chair recognized Chris Trump who addressed the Board regarding the proposed Resolution. The resolution presented is the fundamental final form. Mac McWhorter gave a brief description of the project.

Upon a motion by Anthony Wise and a second by Alvin Nance, the Resolution regarding Lease Agreement for a Payment-In-Lieu-of-Tax transaction with Beehive Industries, LLC, and the waiver of the closing fee was unanimously approved. A copy of the Resolution is attached hereto as Exhibit F.

VII. Old Business.

A) The Report on Debt Obligation for Solid Waste Disposal Revenue Bonds (Tompaul Knoxville LLC Recycling Project), Tax-Exempt (AMT) Series 2022 (Green Bonds) was presented to the Board.

VIII. New Business. None.

IX. Next Meeting. The next regular meeting of The Industrial Development Board of the County of Knox is scheduled for February 14, 2023, at 4:00 p.m. at the offices of The Development Corporation of Knox County located at 17 Market Square, #201, Knoxville, Tennessee.

X. Adjournment. No further business having come before the Board and upon motion duly made and seconded, the Board voted unanimously to adjourn the meeting at 4:30 p.m.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Shannon Coleman Egle, Secretary

DRAFT

## EXHIBITS

- Exhibit A      Agenda – January 10, 2023
- Exhibit B      Minutes – November 8, 2022
- Exhibit C      Finance Report
- Exhibit D      Resolution regarding the application of Averitt Properties, Inc./Averitt Express, Inc. for a Payment-In-Lieu-of-Tax (PILOT) transaction for the proposed construction for expansion of their current facility located at 10207 Cogdill Rd., Knoxville, Tennessee, 37932 (Parcel Nos 131-08801, 131-08001, 131-081, 131-08101, and 131-082)
- Exhibit E      Resolution regarding Lease Agreement for a Payment-In-Lieu-of-Tax (PILOT) transaction with Blueprint Group/Axle Logistics, LLC for the proposed new construction of a 71,000 sq ft corporate office building to be located at 849 N. Central St/0 Bernard St., Knoxville, Tennessee, 37917
- Exhibit F      Resolution regarding Lease Agreement for a Payment-In-Lieu-of-Tax (PILOT) transaction with Beehive Industries, LLC for the proposed new construction of an approximately 62,000 sq ft building for manufacturing to be located at 10505 Murdock Dr., Knoxville, Tennessee, 37932 (Parcel ID 118173)

## AMENDMENT TO LEASE AGREEMENT

This **AMENDMENT TO LEASE AGREEMENT** (this “Amendment”) is made and entered into as of the 14<sup>th</sup> day of February, 2023, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX**, a public nonprofit corporation under the laws of the State of Tennessee (the “IDB”), and **FRESENIUS USA MANUFACTURING, INC.**, a corporation organized under the laws of the State of Delaware (“Fresenius”).

**WHEREAS**, Fresenius and the IDB have previously entered into that certain Lease Agreement (the “Lease Agreement”) dated as of January 1, 2015, with respect to the Premises (as such term is defined in the Lease Agreement), pursuant to which the IDB granted certain property tax incentives;

**WHEREAS**, pursuant to the Lease Agreement, Fresenius had the right to request an extension of the Term (as such term is defined in the Lease Agreement) under certain circumstances, provided that Fresenius complied with the terms of Section 4.02 of the Lease Agreement;

**WHEREAS**, Fresenius has requested a two (2) year extension of the term of the Lease Agreement and has complied with all of the requirements of Section 4.02 of the Lease Agreement necessary in order to obtain such an extension; and

**WHEREAS**, the parties desire to amend the Lease Agreement to memorialize the extension of the Term.

### AGREEMENT :

**FOR AND IN CONSIDERATION** of the sum of \$10.00 cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**1. Amendments to Lease Agreement.**

(a) Section 4.01 of the Lease Agreement is hereby amended and restated in its entirety as follows:

Section 4.01 Term. This Lease shall be and remain in full force and effect for a term commencing on the date of this Lease and ending December 31, 2024 (“Term”). The Lease may be terminated at an earlier date or extended in accordance with the terms and conditions of this Lease.

(b) Section 4.02 of the Lease Agreement, and any references thereto, are hereby deleted in their entirety.

**2. Ratification of Lease Agreement.** Except as specifically modified hereby, the terms and provisions of the Lease Agreement are hereby ratified and confirmed in all respects. Any provision in the Lease Agreement that expressly survives the Term and/or any termination of the Lease Agreement shall survive, notwithstanding any provision herein or in the Lease Agreement to the contrary. Capitalized terms not specifically defined herein will have the meanings assigned to them in the Lease Agreement.

**3. Expenses and Closing Fee.** In consideration for the extension of the Term, Fresenius agrees to pay all fees and expenses (including attorneys’ fees) incurred by the IDB in connection with this Amendment, including without limitation, a closing fee equal to \$0.00, as determined pursuant to the Lease Agreement. Fresenius expressly acknowledges that such closing fee is fair and reasonable compensation for the IDB’s extension of the Term.

4. **Waiver of Default and No Other Defaults.** Other than the inability to achieve the number of jobs required under the Lease Agreement, which such default is hereby waived by the IDB, Fresenius knows of no circumstances, facts or events which would or could lead to the occurrence of an Event of Default and hereby acknowledges that the IDB is entering into this Amendment in reliance upon the representations and warranties made herein.

5. **The IDB's Limitation of Liability - No Personal Liability.** Without limiting any provisions in the Lease Agreement, and notwithstanding anything in this Amendment or the Lease Agreement to the contrary, Fresenius agrees that it shall look solely to the Premises for the collection of any judgment (or other judicial process) requiring the payment of money by the IDB in the event of any default or breach by the IDB with respect to any of the terms, covenants and conditions of this Amendment or the Lease Agreement to be observed and/or performed by the IDB. No other property or assets of the IDB shall be subject to levy, execution or other procedures for the satisfaction of Fresenius's remedies hereunder.

6. **Further Assurances.** Each party hereby covenants and agrees to execute and deliver, or cause to be executed and delivered, and to do or make, or cause to be done or made, upon the reasonable request of the other, any and all instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required by the requesting party for the purpose of effecting the amendments described herein.

7. **Completeness and Modification.** This Amendment together with the Lease Agreement and the other documents executed in connection therewith constitute the entire agreement between the parties hereto as to the transactions contemplated hereby and supersede all prior discussions, understandings or agreements between the parties hereto.

8. **Governing Law.** This Amendment and all other instruments referred to herein shall be governed by, and shall be construed according to, the laws of the State of Tennessee, without resorting to its laws of conflicts.

9. **Counterparts.** To facilitate execution, this Amendment may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of the parties hereto appear on each counterpart hereof, and it shall be sufficient that the signature on behalf of each party hereto appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement.

10. **Time is of the Essence.** With regard to all dates and time periods set forth or referred to in this Amendment and the Lease Agreement, time is of the essence.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment on the day and year first set forth above.

**FRESENIUS USA MANUFACTURING, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF KNOX**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL  
DEVELOPMENT BOARD OF THE COUNTY OF KNOX APPROVING  
EXTENSION OF PILOT DEADLINE FOR BEEHIVE INDUSTRIES, LLC AND  
LEXINGTON-SIMMONS, LLC**

WHEREAS, THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX (“IDB”) is a nonprofit public corporation organized by Knox County as an industrial development board pursuant to Tenn. Code Ann. §§7-53-301 et seq. (the “Act”) and as such is a public instrumentality of Knox County performing a public function; and

WHEREAS, Beehive Industries, LLC and Lexington-Simmons, LLC (collectively, and together with any applicable affiliates thereof, “Applicant”) submitted an application (“Application”) to the IDB for A Payment-In-Lieu-of-Taxes Tax Incentive Grant (PILOT) under the Tax Incentive Program in connection with the construction and installation of the Applicant’s new facilities to be located on property located at 10505 Murdock Drive in Knox County, Tennessee (“Project”); and

WHEREAS, on November 8, 2022, the Board approved a resolution authorizing the Board to negotiate a PILOT Lease with Applicant (“Original Resolution”) and on January 10, 2023, the Board approved a resolution authorizing the form of the PILOT Leases with Applicant; and

WHEREAS, pursuant to the Original Resolution, Applicant had to close the PILOT transaction by December 31, 2022, and upon the failure to close by such date (or such later date approved by the Board pursuant to a separate resolution), the approval would expire and be of no further force and effect; and

WHEREAS, Applicant attempted to close the PILOT transaction by December 31, 2022, but informed the Board that it was unable to do so by the deadline; and

WHEREAS, Applicant still desires to close the PILOT transaction and should be able to close the PILOT transaction by March 31, 2023, at the latest; and

WHEREAS, the Board desires to extend the deadline to close the PILOT transaction until March 31, 2023, to allow additional time for the PILOT transaction to close.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX:

1. The deadline to close the PILOT transaction is hereby extended to, and must close by March 31, 2023, and upon failure to close by such date (or such later date approved by the Board pursuant to a separate resolution), the approval evidenced hereby and the Prior Resolutions shall expire and be of no further force and effect.
2. The terms of the Prior Resolutions not modified hereby are ratified in all respects.

*[Signature Page to Follow]*

*[Signature Page to Beehive Industries, LLC and Lexington-Simmons, LLC Resolution dated February 14, 2023]*

**STATE OF TENNESSEE  
COUNTY OF KNOX**

I, Paul M. Fortunato, Chair of THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE COUNTY OF KNOX (the “Board”) do hereby certify that the foregoing is a true and complete extract of the minutes of the Board of Directors of the Board at a meeting duly called and held on February 14, 2023, and sets forth so much of said minutes as in any way relates to the introduction, consideration and passage of the resolution therein set forth. Public notice of said meeting was given pursuant to and in compliance with all provisions of law.

THE HEALTH, EDUCATIONAL AND HOUSING  
FACILITY BOARD OF THE COUNTY OF KNOX

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Chair

Dated: February 14, 2023

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL  
DEVELOPMENT BOARD OF THE COUNTY OF KNOX APPROVING  
EXTENSION OF PILOT DEADLINE FOR AXLE LOGISTICS, LLC AND BLUEPRINT  
GROUP, LLC**

WHEREAS, THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX (“IDB”) is a nonprofit public corporation organized by Knox County as an industrial development board pursuant to Tenn. Code Ann. §§7-53-301 et seq. (the “Act”) and as such is a public instrumentality of Knox County performing a public function; and

WHEREAS, Axle Logistics, LLC and Blueprint Group, LLC (collectively, and together with any applicable affiliates thereof, “Applicant”) submitted an application (“Application”) to the IDB for A Payment-In-Lieu-of-Taxes Tax Incentive Grant (PILOT) under the Tax Incentive Program in connection with the construction and installation of the Applicant’s new facilities to be located on property located at 849 N. Central Street and 0 Bernard Street in Knox County, Tennessee (“Project”); and

WHEREAS, on November 8, 2022, the Board approved a resolution authorizing the Board to negotiate a PILOT Lease with Applicant (“Original Resolution”) and on January 10, 2023, the Board approved a resolution authorizing the form of the PILOT Leases with Applicant; and

WHEREAS, pursuant to the Original Resolution, Applicant had to close the PILOT transaction by December 31, 2022, and upon the failure to close by such date (or such later date approved by the Board pursuant to a separate resolution), the approval would expire and be of no further force and effect; and

WHEREAS, Applicant attempted to close the PILOT transaction by December 31, 2022, but informed the Board that it was unable to do so by the deadline; and

WHEREAS, Applicant still desires to close the PILOT transaction and should be able to close the PILOT transaction by March 31, 2023, at the latest; and

WHEREAS, the Board desires to extend the deadline to close the PILOT transaction until March 31, 2023, to allow additional time for the PILOT transaction to close.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX:

1. The deadline to close the PILOT transaction is hereby extended to, and must close by March 31, 2023, and upon failure to close by such date (or such later date approved by the Board pursuant to a separate resolution), the approval evidenced hereby and the Prior Resolutions shall expire and be of no further force and effect.
2. The terms of the Prior Resolutions not modified hereby are ratified in all respects.

*[Signature Page to Follow]*

*[Signature Page to Axle Logistics, LLC and Blueprint Group, LLC Resolution dated February 14, 2023]*

**STATE OF TENNESSEE  
COUNTY OF KNOX**

I, Paul M. Fortunato, Chair of THE HEALTH, EDUCATIONAL AND HOUSING FACILITY BOARD OF THE COUNTY OF KNOX (the “Board”) do hereby certify that the foregoing is a true and complete extract of the minutes of the Board of Directors of the Board at a meeting duly called and held on February 14, 2023, and sets forth so much of said minutes as in any way relates to the introduction, consideration and passage of the resolution therein set forth. Public notice of said meeting was given pursuant to and in compliance with all provisions of law.

THE HEALTH, EDUCATIONAL AND HOUSING  
FACILITY BOARD OF THE COUNTY OF KNOX

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Chair

Dated: February 14, 2023

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL  
DEVELOPMENT BOARD OF THE COUNTY OF KNOX  
APPROVING THE PILOT LEASES OF  
AVERITT EXPRESS, INC.**

WHEREAS, THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX (“IDB”) is a nonprofit public corporation organized by Knox County as an industrial development board pursuant to Tenn. Code Ann. §§7-53-301 et seq. (the “Act”) and as such is a public instrumentality of Knox County performing a public function; and

WHEREAS, the IDB’s statutory purposes include financing, owning, and leasing certain real and personal properties, which will have the effect of maintaining and increasing employment and otherwise promoting new industry, commerce and trade in Tennessee and Knox County, in particular; and

WHEREAS, Tenn. Code Ann. §7-53-305 provides that the IDB and all properties at any time owned by it, and the income and revenues therefrom, and all bonds issued by it, and the income therefrom are exempt from all taxation in the State of Tennessee; and

WHEREAS, pursuant to a Resolution dated January 27, 2003, the Commission of Knox County, Tennessee (the “Commission”) delegated to the IDB the authority to negotiate and accept from lessees payments in lieu of ad valorem taxes, found that such payments are deemed to be in furtherance of the IDB’s public purposes as set forth in the Act, and adopted the IDB’s Property Tax Incentive Program; by a Resolution dated December 20, 2004, the Commission adopted certain amendments to the IDB’s Tax Incentive Program in accordance with the Act (as so amended, the “Tax Incentive Program”); and

WHEREAS, AVERITT EXPRESS, INC. and AVERITT PROPERTIES, INC. (collectively, and together with any applicable affiliates thereof, “Applicant”) has submitted an application (“Application”) to the IDB for A Payment-In-Lieu-of-Taxes Tax Incentive Grant (PILOT) under the Tax Incentive Program in connection with the construction and installation of the Applicant’s new facilities to be located on property located at 10207 Cogdill Road in Knox County, Tennessee (“Project”); and

WHEREAS, upon the recommendation of the Application Review Committee (the “Committee”) of the Board of Directors of the IDB (the “Board”), and upon finding that the Project and grant of tax incentives under the Tax Incentive Program to Applicant by the IDB will have the effect of maintaining and increasing employment and otherwise promoting new industry, commerce and trade in Tennessee and Knox County, in particular, the Board has, pursuant to a Resolution dated January 10, 2023, approved the Application under the Tax Incentive Program and for a PILOT for real and personal property having a term-length of four (4) years, with payments-in-lieu of tax at an amount approximating fifty percent (50%) of the ad valorem taxes which would otherwise be payable with respect to the subject real and personal property.

WHEREAS, there have been submitted to the Board at its regularly scheduled meeting on February 14, 2023, a form of Lease Agreements between the IDB and the Applicants (collectively, “Lease Agreements”), which the IDB proposes to execute to carry out the transactions described above, copies of which such instrument shall be filed with the records of the IDB.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE IDB AS FOLLOWS:

1. The IDB is hereby authorized and directed to acquire from the Applicant the real and certain personal property constituting the Project, pursuant to such deeds, assignments, bills of sale and

other documents of transfer deemed necessary or convenient by the IDB to effect the transfer of such property to the IDB in a manner that will comply with the IDB's enabling legislation and thereby cause such property to be exempt from taxation by any applicable municipality.

2. The IDB is hereby authorized and directed to enter into the Lease Agreements, pursuant to which the IDB leases to the Applicant the real property constituting the Project for a term beginning on the date of such acquisition and ending four (4) years from the date of such Lease Agreements. Further, the IDB is hereby authorized to waive the closing fee that would otherwise be due to the IDB with respect to the Project. The documents described in Sections 1 and 2, together with any other documents executed and delivered in connection with the transactions contemplated herein or otherwise deemed necessary or convenient by the IDB or the officer(s) of the IDB specified herein, shall be hereinafter referred to as the "Transaction Documents."

3. The form, content, and provisions of the Lease Agreements presented to this meeting of the Board of Directors, are in all particulars approved. The Lease Agreements are to be in substantially the form now before this meeting of the Board of Directors, or with such changes therein as shall be approved by the officer or officers executing the Transaction Documents and legal counsel to the Board. The execution of the Transaction Documents by the authorized officer or officers shall constitute evidence of his, her or their approval and approval of legal counsel of any and all such changes or revisions.

4. Each of the officers of the Board is hereby authorized and directed to execute and deliver the Transaction Documents on behalf of the IDB. Such officers are, and each of them is, furthermore, hereby authorized to do all acts and things and execute all documents, from time to time, as may be necessary or convenient to effect the transactions contemplated herein and in the Transaction Documents and to carry out and comply with the provisions of the Transaction Documents and other documents deemed necessary by the IDB.

[The remainder of this page intentionally left blank.]

**STATE OF TENNESSEE  
COUNTY OF KNOX**

I, Paul M. Fortunato, Chair of The Industrial Development Board of the County of Knox (the “IDB”), do hereby certify that the foregoing is a true and complete extract of the minutes of the Board of Directors of the IDB at a meeting duly called and held on February 14, 2023, and sets forth so much of said minutes as in any way relates to the introduction, consideration and passage of the resolution therein set forth. Public notice of said meeting was given pursuant to and in compliance with all provisions of law.

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE COUNTY OF KNOX**

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Chair

Dated: February 14, 2023

## LEASE AGREEMENT

This **LEASE AGREEMENT** (this "Lease"), is made and entered into to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX**, a public nonprofit corporation organized under the laws of the State of Tennessee, ("Landlord" or "IDB"), and **AVERITT EXPRESS, INC.**, a Tennessee corporation ("Tenant" or "Averitt Express").

### RECITALS

Landlord is a public nonprofit corporation organized pursuant to the provisions of Sections 7-53-101 to 7-53-316, inclusive, of the Tennessee Code Annotated, as amended, and is authorized thereunder to acquire, own, lease and dispose of certain real and personal properties, in order to (i) maintain and increase employment, (ii) promote and develop trade, new industry, and commerce, and (iii) induce manufacturing, industrial, governmental and commercial ventures to remain or locate in the State of Tennessee.

In connection therewith and in response to Tenant's application and request under Landlord's Property Tax Incentive Program, Landlord has acquired or will acquire certain personal property described herein which is to be located on and used by Tenant in connection with the consolidation of Tenant's manufacturing facilities in Knoxville to be located on the Real Property (as defined below).

To induce Averitt Express to expand its Knoxville operations and construct a new freight management/freight distribution facility in Knoxville, Tennessee, to induce Averitt Express's affiliate, Averitt Properties, Inc. ("Averitt Properties"), to build a new 25,700 square foot freight management/freight distribution on the Real Property at a cost of approximately \$10,500,000, to induce Averitt Express to invest at least \$9,500,000 in Equipment on the Premises and employ at least 238 employees at the facility, all as described in the Application, Landlord authorizes Averitt Express to invest in Equipment on the Premises and employ at least 238 employees in accordance with Averitt Express's requirements. Landlord will lease that certain personal property to Tenant on the terms and conditions of this Lease.

NOW, THEREFORE, LANDLORD AND TENANT AGREE AS FOLLOWS:

Landlord, for and in consideration of the payments stipulated herein to be made by Tenant, the covenants and agreements hereinafter contained and to be kept and performed by Tenant, does hereby demise, lease, and let unto Tenant, and Tenant hereby hires, leases and rents from Landlord, the Equipment and other personal property acquired in furtherance of the Project for the Term and upon the conditions stated herein.

### **ARTICLE I DEFINITIONS**

Section 1.01. Definitions. In addition to words and terms defined in the introductory paragraphs and the Recitals, the following terms and variations thereof have the meanings specified or referred to in this Article I:

**"Act"** means Sections 7-53-101 to 7-53-316, inclusive, of the Tennessee Code Annotated, as amended.

**"Additional Rent"** shall mean all amounts payable by Tenant under this Lease other than Base Rent, including, without limitation, those amounts described in Section 4.04.



**“Application”** means the Application for PILOT as included in the Board Packet distributed at Landlord’s meeting on January 10, 2023, as the same may be amended with the written consent of Landlord.

**“Authorized Tenant Representative”** means Tenant’s Chief Executive Officer, President, or other executive acceptable to Landlord.

**“Base Rent”** has the meaning provided in Section 4.03.

**“Capital Investment”** means capital expenditures of Tenant, including Equipment acquisition and installation costs.

**“Commencement Date”** means [\_\_\_\_\_, 20 \_\_\_\_].

**“Compliance Report”** has the meaning provided in Section 5.06(b).

**“Default”** means the happening of any occurrence which, together with the giving of any required notice or the passage of any required period of time, or both, would constitute an Event of Default.

**“Determination Date Compliance Points”** has the meaning provided in Section 4.02(a).

**“Environmental Claims”** has the meaning provided in Section 13.03(a).

**“Environmental Laws”** has the meaning provided in Section 13.01(a).

**“Equipment”** means the equipment, machinery, and other personal property, which are (a) described in Exhibit B attached hereto and incorporated herein by reference, as the same may be amended, modified, or supplemented from time to time, and (b) acquired or are to be acquired in connection with Tenant’s operation of the Improvements.

**“Event of Default”** has the meaning provided in Section 9.01.

**“Governmental Authority”** means the United States, the State of Tennessee, any political subdivision of either, any court of either of them, and any agency, department, commission, board, bureau or instrumentality of either of them.

**“Hazardous Waste”** has the meaning provided in Section 13.01(a).

**“Improvements”** means the improvements constructed or to be constructed upon the Real Property and affixed thereto, as provided in the Application, including, without limitation, the improvements provided for in the Application and the Equipment located or to be located thereon.

**“Jobs”** means permanent full time and full time-equivalent positions of employment with Averitt Express; the minimum number of Jobs for purposes of this Lease shall be two hundred and thirty-eight (238) positions at the Project, provided, however, that in determining the number of Jobs no more than two hundred and eleven (211) such positions shall be existing positions retained and relocated from existing locations of Averitt Express located in Knox County, Tennessee. The parties intend that at least twenty-seven (27) positions shall be new positions to Knox County, Tennessee, and that no more than two hundred and eleven (211) positions shall be retained and relocated from Averitt Express’s existing offices in Knoxville, Tennessee; provided however, the term “new Jobs” will include jobs created before

the Commencement Date if such job is related to the Project and will be located at the Project after its operations commence. Employees who work at least 36 hours per week and are eligible for full benefits, as provided from time to time during the Term, will be included in any calculation of Jobs under this Lease.

**“Landlord’s Agents”** has the meaning provided in Section 5.05(b).

**“Lease Compliance Information”** has the meaning provided in Section 5.06(a).

**“Legal Requirement”** means any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty and any court order applicable to the Premises.

**“Lender”** means any lending institution which has extended credit to Tenant that is secured by a Security Instrument.

**“Measurement Period”** means the time period covering the three (3) years after the Commencement Date.

**“Municipality”** has the meaning provided in Section 6.02(b).

**“Organizational Documents”** means with respect to any particular entity, (a) if a corporation, the articles or charter of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles of organization and operating agreement; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all equity holders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equity holders of any Person; and (g) any amendment or supplement to any of the foregoing.

**“Permitted Encumbrances”** means the encumbrances on the Equipment as described in Exhibit B, which is attached hereto and incorporated herein.

**“Person”** means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

**“Phase I Report”** has the meaning provided in Section 13.01(b)(ii).

**“Plans and Specifications”** means the plans and specifications for the construction of the Improvements prepared by Tenant and submitted to Landlord, together with any addenda thereto and modifications thereof.

**“Premises”** means the Real Property, together with the Improvements on such Real Property and the Equipment, all whether located on the Real Property at the time of the execution of this Lease, or at any time thereafter.

**“Project”** the means the installation of the Equipment on the Real Property, the conveying of the Equipment to Landlord, the leasing of the Equipment by Tenant from Landlord, as well as the expenditure of the Capital Investment, and the creation and maintenance and/or retention of the Jobs and the Wages

pursuant to the terms of this Lease and the Application.

“**PTIP**” means Landlord’s Property Tax Incentive Program and the payments in lieu of taxes to be paid in accordance with Section 6.02 hereof.

“**PTIP Policies and Procedures**” means the Policies and Procedures of Landlord with regard to the PTIP, a copy of which is attached hereto as Exhibit D and incorporated herein by reference, as the same may be modified from time to time by Landlord.

“**Purchase Option**” has the meaning provided in Section 11.01.

“**Real Property**” means the real property generally referred to as 10207 Cogdill Road, Knoxville, Tennessee 37932, Parcel IDs 131-08801, 131-08001, 131-081, 131-08101, and 131-082, as further described in Exhibit A attached to this Lease and the Improvements.

“**Related Documents**” has the meaning provided in Section 12.05.

“**Report**” has the meaning provided in Section 5.06(a).

“**Security Instrument**” means any deed of trust, security agreement, assignment, pledge, hypothecation, conditional sale agreement, chattel paper, financing statement or other instrument or document encumbering the Equipment or Tenant’s leaseholder interest in the Equipment, all as amended from time to time.

“**Tax Year**” has the meaning provided in Section 6.02.

“**Tenant**” means the legal entity or natural person identified in the first paragraph of this Lease, or any permitted transferee or assignee.

“**Tenant Documents**” means this Lease and such deeds, bills of sale, assignments, subleases, estoppel certificates, subordination agreements, nondisturbance and attornment agreements and other instruments and documents evidencing and providing for the transactions and obligations contemplated herein, as the same may be amended, modified and supplemented from time to time.

“**Term**” means the term of this Lease, as provided in Section 4.01.

“**Wages**” means wages paid by Averitt Express to its employees on an annual basis.

Section 1.02. Usage.

- (a) In this Lease, unless a clear contrary intention appears:
  - (i) the singular number includes the plural number and vice versa;
  - (ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Lease, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
  - (iii) reference to any gender includes each other gender;
  - (iv) reference to any agreement, document or instrument means such agreement,

document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Lease as a whole and not to any particular Article, Section or other provision hereof;

(vii) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;

(viii) “or” is used in the inclusive sense of “and/or”;

(ix) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”;

(x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) This Lease was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Lease to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

(c) Any capitalized terms not specifically defined herein shall have the meanings assigned to them in the Application.

## **ARTICLE II CONSTRUCTION AND/OR RESTORATION**

Section 2.01 Investment; Construction. Tenant will acquire and install on the Real Property the Equipment necessary to fully equip and operate the Project at its expense in accordance with the Plans and Specifications and the Application within the Measurement Period. In order to acquire and install the Equipment, Tenant is hereby authorized to execute in its own name, without reference to Landlord, all necessary contracts, agreements, purchase orders, and related documents. In no event shall Landlord be liable under any such contracts, agreements, purchase orders, and other related documents. For purposes of this Agreement, the term “completed” shall mean the issuance by applicable Governmental Authorities of a certificate of occupancy with respect to each element of the Improvements.

### Section 2.02 Rights against Contractors, Etc.

(a) Tenant agrees, pursuant to the authority and power granted in the preceding paragraph, to proceed with acquisition and installation of the Equipment with due diligence, in a good and workmanlike manner and in compliance with all Legal Requirements.

(b) Upon completion of the acquisition and installation of the Equipment and the request of

Tenant, Landlord will assign to Tenant (if any of the following inure to the benefit of Landlord) (i) all warranties and guaranties of any and all contractors, subcontractors, suppliers, and architects for the furnishing of labor, materials or supervision in connection with the acquisition or installation of the Equipment or any part thereof, and (ii) any and all rights or causes of action against any of the foregoing Persons.

(c) If any contractor or subcontractor breaches any contract with Tenant or Tenant's contractor related to the acquisition and installation of the Equipment, Tenant may, at its expense, either in its own name or in the name of Landlord, prosecute or defend any action or proceeding related to the construction and equipping of the Project or take any other action involving any such contractor, subcontractor, surety, or supplier that Tenant deems reasonably necessary. Landlord will cooperate fully with Tenant and, at Tenant's expense, will take all action necessary to effect any necessary substitution of Tenant for Landlord in such action or proceeding related to the acquisition and installation of the Equipment. Tenant shall indemnify Landlord from all claims, damages, liability, attorneys' fees, and court costs, if Tenant prosecutes or defends any such action or proceeding or takes any other action in Landlord's name. Landlord shall pay to Tenant any net amounts recovered and actually received by Landlord as damages, refunds, adjustments, or otherwise in connection with the foregoing.

Section 2.03 Agency Appointment. Landlord hereby makes, constitutes and appoints Tenant as its true and lawful agent, and Tenant hereby accepts such agency, (a) to acquire the Equipment, (b) to make, execute, acknowledge and deliver any contracts, order, receipts, writings and instructions, either in Tenant's name or as the stated agent for Landlord, with any other Person, and in general to do all things which may be requisite or proper, all for the acquisition of the Equipment with the same powers and with the same validity as Landlord could do if acting in its own behalf, (c) pursuant to the provisions of this Lease, to pay all fees, costs and expenses incurred in the acquisition of the Equipment, and (d) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever that may be due, owing and payable to Landlord under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition of the Equipment, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security. So long as an Event of Default has not occurred, this appointment of Tenant to act as agent and all authority hereby conferred are granted and conferred irrevocably to the completion date of the Project and thereafter until all activities in connection with the equipping of the Project shall have been completed, and shall not be terminated prior thereto by any act of Landlord or of Tenant or by operation of law.

Section 2.04 Equipment. In connection with the acquisition of the Equipment or the reimbursement of Tenant therefor, Tenant, following the acquisition of each item of Equipment, shall deliver to Landlord a bill of sale (naming Landlord as purchaser) specifically listing and identifying each such item of Equipment. Exhibit B shall be deemed to be amended upon delivery of each such bill of sale to include the information therefrom. Each such bill of sale shall be promptly delivered to Landlord after the acquisition of each such item of Equipment, but in no event later than the end of the calendar year in which the Equipment was acquired. Upon the completion of the Project, Tenant shall prepare and deliver to Landlord a revised Exhibit B specifically identifying each item of Equipment leased hereunder. At any time, Tenant may add or substitute items of Equipment identified on Exhibit B and may replace or substitute items of equipment of equal or better value by delivering a bill of sale for each additional item of Equipment naming Landlord as purchaser and by delivering a revised Exhibit B to Landlord. In addition, Tenant may delete items of Equipment in accordance with Section 8.04.

### ARTICLE III TERM AND CONCURRENT AGREEMENTS

Section 3.01 Capital Investment, Jobs and Wages. Tenant ratifies its representations made in

the Application, agrees to comply with all terms and conditions of the Application, and acknowledges that it has represented the following, among other things, in the Application:

(a) That the Project will result in the creation/retention during the Measurement Period, and maintenance throughout the Term following the Measurement Period, of at least **238** Jobs paying Wages, on average of **\$75,000.00** per new Job; and

(b) That Tenant will make a Capital Investment in the Project of at least **\$9,500,000** during the Measurement Period;

provided, however, that Tenant shall not be deemed to have breached these covenants, warranties and representations as to Jobs, Wages, and Capital Investment, unless an Event of Default exists pursuant to Section 9.01(b).

Section 3.02 Use of Project and Compliance with Laws. Tenant shall promptly comply, cause compliance with, or obtain waivers of, all Legal Requirements applicable to the Equipment, at no expense to Landlord, whether or not the same are foreseen or unforeseen, ordinary or extraordinary. Tenant shall throughout the term of this Lease cause the Equipment to be used in a manner that will constitute a “project” within the meaning of Section 7-53-101 of the Act. Tenant has represented to Landlord in the Application that it will complete and use the Equipment solely for the purpose of conducting its business as a freight management/freight distribution, and will create and retain the Jobs at the Wages and make the Capital Investment, all as set out and defined in the Application. Any proposed changes in the use and operation of the Equipment or change in the location of the Equipment from the terms of this Agreement must be submitted to Landlord for advance written approval. Pursuant and subject to the provisions of Article IX of this Lease, Landlord reserves the right to terminate this Lease if the use of the Equipment becomes materially inconsistent with the representations summarized above and as stated in the Application; but no such termination shall be effective unless Landlord shall first give Tenant not less than ninety (90) days’ notice of intent to terminate and Tenant shall not have cured such default within such ninety (90) day period. All representations and warranties in the Application shall be deemed representations and warranties under this Lease.

Section 3.03 Contesting Laws. Tenant shall not be required to comply or cause compliance with the Legal Requirements referred to in Section 3.02, so long as Tenant shall give written notice to Landlord, and at its expense, shall contest the same or the validity thereof in good faith and in accordance with applicable law. Such contests may be made by Tenant in the name of Landlord or of Tenant, or both, as Tenant shall determine, and Landlord agrees that it will, at Tenant’s expense, cooperate with Tenant therein, as Tenant may reasonably request. At Landlord’s option, Tenant shall provide Landlord with such security reasonably satisfactory to Landlord for the purpose of indemnifying Landlord from all claims, damages, liabilities, attorneys’ fees, and court costs, if Tenant shall pursue any claim or right in Landlord’s name.

#### **ARTICLE IV TERM AND RENT**

Section 4.01 Demise and Term. Subject to the terms and provisions of this Lease, this Lease shall be and remain in full force and effect for a term commencing on the date of this Lease and ending on [\_\_\_\_\_, 20\_\_] (“Term”). The Lease may be terminated at an earlier date or extended in accordance with the terms and conditions of this Lease.

Section 4.02 Report on Determination Date. Within thirty (30) days after the [third (3<sup>rd</sup>)] anniversary of the Commencement Date (“Determination Date”), Tenant shall deliver to Landlord the

Compliance Report in accordance with Section 5.06(c) which Landlord shall use to determine the Determination Date Compliance Points (as defined below) in accordance with this Section 4.02.

(a) Landlord will evaluate the Compliance Report in accordance with the following criteria and award points based upon Tenant's actual performance and compliance with the Application and this Lease in accordance with the following criteria:

(i) Landlord will award points based on the Capital Investment made by Tenant respecting the Project as of the Determination Date as described in the PTIP Policies and Procedures in effect as of the date hereof.

(ii) The Board will award points based upon the number of Jobs, which were created and maintained over the Determination Period, and the average Wages paid per such Job, in each case, as described in the PTIP Policies and Procedures in effect as of the date hereof.

Landlord will determine the number of points for which Tenant qualified pursuant to the above criteria (the "Determination Date Compliance Points") and will evaluate the performance of Tenant under this Lease and the Application. Landlord and Tenant will use the Determination Date Compliance Points to determine the Recapture Payment, if any, under Section 9.04(c).

(b) Tenant shall pay all reasonable expenses incurred by Landlord in evaluating Tenant's performance, including consulting fees, auditing fees and reasonable attorney fees.

Section 4.03 Base Rent. Tenant shall pay to Landlord without notice, setoff or demand as base rent ("Base Rent") the sum of [Two Thousand Dollars (\$2,000.00)] per annum, payable on the date on which the payment in lieu of taxes is required pursuant to Section 6.02 herein is due and payable, as rent for the Equipment.

Section 4.04 Additional Rent.

(a) Tenant covenants and agrees at its expense to acquire and install the Equipment as described in the Application and Section 2.01 hereof in an amount not less than **\$9,500,000**. It is understood and agreed that such Improvements shall become the property of Landlord and may become part of the Premises. The cost of the acquisition and installation of the Equipment shall be treated as "Additional Rent" payable by Tenant under this Lease.

(b) Tenant shall also pay, as Additional Rent, those amounts set out in Article VI hereof and all other sums which Tenant shall be obligated to pay hereunder, whether or not such sums are specifically designated as Additional Rent, and debt service payable by Tenant with respect to any loan secured in whole or in part by a security interest in the Equipment or Tenant's interest therein. Tenant shall also pay, as Additional Rent, all reasonable sums advanced by Landlord for or on behalf of Tenant hereunder. The Additional Rent shall be due by Tenant in accordance with the applicable provisions of this Lease and, if no date is specified, then on demand. Any sums advanced by Landlord for or on behalf of Tenant shall bear interest at the prime rate of interest as published in the Wall Street Journal, as adjusted from time to time, plus 2.00% per annum, and shall be due and payable on demand.

Section 4.05 Net Lease. This Lease is a "net lease" and the Base Rent, Additional Rent and all other sums payable hereunder to or for the account of Landlord shall be paid promptly and without set-off, counterclaim, abatement, suspension, deduction, diminution or defense.

**ARTICLE V**  
**REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION; COMPLIANCE REPORT**

Section 5.01 Representations and Covenants of Landlord. Landlord is a public nonprofit corporation, duly incorporated, validly existing and in good standing under the laws of the State of Tennessee, and is validly organized pursuant to the provisions of the Act. Landlord is authorized and empowered by the provisions of the Act, and has all requisite corporate power and authority to execute and deliver and perform its obligations under this Lease. No consents of any third parties are required nor are any regulatory filings required to be made in order for Landlord to execute this Lease and consummate the transactions herein. This Lease has been duly authorized, executed and delivered on behalf of Landlord and constitutes the legal, valid and binding obligation of Landlord enforceable in accordance with its terms subject to bankruptcy and other creditors' rights laws and principles of equity. The execution, delivery and performance by Landlord of this Lease will not contravene or constitute a default under any provision of any Legal Requirement, the Organizational Documents of Landlord or of any contract, agreement, judgment, order, decree, or other instrument binding on Landlord.

Section 5.02 Representations and Warranties of Tenant. Tenant hereby represents and warrants as follows to Landlord:

(a) Tenant is a limited liability company duly incorporated, validly existing, and in good standing under the laws of its jurisdiction of organization, with full company power and authority to conduct its business as it is now being conducted and to own or use the properties and assets that it purports to own or use. Tenant is duly qualified to do business as a foreign limited liability company and is in good standing under the laws of the State of Tennessee.

(b) Tenant has all requisite power, authority and legal right to: (i) execute and deliver this Lease and all other instruments and documents to be executed and delivered by Tenant pursuant hereto; (ii) perform and observe the provisions thereof; and (iii) carry out the transactions contemplated thereby. All action on the part of Tenant which is required for the execution, delivery, performance and observance by Tenant of this Lease has been duly authorized and effectively taken.

(c) This Lease constitutes the legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms subject to bankruptcy and other creditors' rights laws and principles of equity.

(d) The Application does not contain any untrue statement or omit to state a material fact necessary to make the statements therein or in this Lease, in light of the circumstances in which they were made, not misleading. No representation of Tenant, or information disclosed by Tenant, in the Application omits to state a material fact necessary to make the statements therein, in light of the circumstances in which they were made, not misleading.

(e) Tenant is not in material default under or violating, and none of the execution and delivery of this Lease, consummation of the transactions contemplated hereby or compliance with the terms and conditions hereof will conflict with, constitute a breach of or a default under, or violate, any material agreement or instrument to which Tenant is a party or by which Tenant or any of Tenant's property is bound and which has not been waived, or to Tenant's knowledge, any Legal Requirement. To Tenant's knowledge no event has occurred or is continuing which constitutes a default under or which, with the lapse of time or giving of notice or both, would constitute a default under any of the foregoing.

(f) There is no action, suit or proceeding at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of Tenant, threatened against Tenant or any of



its properties which might adversely affect the validity of this Lease or the transactions contemplated hereby.

(g) Neither the execution and delivery of this Lease or the other Tenant Documents nor the consummation or performance of any of the transactions contemplated thereby will, directly or indirectly (with or without notice or lapse of time):

(i) breach (A) any provision of any of the Organizational Documents of Tenant or (B) any resolution adopted by the members, managers or board members or the shareholders of Tenant;

(ii) breach any of the transactions contemplated by the Tenant Documents or give any Governmental Authority or other Person the right to exercise any remedy or obtain any relief under any Legal Requirement or any judgment or order to which Tenant may be subject;

(iii) contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any license, permit, or other authorization that is held by Tenant or that otherwise relates to the Equipment or to the business of Tenant; or

(iv) breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any agreement, document or contract to which Tenant is a party or by which Tenant may be bound.

(h) Except as may be required by its Organizational Documents or any consents already received, Tenant is not required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Lease, the other Tenant Documents, or the consummation or performance of any of the transactions contemplated therein.

(i) Tenant estimates the cost of all Equipment for acquiring, constructing and equipping the Project to be **\$9,500,000**.

**Section 5.03 Acceptance of Equipment, No Warranties. Tenant acknowledges and agrees that (a) it has examined and is fully familiar with the Equipment. Accordingly, Landlord makes no representation or warranty, either express or implied, and offers no assurance to Tenant or any other Person regarding the condition or title of the Equipment or the suitability of the Equipment for Tenant's purposes or needs, or the availability or sufficiency of funds to pay in full the cost of the Project. As to Landlord, Tenant accepts the Equipment in their AS-IS CONDITION WITH ALL FAULTS as of the date of the commencement of the Term, and assumes all risks, if any, resulting from the failure of the Equipment or to comply with all applicable Legal Requirements.**

**Section 5.04 Failure or Defect in Title. Landlord shall not be liable to Tenant or to anyone for any damages resulting from (a) failure of, or any defect in, Landlord's title which interferes with, prevents, or renders burdensome the use of the Equipment or the compliance by Tenant with any of the terms of this Lease, or (b) delay in obtaining possession of all or any part of the Equipment, from any cause whatsoever. No such failure of, or defect in, Landlord's title or delay in possession shall terminate this Lease or entitle Tenant to any abatement in whole or in part, of Base Rent, Additional Rent, or any other sums payable by Tenant pursuant to the terms of this Lease.**

Section 5.05     Release and Indemnification.

(a) Tenant hereby releases and forever discharges Landlord, including any incorporator, member, director, officer, employee, counsel or agent of Landlord, and its successors and assigns from any claims, demands, causes of action, accounting, or any other matter arising in connection with the Project, except to the extent caused by the intentional acts or gross negligence of Landlord.

(b) Tenant covenants and agrees, at its expense, to pay, and to indemnify and save harmless Landlord, and any incorporator, officer, director, agent, counsel, or employee of Landlord (collectively, "Landlord's Agents"), against and from any and all claims by or on behalf of any Person, other than those resulting from the intentional acts or gross negligence of Landlord, arising from (i) the occupation, use, possession, conduct, or management of the Equipment or the Premises, or from any work done in or about, the Premises or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, and Legal Requirements affecting the Equipment or Real Property or the use of the Equipment or Real Property, (ii) any condition of the Equipment or the Real Property and any condition of the adjoining sidewalks and passageways of the Real Property, (iii) any breach or default on the part of Tenant in the performance of any covenant or agreement to be performed by Tenant pursuant to this Lease, (iv) any act or negligence of Tenant, or any of its agents, contractors, servants, employees, or licensees, (v) any accident, injury, or damage whatsoever caused to any Person in or about the Equipment or upon or under the sidewalks, (vi) Landlord's ownership of the Equipment, the making of this Lease or any transactions related thereto, and from and against all costs, reasonable attorneys' fees, expenses, and liabilities incurred by reason of any claim referred to in this Section, and (vii) any obligations arising under any easements granted by Landlord at the request of Tenant.

(c) Upon notice from Landlord, Tenant shall defend Landlord or any of Landlord's Agents, in any action or proceeding brought in connection with any of the above. In the event Tenant shall fail or refuse to defend Landlord or Landlord's Agents after receipt of such notice or shall fail to diligently prosecute or defend any action subject to this Section 5.05, Landlord shall be entitled to provide its own defense of itself and Landlord's Agents and charge Tenant with the costs and expenses incurred in connection therewith which such amount shall be payable by Tenant upon demand by Landlord.

(d) The provisions of this Section 5.05 shall survive the termination of this Lease.

Section 5.06     Reports; Compliance Report.

(a) On or before the February 28 after the anniversary of the execution of this Lease and thereafter on or before the February 28 of each year during the Term of this Lease, Tenant shall file or cause to be filed with Landlord a report in the form of Exhibit C attached hereto and incorporated herein by reference, as such form may be revised by Landlord from time to time (the "Report"), containing all information required by Landlord to determine Tenant's compliance with the terms and requirements of this Lease and the Application and such other information reasonably requested by Landlord ("Lease Compliance Information"). Each Report shall be certified by an Authorized Tenant Representative. Upon the request of Landlord, Tenant shall provide any and all other additional information reasonably requested by Landlord to determine Tenant's compliance with the Lease and the Application.

(b) Within ninety (90) days after the Determination Date, Tenant shall file or cause to be filed with Landlord the following (collectively, the "Compliance Report"):

(i) a report in the form attached hereto as Exhibit C detailing the information required pursuant to Section 5.06(a) above as of the Determination Date;

(ii) a certified listing of all full time employees of Tenant employed at the Project as of the Determination Date which includes for each employee their title, date hired, and annual wage (assuming 2080 hours per year for hourly employees) (“Employee Listing”), and attaching (in each case, redacting any personally identifiable information of any employees, as applicable) (A) a copy of Tenant’s most recently filed Form 940, highlighting the information applicable to the employees employed at the Project, (B) a copy of each Form 941 filed by Tenant since such most recently filed Form 940, highlighting the information applicable to the employees employed at the Project, and (C) statements from Tenant’s payroll processor detailing unemployment insurance premiums paid to the state of Tennessee during the Determination Period, together with a copy of Tenant’s most recently filed wage and premium filings with the Department of Labor and Workforce Development for the State of Tennessee and, if applicable, the most recently filed Multiple Worksite Report filed with such department;

(iii) a certified listing of each invoice paid by Tenant evidencing the Capital Investment of Tenant with respect to the Equipment as of the Determination Date which includes for each such invoice the invoice date, date of payment, payee name, amount, and brief description of expenditure/purpose (“Capital Improvements Invoice Listing”), together with copies of each such invoice; and

(iv) such other detail, backup and supporting information requested by Landlord in its sole and absolute discretion which confirms the expenditures evidencing the Capital Investment with respect to the Equipment and the number of Jobs and average Wages, in each case, as of the Determination Date.

Such Compliance Report shall be certified by an Authorized Tenant Representative. The obligations of Tenant under this Section 5.06(b) shall survive the termination of this Lease. The parties acknowledge that Landlord shall utilize the information required to be provided pursuant to this Section 5.06(b) to assist in determining by Landlord whether a Recapture Payment is due and payable by Tenant pursuant to Section 9.04(c).

(c) Tenant shall prepare and file with the State of Tennessee’s State Board of Equalization by October 1 of each year during the term hereof an annual report containing all of the information required pursuant to Tennessee Code Annotated § 7-53-305(e) in the form attached hereto as Exhibit F, together with such other information, and using such forms, as such Board of Equalization may require from time to time. A copy of the annual report so filed by Tenant shall be filed with the property assessor’s office of Knox County, Tennessee by the immediately succeeding October 15, and a copy concurrently provided to Landlord.

(d) Upon the request of Landlord, Tenant shall provide any and all information reasonably requested by Landlord to determine Tenant’s compliance with the Lease and the Application. Further, Landlord shall have the right during the Term and for 1 year thereafter to audit the books and records of Tenant to ensure compliance with Section 5.06 and this Lease.

## **ARTICLE VI TAXES, OTHER CHARGES AND EXPENSES OF LANDLORD**

Section 6.01 Agreement to Pay Additional Rent. Tenant agrees to pay and discharge, as Additional Rent, during the Term hereof, punctually, as and when the same shall become due and payable:

(a) All expenses and obligations of every kind and nature, foreseen or unforeseen, for the

payment of which Landlord or Tenant is or shall become liable by reason of their respective estates or interests in the Equipment or any portion thereof, by reason of any right or interest of Landlord or Tenant in or under this Lease, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding or use of the Equipment or requirements of this Lease.

(b) All taxes of every type and description, assessments (including, but not limited to, assessments for public improvements or benefits), payments in lieu of taxes, and all other impositions and charges of every kind and nature, extraordinary or ordinary, general or special, which at any time during the Term shall be or become due and payable by Landlord or Tenant which shall be levied, assessed, or imposed in connection with the Equipment.

(c) All charges for gas, water, sewer, electricity, light, heat, power, telephone, and other utilities and services used, rendered or supplied to or in connection with the Equipment and the Premises which are required to be paid by Landlord. Tenant agrees that Landlord is not, nor shall it be required, to furnish to Tenant or any other occupant, any gas, water, sewer, electricity, light, heat, power, or any other facilities, equipment, labor, materials, or services of any kind. Landlord will extend any rights it may have to Tenant, and will cooperate with Tenant, at Tenant's expense, in connection with obtaining the use of any such utilities and other facilities and services.

(d) All of Landlord's closing costs and reasonable expenses, including reasonable attorneys' fees, incurred in connection with the acquisition of the Equipment by Landlord and the negotiation, execution and delivery of this Lease.

(e) Tenant shall not pay a closing fee and the IDB expressly waives such fee.

(f) Tenant shall pay all fees and charges required by the Application.

Tenant covenants to furnish to Landlord, promptly upon request, proof of the payment of any amount or charge required to be paid by Tenant hereunder.

Section 6.02      Payments in Lieu of Taxes.

(a) Landlord and Tenant recognize that under present law, including specifically Section 7-53-305 of the Act, the properties owned by Landlord are exempt from all taxation in the State of Tennessee. Tenant agrees, however, as long as this Lease is in effect, to make payments in lieu of taxes ("PTIP Payments") to Knox County, Tennessee, in accordance with the provisions of this Section 6.02.

(i) Beginning on the date of the Lease and continuing on April 1 of each successive Tax Year during the Term, Tenant shall be required to pay to Knox County, Tennessee as payments in lieu of taxes an amount approximating fifty percent (50%) of the personal property taxes which would otherwise be payable with respect to the Equipment each year, such amount to be determined by Landlord in its reasonable discretion using the Personal Property Tax Report (described below) or, in the absence of such report, using an estimated assessment reasonably determined by Landlord in consultation with the Knox County, Tennessee Property Assessor's office (the "Tax Payment"), provided that in no event shall the amount payable as payments in lieu of taxes hereunder be less than the amount of ad valorem taxes assessed with respect to the subject real property as of the date hereof. The parties agree that any amounts payable with respect to any partial Tax Years included within the Term will be prorated based upon the actual number of days included within the Term. Any obligation to make a payment in lieu of tax pursuant to this Lease that is not due until after the date this Lease expires or terminates shall

survive the expiration or termination of this Lease. By February 1 of each Tax Year, Tenant will prepare and deliver to Landlord a personal property tax report (the "Personal Property Tax Report") as is typically filed on January 1 of each year which shall indicate the personal property taxes which would otherwise be payable with respect to the Equipment each year.

(ii) It is the parties' intent that during the Tax Years identified above, Tenant shall not be required to pay payments in lieu of taxes with respect to the Equipment that is part of the Project in excess of the Tax Payment. Such reduction shall not apply (a) in the event that Tenant assumes ownership of the Equipment; or (b) with regard to any other tax assessed against Tenant, its income, or its other real or personal property. Upon the acquisition of the Project by Tenant, Tenant shall begin paying all applicable taxes directly to Knox County, Tennessee, as assessed, but shall not make, from the date of such acquisition, any in lieu payments with respect to such property. "Tax Year" means each annual period beginning on January 1 in each year.

(iii) It is the intent of this Section 6.02 that Knox County, Tennessee shall receive the amounts that would be payable if the Project were privately owned and fully subject to property taxation, minus those applicable reductions detailed above, notwithstanding Landlord's ownership of all or any part thereof. However, nothing contained in this Section 6.02 is intended or shall be construed to require the payment by Tenant of any greater amounts in lieu of taxes than would be payable as taxes if the Project was privately owned as aforesaid. It is accordingly understood and agreed that the amount payable by Tenant in any Tax Year under the provisions of this Section 6.02 shall be reduced by the amount of any taxes lawfully levied by Knox County upon the Project or any part thereof, or upon Tenant's leasehold estate therein, and actually paid by Tenant pursuant to the requirements of Section 6.02 hereof.

(iv) The payments in lieu of taxes provided in this Section 6.02 for each year shall accrue on October 1 of each Tax Year and shall be due on or before the last day of the February immediately following the Tax Year with respect to which such payment relates, and the obligation to make any such payments shall survive the termination of this Lease as to any payments that accrue prior to such termination. With respect to any payments made pursuant to this Section, prior to the date they are due, Tenant shall be entitled to the same discounts, if any, as any taxpayer in Knox County is entitled to receive with respect to the payment of property taxes prior to the date such taxes are due.

(v) These payments in lieu of taxes shall be paid in the same manner and to the same tax collector as are ad valorem taxes paid in Knox County. Notwithstanding the foregoing or any other provisions of this Lease, however, it is the express intention of the parties hereto that, pursuant to the provisions of Tennessee Code Annotated Section 7-53-305, the Equipment and the leasehold interests therein of Tenant, or any sublessee, shall be exempt from all taxation in the State of Tennessee, and that the PTIP payments as provided for in this Section 6.02 shall be made by and accepted from Tenant in lieu of all ad valorem taxes which are or may be assessed against the Equipment and the leasehold interests therein of Tenant or any sublessee for and during the term of this Lease. If, following an Event of Default, the Equipment should legally be placed on the ad valorem tax rolls of either the City of Knoxville or Knox County or both, the payment in lieu of taxes shall terminate and Tenant shall thereafter pay ad valorem taxes as required of a tax-paying entity. In the event Tenant's leasehold interest, but not Landlord's fee interest, shall become subject to ad valorem taxation, the payment in lieu of taxes called for hereunder shall continue, but shall be reduced on a cumulative basis by the amount of ad valorem taxes paid by Tenant with regard to its leasehold estate in the Equipment. In the event the payment in lieu of taxes obligation terminates, Tenant shall still have the right to exercise its option to purchase the Equipment as set forth in Section 11.01 hereof. In such event, the provisions of Sections 11.01

and 11.03 shall apply and Landlord shall reconvey the Equipment to Tenant, subject to any then existing indebtedness created or incurred by or at the request of Tenant; and Tenant shall pay to Landlord, as consideration therefore, the sum of One Thousand Dollars (\$1,000.00).

(vi) All tax bills for payments in lieu of taxes as provided for in Section 6.02 shall be sent to Tenant at: \_\_\_\_\_, or to such other entity or address as Tenant may hereafter designate and provide to the tax collectors.

(vii) Notwithstanding the foregoing, if the Term of this Lease expires and Tenant remains in possession of the Premises, Tenant shall pay in full all personal property taxes which are or may be assessed against the Equipment each year with respect to such period as and when due.

(b) In the event that the Equipment is not, at the commencement of the Term hereof, situated within the City of Knoxville, Tennessee or some other municipality (collectively, a "Municipality") so as to be subject to ad valorem taxation as a part of a Municipality, but subsequently, by annexation or incorporation, becomes situated within a Municipality during the Term, then Tenant shall make additional payments in lieu of taxes, as Additional Rent, in lieu of the ad valorem taxes of the Municipality from and after the effective date of the annexation or incorporation of the Equipment into the Municipality. These payments will be billed to Tenant, and Tenant shall pay the same to the appropriate tax collector for the Municipality, upon the same terms and conditions and in the same manner as provided for the PTIP Payments provided in subsection (a) above.

(c) If any such PTIP Payments are not paid by the applicable dates on which they are due, then Tenant shall pay a penalty with respect to such delinquent PTIP Payment from and after the delinquency date in the same amount as the penalty and all other charges which would be due on the corresponding Knox County ad valorem taxes.

Section 6.03 Other Taxes, Assessments, or Other Charges. Except as provided for in Sections Section 6.02(b) and (c) above, if any Governmental Authority enacts or imposes any tax, assessment, or other charge on realty or leasehold interests which are not in existence or collected as of the date of this Lease, Tenant shall pay said tax, assessment, or other charge as Additional Rent under this Lease and said tax, assessment, or other charge, if based on the assessment assigned to realty, shall be calculated on an assessment determined as though the Equipment were owned by a tax-paying entity.

Section 6.04 Survival. The obligations of Tenant to pay any amount due at the termination of this Lease pursuant to this Article VI, shall survive the termination of this Lease.

## **ARTICLE VII INSURANCE**

Section 7.01 General Requirements. Tenant shall keep the Equipment, now existing as of the commencement of the Term of the Lease, or hereafter installed and purchased, constantly and satisfactorily insured by an insurance company or companies lawfully doing business in Tennessee against losses under an All Risks Special Form Policy, in an amount not less than the full replacement costs of the Equipment without deduction for depreciation. The policy evidencing this coverage shall be endorsed with a Replacement Cost Endorsement. The amount of the coverage shall be reviewed annually and increased if necessary so as to provide coverage at all times in an amount necessary to restore the Equipment to the conditions existing just prior to the destruction or damage.

Tenant shall further keep or maintain or cause to be carried commercial general liability insurance

on the Equipment covering claims for bodily injury, death and property damage with a combined single limit of not less than Two Million Dollars (\$2,000,000.00), with “umbrella” liability coverage in an amount not less than Five Million Dollars (\$5,000,000.00), or such greater amounts as may from time to time be reasonably required by Landlord. Landlord shall be named as an additional insured on policies referred to in this paragraph.

Tenant shall further maintain the following insurance:

(a) [intentionally omitted].

(b) If any part of the Premises lies within a “special flood hazard area” as defined and specified by the United States Department of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973, Tenant shall (i) promptly purchase and pay the premiums for flood insurance policies as Landlord deems required so that Landlord shall be deemed in compliance with the rules and regulations and provisions of the Flood Disaster Protection Act of 1973 as then in effect; and (ii) deliver such policies to Landlord together with evidence satisfactory to Landlord that the premiums therefor have been paid. Such policies of flood insurance shall be in a form reasonably satisfactory to Landlord, shall name Landlord as an insured thereunder, shall be for an amount at least equal to the maximum limit of coverage made available with respect to the Equipment under the National Flood Insurance Act of 1968, as amended, whichever is less.

(c) Such other insurance on the Equipment, or any replacements or substitutions therefor, in such amounts as may from time to time be reasonably required by Landlord against other insurable casualties which at that time are commonly insured against in the case of properties of similar character and location, due regard being given to the height and type of the Improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor.

Provided that no Event of Default has occurred and remained uncured for any applicable cure period, Tenant shall have the option to apply all insurance proceeds either to the repair, restoration and replacement of the Equipment, or to retain the proceeds upon the exercise of its option to purchase the Equipment in accordance with Article XI. Notwithstanding the foregoing, Landlord’s or Tenant’s entitlement to insurance proceeds shall be subject to the rights of any Lender under a Security Instrument.

Section 7.02 Additional Covenants. All insurance policies and renewals thereof shall be in form reasonably acceptable to Landlord, shall be issued by a company or companies acceptable to Landlord, and shall name Landlord as the named insured or an additional insured, as its interest may appear. Said policies and renewals shall provide for no less than thirty (30) days’ written notice to Landlord of any cancellation or amendment thereof. Certificates of said insurance policies and renewals satisfactory to Landlord shall be provided Landlord prior to the effective date thereof, or, upon written request, Landlord shall have the right to hold the policies and renewals thereof. Upon the request of Landlord, Tenant shall promptly furnish to Landlord all renewal notices and all receipts for paid premiums. At least thirty (30) days prior to the expiration date of any of the policies, Tenant shall deliver to Landlord renewal policies in form reasonably satisfactory to Landlord together with receipts evidencing the payment for such policies and renewals. If Tenant fails to maintain the insurance required hereunder, Landlord may, at its option, pay such premiums, or take such other actions, as may be necessary in order to keep any such insurance in full force and effect. In such event, Tenant shall promptly reimburse Landlord for any such payments on demand, or, at the option of Landlord, all sums so paid by Landlord shall bear interest at the lesser of (i) the prime rate of interest as published in the Wall Street Journal, as adjusted from time to time, plus 2.00% per annum, or (ii) the maximum rate allowed by law at the time of the advance. All premiums on insurance policies shall be paid promptly when due.

**ARTICLE VIII**  
**MAINTENANCE, REPAIR, IMPROVEMENTS AND REPLACEMENT**

Section 8.01 Tenant's Agreement to Maintain and Repair. Tenant acknowledges that Tenant is accepting the Equipment "As-Is" and "With All Faults" and that LANDLORD MAKES NO WARRANTY TO TENANT WHATSOEVER, WHETHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE EQUIPMENT ALL OF SUCH WARRANTIES BEING EXPRESSLY DISCLAIMED BY LANDLORD, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Tenant agrees that at its expense it will keep and maintain the Equipment in good repair and condition, reasonable wear and tear, and damage by fire or other casualty expressly excepted. Tenant shall promptly make or cause to be made all interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen repairs, including the maintenance, repair, and replacement necessary to keep the Equipment installed in the Premises in good repair and operating condition to the end that the Equipment is kept in good and lawful order and condition, wear and tear from reasonable use and damage by fire and other casualty being expressly excepted, whether or not such repairs are due to any Legal Requirement. All permanent replacements, renewals, attachments, and accessories made to, placed on, or affixed to any part of the Equipment, shall become a part of the Equipment, provided, however, in the event that the Equipment is transferred to Tenant, whether as a result of the exercise by Tenant of its right to purchase pursuant to Article XI hereof, or otherwise, any bill of sale or instrument of transfer shall include not only the Equipment, but also all such replacements, renewals, attachments and accessories constituting fixtures.

Section 8.02 Landlord's Repairs. At any time an Event of Default has occurred and is continuing, and if such Event of Default is not cured within any applicable cure period, then after notice to Tenant, Landlord may, but shall not be required to, rebuild or make any repairs, replacements, or renewals of any nature or description in connection with this Lease or maintain the Equipment in any way. Tenant expressly waives the right contained in any Legal Requirement now or hereafter in effect to make any repairs at the expense of Landlord. If Landlord shall (in its sole discretion) advance funds with which to make such repairs, replacements, renewals, or other expenditures, such sums shall be payable by Tenant as Additional Rent hereunder pursuant to Section 4.04 above.

Section 8.03 Changes to Equipment. Subject to Section 2.01, Tenant shall have the right to make replacements for, additions to, alterations of, and improvements to the Equipment, and to modify all of the above at its expense, as Tenant in its discretion may determine appropriate, provided that the same shall not materially decrease the value of the Equipment or materially change the use thereof. All work done in connection with such additions, alterations or improvements shall be done promptly and in a good and workmanlike manner. Tenant shall pay the cost of such replacements, additions, alterations and improvements. Upon the expiration or termination of this Lease, all such replacements, additions, alterations and improvements which have been affixed to the Equipment and are fixtures under applicable law, shall remain and shall belong to and be the property of Landlord, subject, however, to Tenant's option to purchase under Section 11.01.

Section 8.04 Removal of Personal Property. In the event Tenant determines that any improvements or items of personal property installed within the Premises have become inadequate, obsolete, or worn-out and that the removal thereof will not interfere with the operation or substantially decrease the use of the Project for the purposes of this Lease, Tenant may remove such items of personal property from the Premises and sell, trade-in, exchange, or otherwise dispose of the same, and Landlord will execute and deliver to Tenant, at Tenant's request, a bill of sale effecting the transfer of such item to Tenant.



**ARTICLE IX  
DEFAULT; REMEDIES**

Section 9.01 Events of Default. Any one or more of the following events shall constitute an “Event of Default”:

(a) Tenant fails to pay the Base Rent or any Additional Rent, as and when due and within thirty (30) days after written notice of such failure to Tenant from Landlord.

(b) To the extent provided in this Section 9.01(b), Tenant or Averitt Properties breach the representations, warranties, and covenants contained in the Application or in Section 3.01(a), Section 4.04(a) or Section 5.02(i) of this Lease or the PILOT lease by and between Landlord and Averitt Properties (the “Averitt Properties PILOT Lease”) concerning (i) the incurrence of the required amount of Capital Investment within the Measurement Period in this Lease or in the Averitt Properties PILOT Lease, (ii) the creation and/or maintenance of Jobs or Wages within the Measurement Period, or (iii) and the maintenance during the Term of this Lease following the Measurement Period, at least 238 Jobs paying average Wages of \$75,000.00 per Job.

Notwithstanding the foregoing, no Event of Default shall be deemed to occur hereunder (A) respecting the incurrence of Capital Investment unless and until Tenant and Averitt Properties fail to incur Capital Investment as of the Determination Date in an amount of at least 80% of the amount required to be made by Tenant and Averitt Properties as set forth above and in the Averitt Properties PILOT Lease and (B) respecting the maintenance of Jobs as of or following the Determination Date, unless and until Tenant fails to maintain a number of Jobs at the Project which is less than 80% of the Jobs required to be retained/created and maintained by Averitt Express as set forth above, and (C) respecting the average Wages of the Jobs at the Project, unless and until Tenant fails to maintain an average Wage for such Jobs as of or following the Determination Date which are less than 80% of the Wages required to be maintained by Averitt Express as set forth above. Furthermore, in the event Tenant fails to submit to Landlord a Report by the date required under Section 4.02 or Section 5.06(c) hereof and within thirty (30) days of Tenant’s receipt of notice of such failure from Landlord, or in the event the Report contains information which is untrue in any material respect, an Event of Default shall be conclusively deemed to have occurred under this Section 9.01(b).

(c) Except with respect to the matters set forth in Section 9.01(b) above (which Section shall govern with respect to such matters), any other representation or warranty made by Tenant herein or in the Application, or any other representation or warranty made by Tenant in any statement or certificate furnished by Tenant either required hereby or in connection with the execution and delivery of this Lease, proves to be untrue in any material respect as of the date it was made.

(d) Tenant ceases to use the Equipment or abandons the Equipment for a period of sixty (60) days or more.

(e) Tenant fails to complete the acquisition and installation of the Equipment by the time set forth in the Application, subject to the provisions of Section 9.02 hereof.

(f) Tenant fails to file on time any Report or Compliance Report (or any related financial statements) required under Section 5.06.

(g) Any information contained in any Report or Compliance Report proves to be untrue in any material respect.

(h) A default or an event of default (including, in any case, the expiration of any permitted period for the curing of any such default) occurs under any Tenant Document or other agreement between Landlord and Tenant, or any default occurs under any document executed by Tenant related to the Project or the Equipment, including, without limitation, any Security Instrument, but only if any such default or event of default causes the Equipment to be disqualified as, or cease to constitute, a “project” within the meaning of the Act.

(i) Any material adverse change occurs in the use or operation of the Equipment and/or the Project from that set forth in the Application without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

(j) Tenant fails to continuously operate a going business with the Equipment, in such a manner as to cause an Event of Default pursuant to Section 9.01(b).

(k) Tenant fails in the due performance of, or compliance with, any of the other terms of this Lease.

Except for (i) Events of Default based on subsection (a) and (b) above, for which cure periods have been specifically provided, or (ii) Events of Default based on subsection (b), (c), and (g), no Event of Default shall occur under this Section 9.01 until a default continues for thirty (30) days after Landlord shall have given Tenant written notice of such default.

Section 9.02 Force Majeure. The provisions of Sections 9.01 and 2.01 are subject to the limitation that if by reason of Force Majeure, as defined below, Tenant is unable, in whole or in part, to carry out its agreements and covenants herein contained, other than its obligation to pay Base Rent and Additional Rent, Tenant shall not be deemed in default during the continuance of such inability.

The term “Force Majeure” as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts, acts of public enemies, order of any Governmental Authority, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, floods, washouts, droughts, arrests, pandemics, restraint of government and people, or any other cause or event not reasonably within the control of Tenant.

Tenant agrees, however, to remedy with all reasonable dispatch the cause or causes preventing it (as the case may be) from carrying out its agreements and covenants.

Section 9.03 Rights to Cure. Except with respect to the matters set forth in Section 9.01(b) above, if an Event of Default occurs, Landlord may (but shall not be obligated to), advance funds, make payments and perform any such acts for the account of Tenant and at its expense, may enter upon the Premises for any purpose, and take all other actions as may be reasonably necessary or appropriate to protect its interest under this Lease. No such entry shall be deemed an eviction of Tenant. All sums so paid by Landlord and all necessary and incidental costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses) incurred by Landlord, together with interest at the lesser of (i) the prime rate of interest as published in the Wall Street Journal, as adjusted from time to time, plus 2.00% per annum, or (ii) the maximum rate of interest allowed by law, shall be due and payable by Tenant as Additional Rent and may be credited against any sums due to Tenant.

Section 9.04 Landlord’s Rights Upon Default.

(a) Except as otherwise expressly provided herein, if any Event of Default, as defined in Section 9.01, occurs and is not cured within any applicable cure period, Landlord may exercise its right to terminate this Lease under Section 9.01 and without further notice may enter upon and repossess the

## Equipment.

(b) Except as otherwise expressly provided herein, if an Event of Default occurs and is not cured within any applicable cure period, Landlord shall have the right of entry, repossession, and removal of the Equipment prior to the expiration of the Term of this Lease. Landlord shall be under no obligation to terminate this Lease prior to exercising its rights of entry, repossession and removal of the Equipment. If Landlord exercises such rights without terminating this Lease, this Lease shall continue in full force and effect for the balance of its Term, except that Tenant shall have no right of possession from the date of the exercise of such right.

(c) If an Event of Default described in Section 9.01(b) occurs, Tenant shall be obligated to pay (or cause to be paid) to the appropriate tax collectors, as an additional payment in lieu of taxes under Section 6.02 hereof an amount (hereinafter called the "Recapture Payment") equal to the difference, if any, between (i) the total amount of the payments in lieu of taxes actually paid by or required to be paid by, or for the account of, Tenant during the Measurement Period, and (ii) the total amount of the payments in lieu of taxes for which Tenant would have been obligated to pay Landlord for a Lease term equal to the total number of years for which Tenant qualifies for at the Determination Date under the standard scoring matrix set forth in the PTIP Policies and Procedures in effect as of the date hereof, such determination to be made using the Determination Date Compliance Points. The obligation for any Recapture Payment(s) required pursuant to this Section 9.04(c) shall survive the termination of this Lease and shall be the obligation of Tenant, and the same shall constitute a lien upon the Equipment.

(d) Tenant covenants and agrees to pay, and to indemnify Landlord from and against, all costs and charges, including reasonable attorneys' fees, lawfully and reasonably incurred in (i) obtaining possession of the Equipment after default by Tenant or upon expiration or earlier termination of the Term hereof, and (ii) enforcing any provision of this Lease.

(e) Tenant hereby (i) irrevocably submits to the exclusive jurisdiction of the state courts of the State of Tennessee located in Knox County, Tennessee and to the jurisdiction of the United States District Court for the Eastern District of Tennessee located in Knox County, Tennessee, for the purpose of any suit, action, or other proceeding arising out of or based upon this Lease, the Tenant Documents or any other document or transaction related directly or indirectly to the transactions contemplated herein; (ii) waive and agree not to assert by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim (A) that each is not subject personally to the jurisdiction of the above-named courts, (B) that the suit, action, or proceeding is brought in any inconvenient forum, (C) that the venue of the suit, action, or proceeding is improper, or (D) that this Lease or any of the Loan Documents or the subject matter hereof or thereof may not be enforced in or by such court.

Section 9.05 Re-leasing. Except as otherwise provided herein, at any time or from time to time after the termination of this Lease pursuant to Section 9.04(a), Landlord may, (but shall be under no obligation to) re-lease the Equipment or any part thereof for the account of Tenant, in the name of Tenant or Landlord, or otherwise without notice to Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), on such conditions and for such uses as Landlord in its discretion may determine. Landlord may collect and receive the rents therefor. Landlord shall have the same right to re-lease if it exercises its right of entry, repossession, or removal without termination of this Lease as provided in Section 9.04(b). Landlord shall not be responsible or liable for any failure to re-lease the Equipment or any part thereof, or for any failure to collect any rent due upon any such re-leasing. Any such re-leasing pursuant to this Section 9.05 shall, in all events, be subject to and expire upon the exercise of Tenant's purchase option set forth in Article XI.

Section 9.06 Survival of Tenant's Obligations. No termination of this Lease pursuant to Section 9.04(a) or repossession of the Equipment pursuant to Section 9.04(b), or otherwise, shall relieve Tenant of its respective liabilities and obligations hereunder, all of which shall survive any such termination or repossession. If this Lease is terminated pursuant to Section 9.04(a) or if Landlord exercises its right of entry without termination of the Lease as provided in Section 9.04(b), Tenant shall pay to Landlord the Base Rent and all Additional Rent and other charges required to be paid under this Lease or otherwise, by Tenant up to the time of such termination or repossession.

Section 9.07 Additional Remedies. In addition to the right to terminate this Lease and any other remedies provided for herein, when any Event of Default occurs and is not cured within any applicable cure period, Landlord may take whatever other action at law or in equity may appear necessary or desirable to collect the Base Rent, Additional Rent, and any other monetary obligation of Tenant hereunder when due, or to enforce any obligation, covenant, or agreement of Tenant under this Lease. If Landlord elects to terminate this Lease after an Event of Default, Landlord's remedies shall include, but are not limited to, Landlord's right to convey the Equipment to Tenant and retain a vendor's lien for all sums due and payable to Landlord by Tenant at the time of the conveyance.

## **ARTICLE X CONDEMNATION AND CASUALTY**

Section 10.01 Condemnation Proceeds. If all or any part of the Equipment is taken by the exercise of the power of eminent domain or condemnation, Tenant shall receive the entire award for the taking. If the award is disbursed by the condemning authorities to Landlord, Landlord shall immediately pay the award to Tenant. Tenant shall be entitled to the proceeds of any condemnation award or portion thereof separately awarded for damages to, or takings of, Tenant's property, or for damages on account of the taking or an interference with Tenant's right to possession or use the Equipment.

Section 10.02 Termination of Lease Upon Condemnation. If all or substantially all of the Equipment is taken by the exercise of the power of eminent domain or condemnation, or if the exercise of the power of eminent domain renders the Equipment and the use thereof unsatisfactory to Tenant for the purposes for which they were intended, Tenant shall have the right to either acquire the Equipment pursuant to the provisions of Section 11.01 or terminate this Lease. Until the purchase or termination has taken place, this Lease shall continue in full force and effect without abatement of rent.

Section 10.03 Continuation of Lease Upon Condemnation. If a lesser portion of the Equipment is taken by the exercise of the power of eminent domain or condemnation, this Lease shall nevertheless continue in full force and effect without abatement of rent. If such taking causes damage to, or necessitates the restoration or rebuilding of the Equipment or a portion thereof, Tenant, at its sole cost and expense, shall promptly and diligently restore and rebuild to such condition as it shall deem reasonable in view of the nature of the taking and the then intended use of the Equipment by Tenant.

Section 10.04 Minor Casualty. If a minor part of the Equipment is destroyed or damaged, Tenant shall promptly notify Landlord and at Tenant's expense, Tenant shall promptly and diligently rebuild, restore, replace, and repair the same to such condition as it shall deem reasonable in view of the nature of the damage and the then intended use of the Equipment by Tenant.

Section 10.05 Substantial or Complete Casualty. If the entire Equipment, or a substantial part thereof, shall be damaged or destroyed to such an extent that restoration thereof cannot be accomplished within ninety (90) days from the date of damage, Tenant shall have the right to either restore the Equipment as provided in Section 10.04, acquire the Equipment pursuant to the provisions of Section 11.01, or terminate this Lease. If Tenant acquires the Equipment, Landlord shall then assign to Tenant (to

the extent not previously paid to Landlord) or shall then pay to Tenant (to the extent the same have previously been paid to Landlord but not applied to the repair or restoration of the Equipment) all insurance proceeds arising out of such damage or destruction. The foregoing shall in no way, however, supersede or modify the rights of Tenant and any permitted sublessee.

## **ARTICLE XI OPTION TO PURCHASE, INVESTMENT TAX CREDIT AND LIMITATIONS**

Section 11.01 Option to Purchase. Tenant shall have the option (the "Purchase Option") at any time during the Term of this Lease or within one hundred eighty (180) days after the expiration or termination of this Lease for any reason whatsoever, including, without limitation, an Event of Default, to purchase the Equipment, subject to any then existing indebtedness created by or for the account of Tenant, as permitted or provided for in this Lease. The purchase price will be the sum of One Thousand Dollars (\$1,000.00), payable in collected funds. If the Lease is terminated by Landlord for any reason prior to the expiration of the Term, and Tenant has not exercised the Purchase Option, the Landlord shall provide written notice of same to Tenant within ten (10) days after the date of such termination. The exercise of such option by Tenant shall not relieve Tenant from the payment of any monetary obligations which shall be due and payable, or shall have accrued, under this Lease as of the date of conveyance. Tenant shall notify Landlord in writing thirty (30) days before the proposed date of purchase that Tenant desires to exercise its option to purchase hereunder. Upon payment by Tenant of the purchase price in collected funds plus all expenses related thereto and any other sums due and payable hereunder, Landlord shall convey the Equipment to Tenant, subject always to the liens of any Security Instrument.

Section 11.02 Investment Tax Credit. Landlord and Tenant hereby elect and agree that Tenant shall be entitled to any investment tax or similar credit, or grants, with respect to the Equipment now or hereafter authorized by the Internal Revenue Code, or other legislation, and Landlord agrees to take all reasonable action necessary to make such investment tax election and obtain the benefits for same for Tenant at Tenant's request and expense, and to obtain such grants.

Section 11.03 Conveyance of Title. In the event of any purchase of the Equipment or any portion thereof by Tenant pursuant to any provision of this Lease, Landlord shall convey title by a quitclaim bill of sale to Tenant subject to Permitted Encumbrances and other encumbrances and interests thereafter created by or for the account of Tenant. Landlord shall not otherwise be obligated to convey any better title to Tenant than existed on the first day of the Term of this Lease; provided, however, that Landlord acknowledges and agrees that Landlord has no authority or right to encumber the Equipment or Landlord's interest therein by any encumbrances other than (i) the Permitted Encumbrances, (ii) those which Tenant has subsequently requested to be placed, or caused to be placed, against the Equipment, (iii) those which Tenant has subsequently approved in writing to be placed against the Equipment, and (iv) those for which Tenant is responsible under the terms and provisions of this Lease and which arise out of any default by Tenant in the performance of its obligations under this Lease. Any other conveyance or encumbrance (other than those described in clauses (i) through (iv) inclusive of the preceding sentence) by or for the account of Landlord shall in all respects be subject and subordinate to Tenant's leasehold interest as created under this Lease and to Tenant's right to acquire title to the Equipment, free and clear of any such other conveyances or encumbrances, pursuant to Tenant's exercise of its option to purchase the Equipment pursuant to this Article XI; and any such other conveyance or encumbrance, and any rights or liens created thereunder or arising therefrom shall be automatically terminated, released and extinguished by the conveyance of the Equipment to Tenant by Landlord by a quitclaim bill of sale as provided for in this Section 11.03, and thereafter all such conveyances, encumbrances, rights or liens shall be void and of no further effect. Tenant shall accept such title, subject, however, to (i) any liens, encumbrances, charges, exceptions, and restrictions not created or caused by Landlord or Landlord's Agents, and (ii) any Legal Requirements.

Section 11.04 Survival of Rights. All provisions of this Article XI shall survive the expiration of the Term of this Lease (including any extensions therefore) or the termination of this Lease pursuant to any provision hereof (including, but not limited to, any termination pursuant to Article IX or Article X).

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

Section 12.01 Recording. This Lease or a memorandum thereof shall be executed and may be recorded in the proper public office for the recordation of deeds in Knox County, Tennessee.

Section 12.02 Waivers. No waiver of any breach shall affect or alter this Lease or constitute a waiver of any other then-existing or subsequent breach.

Section 12.03 Remedies. Subject to the express provisions and limitations of this Lease, each right, power, and remedy of Landlord or Tenant provided for in this Lease shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers, and remedies are sought to be enforced. The exercise of any one or more of the rights, powers, or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all such other rights, powers, or remedies.

Section 12.04 No Claims against Landlord. Except as provided herein, nothing contained in this Lease shall constitute any consent or request by Landlord, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Equipment or any part thereof, nor give Tenant any right, power, or authority to contract for, or permit the performance of, any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any personal claim against Landlord.

Section 12.05 Governing Law; Entire Agreement. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee, and, together with the action taken by Landlord granting the PTIP incentives with respect to the Project set forth in the minutes of the meeting of the Board of Directors of Landlord held on January 10, 2023, and the Application (collectively, the “Related Documents”), expresses the entire agreement of the parties hereto. No party hereto shall be bound by any agreement or representation to any other party which is not expressly set forth in this Lease, the Related Documents, or Reports.

Section 12.06 Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 12.07 Notice. All notices, certificates, demands, requests, consents, approvals, and other similar instruments under this Lease shall be in writing and shall be deemed to have been properly given and received if (i) delivered in person, (ii) sent by United States certified or registered mail, postage prepaid, or (iii) sent by recognized overnight service providing proof of delivery, to Landlord or Tenant, as applicable at such addresses as either may have designated from time to time in writing. At the commencement of this Lease:

Landlord’s address is 17 Market Square #201, Knoxville, Tennessee 37902 with a mandatory copy to counsel for the Board, R. Christopher Trump, Egerton, McAfee, Armistead & Davis, P.C., 900 South Gay Street, 14<sup>th</sup> Floor, Knoxville, Tennessee 37902;

Tenant's address is 1415 Neal St., Cookeville, TN 38501, Attn: Rhonda Otto, with a mandatory copy to Averitt Express's advisor, John Polizzano, Rockefeller Center, 600 5th Avenue, 9th Floor, New York, New York 10020.

Delivery in person shall be effective on the date of delivery. Delivery by mail shall be effective three (3) days from the date of posting in the United States Mail. Delivery by recognized overnight courier shall be effective the next business day following the date the notice is delivered to the recognized overnight courier for the delivery.

Section 12.08 Signs. At the request of Landlord and the expense of Tenant any development or construction signs located at or on the Premises shall read: "The Industrial Development Board of the County of Knox has provided financial incentives and other assistance for this Project."

Section 12.09 No Default Certificates. Landlord and Tenant agree at any time and from time to time, upon not less than twenty (20) days prior written request by the other party or by any Lender, or by any permitted sublessee(s), to execute, acknowledge, and deliver a statement in writing certifying that this Lease is in full force and effect and that they know of no default (or if there is a default, the grounds therefor) and the date to which the Base Rent and other charges have been paid in advance, if any.

Section 12.10 Headings. Headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof.

Section 12.11 Successors. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 12.12 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signature of any party on a signature page intended by such party to be appended to a counterpart shall be deemed to be a signature to, and may be appended to, any counterpart, and the signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

Section 12.13 Amendments. This Lease may be modified or amended only by an instrument in writing signed by the parties (or their respective successors or assigns).

Section 12.14 Landlord's Limitation of Liability - No Personal Liability. Anything in this Lease to the contrary notwithstanding, Tenant agrees that it shall look solely to the Equipment for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord. No other property or assets of Landlord shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies hereunder.

### **ARTICLE XIII ENVIRONMENTAL MATTERS**

Section 13.01 Tenant's Environmental Representations and Warranties. Tenant represents, warrants and covenants to Landlord and its successors and assigns that:

(a) In connection with the ownership, use, maintenance or operation of the Premises and the conduct of the business related thereto and therein, Tenant is not in violation of, and has not violated and will not violate, any applicable federal, state, county or local statute, law, regulation, rule, ordinance, code, license or permit relating to environmental matters, including but not limited to the Comprehensive

Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act of 1976 as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq., the Clean Air Act of 1986, as amended, 42 U.S.C. § 7401, et seq., the Clean Water Act of 1977, as amended, 33 U.S.C. § 1251, the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, et seq., the National Environmental Policy Act of 1975, 42 U.S.C. § 4321, the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300, et seq., the Emergency Planning and Right-to-Know Act of 1982, 42 U.S.C. § 11001, et seq., the Tennessee Water Quality Control Act, Tenn. Code Ann. § 69-3-101, et seq., the Tennessee Air Quality Act, Tenn. Code Ann. § 68-201-101, et seq., the Tennessee Solid Waste Disposal Act, Tenn. Code Ann. § 68-211-101, et seq., the Tennessee Hazardous Waste Management Act, Tenn. Code Ann. § 68-212-101, et seq., the Tennessee Petroleum Underground Storage Tank Act, Tenn. Code Ann. §68-215-101, et seq., or any other Legal Requirements regulating, relating to or imposing liability or standards of conduct concerning any petroleum, petroleum byproduct (including, but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity), natural or synthetic gas, or hazardous, toxic, radioactive or any other regulated substance, product, material, waste, pollutant or contaminant which are defined as “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” or other similar designations by Legal Requirements (hereinafter “Hazardous Waste”), as may now or at my time hereafter be in effect (hereinafter “Environmental Laws”).

(b) Without limiting the generality of Section 13.01, Tenant represents and warrants to Landlord, its successors and assigns that:

(i) Prior to the conveyance of the Equipment to Landlord, Tenant has not (except in strict compliance with all applicable Environmental Laws) received, handled, used, stored, treated, shipped or disposed of any Hazardous Waste on the Premises; and subsequent to the conveyance of the Equipment to Landlord, Tenant will (and will require any permitted sublessee of the Premises) at all times receive, handle, use, store, treat, ship and dispose of all Hazardous Waste in strict compliance with all applicable Environmental Laws, and will continue to do so during the Term of this Lease and any extension thereof.

(ii) Tenant has delivered (or caused to be delivered) to Landlord a copy of that certain Phase I Environmental Site Assessment dated [\_\_\_\_\_, 20\_\_ prepared by \_\_\_\_\_] for Tenant (the “Phase I Report”) concerning the environmental condition of the Premises. Except as may be shown in the Phase I Report, Tenant has no knowledge of or information regarding any Hazardous Waste on the Premises.

(iii) There are no violations of any Environmental Laws requiring any work, repairs, construction or capital expenditures with respect to the Premises, and Tenant has no knowledge or information, nor has Tenant received any notice of any such violations.

(iv) Other than matters disclosed in the Phase I Report, Tenant is not aware of any of the following circumstances or events related to the presence of Hazardous Wastes at, on, or near the Premises:

A. any release into the environment, deposit, discharge, placement, or disposal of Hazardous Wastes at, on, or near the Premises, or the use of the Premises at any time by any person or entity as a landfill or a waste disposal site.

B. any violation of any Environmental Laws relating to the Premises or the use of the Premises; any writs, injunctions, decrees, orders or judgments outstanding



relating to the Premises or the use of the Premises in violation of Environmental Laws; any lawsuits, claims, proceedings or investigations pending or threatened relating to the ownership, use, maintenance or operation of the Premises in violation of Environmental Laws; or any basis for such lawsuits, claims, proceedings or investigations being instituted or filed.

C. monitoring wells for monitoring Hazardous Waste; underground storage tanks; PCB contamination from any power transformer, capacitor, or any other source; or asbestos containing material.

D. any fact or circumstance that may give rise to any future civil, criminal, or administrative proceedings against it relating to Hazardous Waste involving the Premises.

Section 13.02 Tenant's Continuing Responsibility for Environmental Matters.

(a) Tenant covenants at its sole cost and expense, to remove or take remedial action required by any Environmental Law with regard to any Hazardous Waste released to the environment at, on, or from the Premises while under Tenant's possession and control during the Term of this Lease or any extension thereof.

(b) No removal or remedial action shall be taken except after reasonable advance written notice to Landlord; provided, however, that no notice shall be required if immediate action is required in order to comply with the requirements of any Legal Requirements or if immediate action would diminish the extent of any environmental problem or hazardous condition.

(c) Tenant shall indemnify Landlord for any action taken by Tenant, in accordance with Section 13.03 hereof to Landlord's satisfaction.

(d) Tenant shall at all times retain any and all liabilities arising from the handling, treatment, storage, transportation or disposal of any Hazardous Waste by Tenant or by any of Tenant's contractors.

Section 13.03 Tenant's Indemnification.

(a) Tenant shall indemnify and hold Landlord and its officers, directors, agents, counsel and employees harmless from and against any and all liabilities, losses, claims, penalties, damages (including, without limitation, consequential damages, interest, penalties, fines and monetary sanctions), and costs, and reasonable attorneys' and consultants' fees and expenses, court costs and all other out-of-pocket expenses incurred or suffered by Landlord by reason of, resulting from, or in connection with, or arising in any manner whatsoever out of the following ("Environmental Claims"):

(i) the breach of any warranty or covenant or the inaccuracy of any representation of Tenant contained or referred to in this Article XIII.

(ii) any violation or breach by Tenant or the Premises of any Environmental Laws, or the violation or breach of any obligations imposed on Tenant or the Premises under any Environmental Laws;

(iii) to the extent arising out of, or relating to Tenant or the Premises, any of the following: (A) pollution or contamination of the environment; (B) handling, treatment, storage, disposal, or transportation of Hazardous Waste; (C) exposure to Hazardous Waste; (D) the

manufacture, processing, distribution in commerce, use, or storage of Hazardous Waste; (E) injury to or death of any person or persons directly or indirectly connected with Hazardous Waste on, under, over, or transported or released to or from the Premises or any portion thereof; or (F) contamination of any property caused by Hazardous Waste on, under, over, or transported or released to or from the Premises or any portion thereof;

(iv) the failure by Tenant, or any other party directly or indirectly connected with the Premises, or any portion thereof, to obtain, maintain, or comply with any permit, license, approval, or other authorization with respect to any activities, operations, or businesses conducted on or in relation to the Premises, or any portion thereof, required under any applicable Environmental Laws; or

(v) the presence or existence of Hazardous Waste on, under, over, or released or transported from the Premises, or any portion thereof,

Landlord shall be entitled to conduct its own investigation in connection therewith and provide its own defense and charge Tenant with its reasonable and actual expense incurred in connection therewith. The term "Environmental Claim" also includes (i) the costs of removal of any and all Hazardous Waste from all or any portion of the Premises, (ii) costs required to take necessary precautions to protect against the release of Hazardous Waste on, in, under, or affecting the Premises, or any portion thereof, and (iii) costs incurred to comply, in connection with all or any portion of the Premises or any surrounding areas affected by Hazardous Waste on, under, over, or transported or released to or from the Premises, with all applicable Environmental Laws.

(b) All representations, warranties, covenants, agreements and indemnities of Tenant contained in this Article XIII shall survive the Term of this Lease or any extensions hereof and the consummation of the transactions contemplated in this Lease, and shall not be affected by an investigation by or on behalf of Tenant or by any information Tenant may have or obtain with respect thereof.

Section 13.04 Cost Benefit Analysis. Pursuant to Tenn. Code Ann. § 7-53-305(b), the Cost Benefit Analysis created in accordance with the PTIP is attached hereto as Exhibit E.

*[Signatures on Following Page]*

[SIGNATURE PAGE FOR LEASE AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

**AVERITT EXPRESS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, a Notary Public in and for said county and state, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the \_\_\_\_\_ of **AVERITT EXPRESS, INC.**, the within named bargainer, a Tennessee corporation, and that he/she as such officer being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said company by himself/herself as such \_\_\_\_\_.

Witness my hand and official seal at office in the aforesaid county, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SIGNATURE PAGE FOR LEASE AGREEMENT]

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF KNOX**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF TENNESSEE  
COUNTY OF KNOX**

Before me, the undersigned authority, a Notary Public in and for said county and state personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the \_\_\_\_\_ of **The Industrial Development Board of the County of Knox** within named bargainor a corporation, and that he/she as such officer being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said Public nonprofit corporation by himself/herself as such \_\_\_\_\_.

WITNESS my hand, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT A  
PERSONAL PROPERTY DESCRIPTION**

**[see attached]**

**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

**EXHIBIT C**

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF KNOX  
PROPERTY TAX INCENTIVE PROGRAM (PTIP)**

***PTIP COMPLIANCE REPORT***

Please complete the following contact information:

Company Name: \_\_\_\_\_

Local Contact: \_\_\_\_\_

Title: \_\_\_\_\_

Local Address: \_\_\_\_\_

\_\_\_\_\_

Local Phone: \_\_\_\_\_

Local Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Person Responsible for completing Report (If different from the local contact)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Please submit completed and signed materials to:  
The Development Corporation of Knox County  
Attn: Todd Napier  
17 Market Square, #201  
Knoxville, TN 37902-1405

**DEADLINE:** \_\_\_\_\_

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF KNOX  
PROPERTY TAX INCENTIVE PROGRAM (PTIP)**

**PTIP REPORT/COMPLIANCE REPORT**  
as of \_\_\_\_\_, 20\_\_

**Project Data:**

Recipient of Property Tax Incentive (Company Name): \_\_\_\_\_

Address of Property Subject to Payment in Lieu of Tax Transaction (PILOT):

\_\_\_\_\_

\_\_\_\_\_

**Capital Investment:**

Identify the total Capital Investment in the Project as of \_\_\_\_\_, 20\_\_.

Purpose	Amount
Land Acquisition	\$ _____
Site Development Costs	\$ _____
Building Improvements	\$ _____
Machinery and Equipment	\$ _____
Air Quality/Pollution Control Equipment	\$ _____
Other (please describe)	\$ _____
Total	\$ _____

Capitalized terms not specifically defined will have the meanings assigned to them in the Lease Agreement between the IDB and the Company and in the Policies and Procedures of the PTIP.

**Employee Report / Job Creation & Wages:**

List the following information for all new employees of the Company currently holding positions as a result of the Project. In a separate document list part-time, contract, or seasonal workers who reside in Knox County or a contiguous county and the gross salaries of employees who reside in Knox County or a contiguous county. (These jobs shall be reported in job classifications as required by the Board.) Also indicate the total on-site employment as of \_\_\_\_\_, 20\_\_.



<b>Position (job classification or title)</b>	<b>Number of Employees (full time equivalent)</b>	<b>Annual Wage (salary without benefits)</b>
TOTALS:		

**TOTAL ON-SITE EMPLOYMENT:** \_\_\_\_\_

**Vendor Support Report:**

The annual and cumulative gross dollars spent locally on supplier and professional service contracts, to demonstrate the amounts by contract awarded and performed by Knox County Persons.

<b>Knox County Suppliers (by type)</b>	<b>Calendar Year Expenditures</b>	<b>Cumulative Expenditures for PILOT Term</b>

**Minority/Small Businesses:**

The dollar amount of contracts awarded to Minority/Small Business for the term of the PILOT.

<b>Minority/Small Business by Type</b>	<b>Amount of Contract</b>
Total	

**Insurance Requirements:**

In accordance with the Lease Agreement provide a certificate of insurance showing insurance coverage in the proper amounts and listing The Industrial Development Board of the County of Knox as an additional insured on all liability policies. The form of the Certificate must comply with the

Lease Agreement. It should provide an obligation on the part of the insurer to provide 30 days' notice of cancellation or a material change in coverage.

The following language normally contained in Accord Certificate 25-S is NOT acceptable:

- (i) the insurer "will endeavor to mail notice to "the certificate holder""; and
- (ii) "This certificate is issued as a matter of information only and confers no rights upon the certificate holder. The certificate does not amend, extend, or alter the coverage afforded by the policies below."

The Company may provide an insurance binder, a summary of declarations showing the coverage and the notice requirements, or a copy of the actual policies.

**CERTIFICATE**

The undersigned hereby represents, warrants and certifies to The Industrial Development Board of the County of Knox ("IDB") as follows:

- (i) The undersigned is the incumbent holder of the office or official position set forth below and is authorized by the Company to execute and deliver this Compliance Report to the IDB;
- (ii) the undersigned has examined the information contained in this Compliance Report and the accompanying Employee Listing and accompanying Capital Improvements Invoice Listing, if applicable, and the information contained therein is true, complete and accurate as of the date set forth below;
- (iii) no Event of Default has occurred under the Lease Agreement between the Company and the IDB, or would have occurred but for the giving of notice or the passage of time, or both;
- (iv) no circumstance exists that could serve as the basis for an Event of Default referred to above; and
- (v) the Company has performed all of its obligations under the Lease Agreement between the Company and the IDB, as amended, that are required to be performed by it at or prior to the date set forth below.

\_\_\_\_\_  
Print name and title of authorized Company representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

STATE OF TENNESSEE  
COUNTY OF KNOX

Before me, the undersigned authority, a Notary Public in and for said county and state, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself/herself to be the \_\_\_\_\_ of \_\_\_\_\_, the within named bargainor, a \_\_\_\_\_, and that he/she as such \_\_\_\_\_ being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said \_\_\_\_\_ by himself/herself as such \_\_\_\_\_.

Witness my hand and official seal at office in the aforesaid county, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

Notary Public  
My Commission expires: \_\_\_\_\_

**Please submit completed and signed materials to:**  
The Development Corporation of Knox County  
Attn: Todd Napier  
17 Market Square, #201  
Knoxville, TN 37902-1405  
**For assistance call: 865-546-5887**

**EXHIBIT D**

**PTIP POLICIES AND PROCEDURES**

**[SEE ATTACHED]**

**EXHIBIT E**  
**COST BENEFIT ANALYSIS**  
**[SEE ATTACHED]**

**EXHIBIT F**

**BOARD OF EQUALIZATION REPORT**

**REPORT OF PROPERTIES OWNED BY HEALTH AND EDUCATIONAL, INDUSTRIAL DEVELOPMENT AND SPORTS AUTHORITY BOARDS**  
(Rev. 2013)

(Note: late fee due after October 1)

Tennessee law requires businesses leasing property from certain public boards and authorities to annually report to the State Board of Equalization concerning the leased properties.

<p><b>GENERAL INFORMATION</b>      County: _____ Year: _____</p> <p>Owner name: _____</p> <p>Lessee name and address: _____</p> <p>_____</p>	<p>This property is owned in the name of (select one):</p> <p><input type="checkbox"/> Industrial Development Board (T.C.A. §7-53-301)</p> <p><input type="checkbox"/> Health, Housing &amp; Educational Facility Board (T.C.A. §48-101-307)</p> <p><input type="checkbox"/> Sports Authority Board (T.C.A. §7-67-108)</p>
--	--

Has lessee name changed since last filing? Yes \_\_\_ No \_\_\_

Person filing this report:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**1. PROPERTY LISTING:** List all the real and personal property owned by the ID/H&ED Board which is leased or subleased by this lessee as of last January 1. List each property separately if it has a separate parcel or account number in the assessor's records:

A. _____	State the city where the property is located	Assessor's id. no.
B. _____		
C. _____		

D. \_\_\_\_\_  
 E. \_\_\_\_\_

2. PROPERTY DETAIL: For each of the above properties, provide the following information:

Item	EST. VALUE	DATE1	TERM	RENT	PILOT/CITY	PILOT/CO.	DATE2	L/H TAX (IF ANY)
A								
B								
C								
D								
E								

EST. VALUE: Good faith estimate of value DATE1: Lease date TERM: Lease term (mos./yrs.)

RENT: Amount of stated rent per the lease.

PILOT/CITY: Annual payments in lieu of property taxes payable to or for the benefit of a city

PILOT/COUNTY: Annual payments in lieu of property taxes to or for the benefit of a county

DATE2: Date the property is scheduled to return to the regular tax rolls

L/H TAX: If the county assessor has recorded a positive value for the leasehold interest, state the amount of tax due (confirm with county assessor).

*This report must be completed and submitted to the State Board of Equalization annually by October 1. The report is late if postmarked after October 1. Late filed reports must be accompanied by a late fee of \$50. The report may be submitted electronically through our web site at [www.comptroller.state.tn.us](http://www.comptroller.state.tn.us).*

A copy of this report must be filed with the county assessor of property by Oct. 15. Has a copy of this report been filed with the county assessor?  
 Yes \_\_\_ No \_\_\_

For questions, call or write the Board or visit our website at <http://www.comptroller.state.tn.us/sb/faq.htm>.

State Board of Equalization  
 9<sup>th</sup> Floor, W.R. Snodgrass TN Tower  
 312 Rosa Parks Avenue  
 Nashville, Tennessee 37243-1102  
 (615)401-7883

## LEASE AGREEMENT

This **LEASE AGREEMENT** (this “Lease”), is made and entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2023, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF KNOX**, a public nonprofit corporation organized under the laws of the State of Tennessee, (“Landlord” or “IDB”), **AVERITT EXPRESS, INC.**, a Tennessee corporation (“Averitt Express”) and **AVERITT PROPERTIES, INC.**, a Tennessee corporation (“Tenant”).

### RECITALS

Landlord is a public nonprofit corporation organized pursuant to the provisions of Sections 7-53-101 to 7-53-316, inclusive, of the Tennessee Code Annotated, as amended, and is authorized thereunder to acquire, own, lease and dispose of certain real and personal properties, in order to (i) maintain and increase employment, (ii) promote and develop trade, new industry, and commerce, and (iii) induce manufacturing, industrial, governmental and commercial ventures to remain or locate in the State of Tennessee.

In connection therewith and in response to Averitt Express’s application and request under Landlord’s Property Tax Incentive Program, Landlord has acquired the Real Property (as defined below). Averitt Express submitted an Application under the Property Tax Incentive Program, and Tenant has acquired the Real Property and transferred the Real Property to, or caused the Real Property to be transferred to, Landlord by Special Warranty Deed dated [\_\_\_\_\_, 20\_\_]. Tenant will be the primary tenant under this Lease and improving the Real Property, with Averitt Express operating its business on the Premises under the terms of the Averitt Express Lease (as defined below).

To induce Averitt Express to expand its Knoxville operations and construct a new freight management/freight distribution facility in Knoxville, Tennessee, to induce Tenant to build a new 25,700 square foot freight management/freight distribution facility on the Real Property at a cost of approximately \$10,500,000, to induce Averitt Express to invest at least \$9,500,000 in Equipment on the Premises and employ at least 238 employees at the facility, all as described in the Application, Landlord has acquired the Real Property from Tenant and authorizes Tenant to invest at least \$20,000,000 in Capital Investments and Equipment on the Real Property and authorizes Averitt Express to employ at least 238 employees in accordance with Averitt Express’s requirements. Landlord will lease the Real Property to Tenant on the terms and conditions of this Lease.

NOW, THEREFORE, LANDLORD AND TENANT AGREE AS FOLLOWS:

Landlord, for and in consideration of the payments stipulated herein to be made by Tenant, the covenants and agreements hereinafter contained and to be kept and performed by Tenant, does hereby demise, lease, and let unto Tenant, and Tenant hereby hires, leases and rents from Landlord, for the Term and upon the conditions stated herein, the Real Property and Improvements.

### **ARTICLE I DEFINITIONS**

Section 1.01. Definitions. In addition to words and terms defined in the introductory paragraphs and the Recitals, the following terms and variations thereof have the meanings specified or referred to in this Article I:



“**Act**” means Sections 7-53-101 to 7-53-316, inclusive, of the Tennessee Code Annotated, as amended.

“**Additional Rent**” shall mean all amounts payable by Tenant under this Lease other than Base Rent, including, without limitation, those amounts described in Section 4.04.

“**Application**” means the Application for PILOT executed by Averitt Express as included in the Board Packet distributed at Landlord’s meeting on January 10, 2023, as the same may be amended with the written consent of Landlord.

“**Authorized Tenant Representative**” means Tenant’s Chief Executive Officer, President, or other executive acceptable to Landlord.

“**Averitt Express Lease**” means that certain Lease Agreement dated [\_\_\_\_\_, 20\_\_\_], by and between Tenant and Averitt Express.

“**Base Rent**” has the meaning provided in Section 4.03.

“**Capital Investment**” means capital expenditures of Tenant and/or Averitt Express, including land acquisition costs, construction costs, site preparation work, other tax producing improvements to the Real Property, and Equipment purchases.

“**Commencement Date**” means the earlier to occur of (a) the date the certificate of occupancy is issued for the Improvements or (b) [\_\_\_\_\_, 20\_\_\_].

“**Compliance Report**” has the meaning provided in Section 5.06(b).

“**Default**” means the happening of any occurrence which, together with the giving of any required notice or the passage of any required period of time, or both, would constitute an Event of Default.

“**Determination Date**” has the meaning set forth in Section 4.02.

“**Determination Date Compliance Points**” has the meaning provided in Section 4.02(a).

“**Environmental Claims**” has the meaning provided in Section 13.03(a).

“**Environmental Laws**” has the meaning provided in Section 13.01(a).

“**Equipment**” means the equipment, machinery, and other personal property, which Averitt Express may utilize on the Premises for the Project.

“**Event of Default**” has the meaning provided in Section 9.01.

“**Governmental Authority**” means the United States, the State of Tennessee, any political subdivision of either, any court of either of them, and any agency, department, commission, board, bureau or instrumentality of either of them.

“**Hazardous Waste**” has the meaning provided in Section 13.01(a).

**“Improvements”** means the improvements constructed or to be constructed upon the Real Property and affixed thereto, as provided in the Application, including, without limitation, an approximate 25,700 square foot freight management/freight distribution to be built on the Real Property.

**“Jobs”** means permanent full time and full time-equivalent positions of employment with Averitt Express; the minimum number of Jobs for purposes of this Lease shall be two hundred and thirty-eight (238) positions at the Project, provided, however, that in determining the number of Jobs no more than two hundred and eleven (211) such positions shall be existing positions retained and relocated from existing locations of Averitt Express located in Knox County, Tennessee. The parties intend that at least twenty-seven (27) positions shall be new positions to Knox County, Tennessee, and that no more than two hundred and eleven (211) positions shall be retained and relocated from Averitt Express’s existing offices in Knoxville, Tennessee; provided however, the term “new Jobs” will include jobs created before the Commencement Date if such job is related to the Project and will be located at the Project after its operations commence. Employees who work at least 36 hours per week and are eligible for full benefits, as provided from time to time during the Term, will be included in any calculation of Jobs under this Lease.

**“Landlord’s Agents”** has the meaning provided in Section 5.05(b).

**“Lease Compliance Information”** has the meaning provided in Section 5.06(a).

**“Legal Requirement”** means any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty and any court order applicable to the Premises.

**“Lender”** means any lending institution which has extended credit to Tenant that is secured by a Security Instrument.

**“Measurement Period”** means the time period covering the three (3) years after the Commencement Date.

**“Municipality”** has the meaning provided in Section 6.02(b).

**“Organizational Documents”** means with respect to any particular entity, (a) if a corporation, the articles or charter of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles of organization and operating agreement; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all equity holders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equity holders of any Person; and (g) any amendment or supplement to any of the foregoing.

**“Permitted Encumbrances”** means the encumbrances on the Real Property as described in Exhibit B, which is attached hereto and incorporated herein.

**“Person”** means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

**“Phase I Report”** has the meaning provided in Section 13.01(b)(ii).

**“Plans and Specifications”** means the plans and specifications for the construction of the Improvements prepared by Tenant and submitted to Landlord, together with any addenda thereto and modifications thereof.

**“Premises”** means the Real Property, together with the Improvements on such Real Property and the Equipment, all whether located on the Real Property at the time of the execution of this Lease, or at any time thereafter.

**“Project”** means the completed Improvements by Tenant, the Equipment, the conveyance of the Real Property to Landlord, the leasing of the Real Property by Tenant from Landlord, and the work of constructing the Improvements on the Real Property, as well as the expenditure of the Capital Investment, and the creation and maintenance and/or retention of the Jobs and the Wages pursuant to the terms of this Lease and the Application.

**“PTIP”** means Landlord’s Property Tax Incentive Program and the payments in lieu of taxes to be paid in accordance with Section 6.02 hereof.

**“PTIP Policies and Procedures”** means the Policies and Procedures of Landlord with regard to the PTIP, a copy of which is attached hereto as Exhibit D and incorporated herein by reference, as the same may be modified from time to time by Landlord.

**“Purchase Option”** has the meaning provided in Section 11.01.

**“Real Property”** means the real property generally referred to as 10207 Cogdill Road, Knoxville, Tennessee 37932, Parcel IDs 131-08801, 131-08001, 131-081, 131-08101, and 131-082, as further described in Exhibit A attached to this Lease and the Improvements.

**“Related Documents”** has the meaning provided in Section 12.06.

**“Report”** has the meaning provided in Section 5.06(a).

**“Security Instrument”** means any deed of trust, security agreement, assignment, pledge, hypothecation, conditional sale agreement, chattel paper, financing statement or other instrument or document encumbering the Real Property or Averitt Express’s leasehold interest therein, all as amended from time to time (not including the Averitt Express Lease).

**“Tax Payment”** has the meaning provided in Section 6.02(a)(i).

**“Tax Year”** has the meaning provided in Section 6.02(a)(ii).

**“Tenant”** means the legal entity or natural person identified in the first paragraph of this Lease, or any permitted transferee or assignee pursuant to Section 3.06.

**“Tenant Documents”** means this Lease and such deeds, bills of sale, assignments, subleases, estoppel certificates, subordination agreements, nondisturbance and attornment agreements and other instruments and documents evidencing and providing for the transactions and obligations contemplated herein, as the same may be amended, modified and supplemented from time to time.

“**Term**” means the term of this Lease, as provided in Section 4.01.

“**Wages**” means wages paid by Averitt Express to its employees on an annual basis.

Section 1.02. Usage.

(a) In this Lease, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Lease, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) “hereunder,” “hereof,” “hereto,” and words of similar import shall be deemed references to this Lease as a whole and not to any particular Article, Section or other provision hereof;

(vii) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;

(viii) “or” is used in the inclusive sense of “and/or”;

(ix) with respect to the determination of any period of time, “from” means “from and including” and “to” means “to but excluding”; and

(x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) This Lease was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Lease to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

(c) Any capitalized terms not specifically defined herein shall have the meanings assigned to them in the Application.

**ARTICLE II**  
**CONSTRUCTION AND/OR RESTORATION**

Section 2.01 Capital Investment; Construction. Tenant has or shall make the Improvements provided in the Application and shall cause the Project to be undertaken and the Improvements to be completed at its expense substantially in accordance with the Plans and Specifications and the Application within the Measurement Period. In order to accomplish the construction of the Improvements, Tenant is hereby authorized to execute in its own name, without reference to Landlord, all necessary contracts, agreements, purchase orders, and related documents. In no event shall Landlord be liable under any such contracts, agreements, purchase orders, and other related documents. For purposes of this Agreement, the term “completed” shall mean the issuance by applicable Governmental Authorities of a certificate of occupancy with respect to each element of the Improvements.

Section 2.02 Rights against Contractors, Etc.

(a) Tenant agrees, pursuant to the authority and power granted in the preceding paragraph, to proceed with the construction, renovation and equipping of the Improvements (not including the purchase or installation of the Equipment) with due diligence, in a good and workmanlike manner and in compliance with all Legal Requirements.

(b) Upon completion of the Improvements and the request of Tenant, Landlord will assign to Tenant (if any of the following inure to the benefit of Landlord) (i) all warranties and guaranties of any and all contractors, subcontractors, suppliers, and architects for the furnishing of labor, materials or supervision in connection with the Improvements or any part thereof, and (ii) any and all rights or causes of action against any of the foregoing Persons.

(c) If any contractor or subcontractor breaches any contract with Tenant or Tenant’s contractor related to the Improvements, Tenant may, at its expense, either in its own name or in the name of Landlord, prosecute or defend any action or proceeding related to the construction and equipping of the Project or take any other action involving any such contractor, subcontractor, surety, or supplier that Tenant deems reasonably necessary. Landlord will cooperate fully with Tenant and, at Tenant’s expense, will take all action necessary to effect any necessary substitution of Tenant for Landlord in such action or proceeding related to the construction and equipping of the Project. Tenant shall indemnify Landlord from all claims, damages, liability, attorneys’ fees, and court costs, if Tenant prosecutes or defends any such action or proceeding or takes any other action in Landlord’s name. Landlord shall pay to Tenant any net amounts recovered and actually received by Landlord as damages, refunds, adjustments, or otherwise in connection with the foregoing.

Section 2.03 Agency Appointment. Landlord hereby makes, constitutes and appoints Tenant as its true and lawful agent, and Tenant hereby accepts such agency, (a) to construct the Improvements, (b) to make, execute, acknowledge and deliver any contracts, order, receipts, writings and instructions, either in Tenant’s name or as the stated agent for Landlord, with any other Person, and in general to do all things which may be requisite or proper, all for the construction of the Improvements with the same powers and with the same validity as Landlord could do if acting in its own behalf, (c) pursuant to the provisions of this Lease, to pay all fees, costs and expenses incurred in the construction of the Improvements, and (d) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever that may be due, owing and payable to Landlord under the terms of any contract, order, receipt, writing or instruction in connection with the construction of the Improvements, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security. So long as an Event of Default has not occurred, this appointment of Tenant to act as agent and all authority hereby conferred

are granted and conferred irrevocably to the completion date of the Project and thereafter until all activities in connection with the construction and equipping of the Project shall have been completed, and shall not be terminated prior thereto by any act of Landlord or of Tenant or by operation of law.

### ARTICLE III TERM AND CONCURRENT AGREEMENTS

Section 3.01 Capital Investment, Jobs and Wages. Averitt Express ratifies its representations made in the Application, agrees to comply with all terms and conditions of the Application, and acknowledges that it has represented the following, among other things, in the Application:

(a) That the Project will result in the creation/retention during the Measurement Period, and maintenance throughout the Term following the Measurement Period, of at least **238** Jobs paying Wages, on average of **\$75,000.00** per new Job; and

(b) That Tenant has previously acquired the Real Property, will make Improvements to the Real Property in an amount equal to at least **\$10,500,000**, and Averitt Express, in conjunction with the Improvements to the Real Property made by Tenant, will make other Capital Investment in the Project of at least **\$9,500,000** during the Measurement Period, for a total investment of **\$20,000,000**;

(c) All representations and warranties in the Application shall be deemed representations and warranties of Averitt Express under this Lease.

provided, however, that Averitt Express shall not be deemed to have breached these covenants, warranties and representations as to Jobs, Wages, and Capital Investment, unless an Event of Default exists pursuant to Section 9.01(b).

Section 3.02 Use of Project and Compliance with Laws. Tenant shall promptly comply, cause compliance with, or obtain waivers of, all Legal Requirements applicable to the Real Property and Improvements, at no expense to Landlord, whether or not the same are foreseen or unforeseen, ordinary or extraordinary. Tenant shall throughout the term of this Lease cause the Real Property and Improvements to be used in a manner that will constitute a “project” within the meaning of Section 7-53-101 of the Act. Tenant represents to Landlord that during the Term it will complete and use the Project solely for the purpose of expanding Averitt Express’s operations in Knox County and building a new 25,700 square foot freight management/freight distribution and make the Capital Investment, all as set out and defined in the Application. Any proposed changes in the use and operation of the Real Property and Improvements from the terms of this Agreement must be submitted to Landlord for advance written approval. Pursuant and subject to the provisions of Article IX of this Lease, Landlord reserves the right to terminate this Lease if the use of the Real Property and Improvements becomes materially inconsistent with the representations summarized above and as stated in the Application; but no such termination shall be effective unless Landlord shall first give Tenant not less than ninety (90) days’ notice of intent to terminate and Tenant shall not have cured such default within such ninety (90) day period.

Section 3.03 Contesting Laws. Tenant shall not be required to comply or cause compliance with the Legal Requirements referred to in Section 3.02, so long as Tenant shall give written notice to Landlord, and at its expense, shall contest the same or the validity thereof in good faith and in accordance with applicable law. Such contests may be made by Tenant in the name of Landlord or of Tenant, or both, as Tenant shall determine, and Landlord agrees that it will, at Tenant’s expense, cooperate with Tenant therein, as Tenant may reasonably request. At Landlord’s option, Tenant shall provide Landlord with such security

reasonably satisfactory to Landlord for the purpose of indemnifying Landlord from all claims, damages, liabilities, attorneys' fees, and court costs, if Tenant shall pursue any claim or right in Landlord's name.

Section 3.04 Landlord's Title to Real Property. Landlord has or will acquire title to the Real Property subject to the Permitted Encumbrances. Until such time as this Lease has been terminated after the occurrence of an Event of Default or otherwise, Landlord will not, without the prior written consent of Tenant, directly or indirectly create or consent to the creation or existence of any lien or encumbrance (other than as requested by Tenant in writing) upon the Real Property or Improvements or Landlord's interest therein, or convey title to the Real Property or Improvements in any manner whatsoever, except as otherwise provided herein or as requested or approved by Tenant in writing. Landlord will promptly consent to, and allow Tenant to place, any easements (including, but not limited to, the dedication of a portion or portions of the Real Property for public use) on the Real Property, which Tenant believes are necessary for the operation thereof. Landlord will promptly execute any and all documents reasonably requested by Tenant to grant such easements. The form and content of such documents shall be acceptable to Landlord and its counsel and shall provide that Landlord and its agents will not incur any obligations or liabilities as a result of granting and otherwise entering into such easements. Notwithstanding the foregoing sentence or any provision to the contrary in the documents granting any such easements, Tenant agrees to pay and perform any and all obligations and liabilities of the grantor or Landlord set forth in such documents and shall indemnify Landlord and hold Landlord harmless from and against any and all such obligations and liabilities.

Section 3.05 Additional Encumbrances: Subordination; Estoppel.

(a) Provided that no Event of Default shall have occurred hereunder, and provided that Landlord is notified in writing of the details of any proposed transaction prior to the closing of such transaction, Tenant shall have the right to encumber by one or more Security Instruments its right to use and occupy the Real Property and Improvements, or portions thereof. Any and all such encumbrances of Tenant's leasehold estate shall, however, at all times be subject to the fee interest of Landlord (unless subordinated to such encumbrances as hereinafter provided) and shall impose no personal liability on Landlord. Tenant shall indemnify Landlord against any losses, costs or expenses (including reasonable attorneys fees), which Landlord may incur as the result of executing any such encumbrance or subordination agreement requested by Tenant. Upon the execution and recordation of any Security Instrument, Tenant shall notify Landlord that such Security Instrument has been executed and delivered by Tenant, and Landlord shall also be furnished with the address of the Lender involved in such encumbrance, to which copies of notices are to be mailed. Landlord will thereafter contemporaneously mail to such Lender a duplicate copy of any and all notices in writing that Landlord may, from time to time, give or serve upon Tenant under this Lease. If a Lender requires Landlord to execute any certificate or other closing documents, Tenant shall be responsible to reimburse Landlord's actual expenses, costs, and reasonable attorneys' fees incurred in reviewing closing documents or otherwise expended by Landlord as a result of Tenant's transactions.

(b) Any Lender may, at its option, at any time before the rights of Tenant shall have been terminated, as provided for herein, pay any of the rent due hereunder or do any other act or thing required or permitted of Tenant by the terms hereof, or do any act or thing which may be necessary and proper to be done in the observance of the covenants and conditions hereof, in order to prevent the termination of this Lease or to exercise the option to purchase set forth in Section XI. All payments so made, and all things so done and performed, by such Lender shall be as effective to prevent a termination of the rights of Tenant hereunder as the same would have been, if done and performed by Tenant.

(c) Any Security Interest to be executed by Landlord at the request of Tenant shall include no-recourse provisions stating that Landlord shall incur no personal or individual liability whatsoever as a result of entering into the Security Instrument, and these provisions shall have no exceptions to, or carve-outs from, the no-recourse covenant. In addition, any lien, encumbrance, mortgage or security interest evidenced by the Security Instrument shall be subordinate in right and dignity to the lien in favor of Landlord securing Tenant's obligation to make the rent payments, the payments in lieu of taxes and other amounts due to Landlord under this Lease.

(d) If requested by Tenant, Landlord shall subordinate its fee interest in the Real Property and Improvements to any Security Instrument in favor of any Lender, and to the right, title and interest of any Lender in and to the Real Property and Improvements. The subordination shall be in the form and content reasonably requested by Tenant on behalf of such Lender, including, without limitation, the execution of a Security Instrument in favor of such Lender encumbering the fee interest of Landlord; provided, however, in the event of Landlord's execution of any such subordination or Security Instrument, Tenant agrees to indemnify Landlord against any losses, costs or expenses which Landlord may incur as a result of executing any such subordination or Security Instrument. Any such subordination or Security Instrument shall provide that Landlord shall incur no personal liability or obligation as a result of entering into the subordination or the Security Agreement.

Landlord acknowledges that, subject to the statutory lien for payments in lieu of taxes, the interests of a Lender in the Real Property and Improvements shall take priority at all times as necessary in order to protect and preserve the existence and priority of the collateral or security interest and/or lien rights of such Lender in and to the Real Property and Improvements, while at the same time preserving for such Lender the rights set forth herein and in Section 9.03 to cure any defaults by Tenant hereunder.

Section 3.06 Subletting and Assignment. Tenant shall not assign its interest in this Lease or sublet the Real Property and Improvements or any interest therein without the prior written consent of Landlord; provided, however, that Tenant may sublet the Real Property and Improvements to Averitt Express pursuant to the Averitt Express Lease. Any permitted assignment or subletting of the Real Property and Improvements shall be only for the purposes set forth in the Application and this Lease. Any permitted sublease shall be subject and subordinate to the terms of this Lease. Tenant shall give Landlord thirty (30) days' notice of any proposed assignment or subletting of the Real Property and Improvements, and if Landlord consents thereto, shall provide Landlord with an instrument executed by the assignee or sublessee(s) of the Real Property and Improvements certifying that the assignment or sublease of the Real Property and Improvements is in force and is subject to all of the terms and provisions of this Lease. If a transfer, assignment or sublease will, in Landlord's opinion, result in a change in the use and operation of the Real Property and Improvements from that specified in the Application or if, as a result of any proposed sublease or assignment of the Real Property and Improvements, the beneficiary of the PTIP incentives would be a party other than Tenant or Averitt Express, then Landlord may withhold its consent. Notwithstanding the foregoing, the parties acknowledge that the Averitt Express Lease will not result in a change in the use or operation of the Real Property and Improvements nor will it result in a person other than Tenant or Averitt Express being a beneficiary of the PTIP incentives. The Averitt Express Lease shall not be modified by Tenant or Averitt Express without the consent of Landlord. Granting any consent under this Section will be at the sole discretion of Landlord and, if granted, may be subject to Tenant and the transferee, assignee, and sublessee filing a new application for PTIP incentives with Landlord, paying any fees due with respect to such new application or transfer, and otherwise complying with the PTIP Policies and Procedures.

Section 3.07 Default of Tenant Under Lease. If, for any reason, Tenant causes an Event of Default to terminate this Lease, and Tenant does not exercise the option to purchase the Real Property set



forth in Section 11.01 below during the applicable time period, then Averitt Express agrees that (a) it will continue and assume and obtain all rights, remedies and obligations of Tenant under this Lease, specifically including without limitation the right to exercise the Purchase Option in accordance with Section 11.01 below, and (b) this Lease will otherwise continue between Landlord and Averitt Express unaffected by the default of Tenant; provided, however, that, if this Lease is terminated as a result of an Event of Default by Tenant *prior to* completion of the Improvements in accordance with Section 2.01 above, then Averitt Express shall have the right to terminate this Lease in its entirety upon thirty (30) days' written notice to Landlord whereupon the Averitt Express Lease shall also be automatically terminated. Landlord's continuation of the Lease between Landlord and Averitt Express will not abridge or limit any remedies Landlord may have against Tenant for its default under the Lease.

#### **ARTICLE IV TERM AND RENT**

Section 4.01 Demise and Term. Subject to the terms and provisions of this Lease, this Lease shall be and remain in full force and effect for a term commencing on the date of this Lease and ending on [\_\_\_\_\_, 20\_\_\_\_] ("Term"). The Lease may be terminated at an earlier date or extended in accordance with the terms and conditions of this Lease.

Section 4.02 Report on Determination Date. Within thirty (30) days after the third (3rd) anniversary of the Commencement Date ("Determination Date"), Averitt Express shall deliver to Landlord and Tenant the Compliance Report in accordance with Section 5.06(c) which Landlord shall use to determine the Determination Date Compliance Points (as defined below) in accordance with this Section 4.02.

(a) Landlord will evaluate the Compliance Report in accordance with the following criteria and award points based upon Averitt Express's actual performance and compliance with the Application and this Lease in accordance with the following criteria:

(i) Landlord will award points based on the Capital Investment made by Averitt Express and Tenant respecting the Project as of the Determination Date as described in the PTIP Policies and Procedures in effect as of the date hereof.

(ii) The Board will award points based upon the number of Jobs, which were created and maintained over the Determination Period, and the average Wages paid per such Job, in each case, as described in the PTIP Policies and Procedures in effect as of the date hereof.

Landlord will determine the number of points for which Averitt Express and Tenant qualified pursuant to the above criteria (the "Determination Date Compliance Points") and will evaluate the performance of Averitt Express and Tenant under this Lease and the Application. Landlord and Tenant will use the Determination Date Compliance Points to determine the Recapture Payment, if any, under Section 9.04(c).

(b) Averitt Express shall pay all reasonable expenses incurred by Landlord in evaluating Averitt Express's and Tenant's performance, including consulting fees, auditing fees and reasonable attorney fees.

Section 4.03 Base Rent. Tenant shall pay, or shall cause Averitt Express to pay, to Landlord without notice, setoff or demand as base rent ("Base Rent") the sum of Two Thousand Dollars (\$2,000.00)

per annum, payable on the date on which the payment in lieu of taxes is required pursuant to Section 6.02 herein is due and payable, as rent for the Real Property and Improvements.

Section 4.04    Additional Rent.

(a)     Tenant covenants and agrees at its expense to acquire and construct, or cause Averitt Express to acquire and construct, the Improvements, and to cause Averitt Express to acquire and place in service the Equipment, in each case, as described in the Application and Section 2.01 hereof for a total Capital Improvement of at least **\$20,000,000**. It is understood and agreed that such Improvements shall become the property of Landlord and part of the Real Property leased hereunder. The cost of the acquisition and construction of the Improvements shall be treated as “Additional Rent” payable by Tenant under this Lease.

(b)     Tenant shall also pay, as Additional Rent, those amounts set out in Article VI hereof and all other sums which Tenant shall be obligated to pay hereunder, whether or not such sums are specifically designated as Additional Rent, and debt service payable by Tenant with respect to any loan secured in whole or in part by a security interest in the Real Property and Improvements or Tenant’s interest therein. Tenant shall also pay, as Additional Rent, all reasonable sums advanced by Landlord for or on behalf of Tenant hereunder. The Additional Rent shall be due by Tenant in accordance with the applicable provisions of this Lease and, if no date is specified, then on demand. Any sums advanced by Landlord for or on behalf of Tenant shall bear interest at the lesser of (i) the prime rate of interest as published in the Wall Street Journal, as adjusted from time to time, plus 2.00% per annum, or (ii) the maximum rate allowed by law, and shall be due and payable on demand.

Section 4.05    Net Lease. This Lease is a “net lease” and the Base Rent, Additional Rent and all other sums payable hereunder to or for the account of Landlord shall be paid promptly and without set-off, counterclaim, abatement, suspension, deduction, diminution or defense.

**ARTICLE V**  
**REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION; COMPLIANCE REPORT**

Section 5.01    Representations and Covenants of Landlord. Landlord is a public nonprofit corporation, duly incorporated, validly existing and in good standing under the laws of the State of Tennessee, and is validly organized pursuant to the provisions of the Act. Landlord is authorized and empowered by the provisions of the Act, and has all requisite corporate power and authority to execute and deliver and perform its obligations under this Lease. No consents of any third parties are required nor are any regulatory filings required to be made in order for Landlord to execute this Lease and consummate the transactions herein. This Lease has been duly authorized, executed and delivered on behalf of Landlord and constitutes the legal, valid and binding obligation of Landlord enforceable in accordance with its terms subject to bankruptcy and other creditors’ rights laws and principles of equity. The execution, delivery and performance by Landlord of this Lease will not contravene or constitute a default under any provision of any Legal Requirement, the Organizational Documents of Landlord or of any contract, agreement, judgment, order, decree, or other instrument binding on Landlord.

Section 5.02    Representations and Warranties of Tenant and Averitt Express. Tenant and Averitt Express, each as to itself only, hereby represents and warrants as follows to Landlord:

(a) Tenant is a corporation duly organized, validly existing, and in good standing under the laws of the State of Tennessee, with full company power and authority to conduct its business as it is now being conducted and to own or use the properties and assets that it purports to own or use. Averitt Express is a corporation duly incorporated, validly existing, and in good standing under the laws of its jurisdiction of organization, with full company power and authority to conduct its business as it is now being conducted and to own or use the properties and assets that it purports to own or use.

(b) Each of Tenant and Averitt Express has all requisite power, authority and legal right to: (i) execute and deliver this Lease and all other instruments and documents to be executed and delivered by Tenant or Averitt Express pursuant hereto; (ii) perform and observe the provisions thereof; and (iii) carry out the transactions contemplated thereby. All action on the part of Tenant or Averitt Express which is required for the execution, delivery, performance and observance by Tenant or Averitt Express of this Lease has been duly authorized and effectively taken.

(c) Averitt Express represents that it has directed Landlord to acquire the Real Property in accordance with the PTIP.

(d) This Lease constitutes the legal, valid and binding obligation of Tenant and Averitt Express enforceable against each of Tenant and Averitt Express in accordance with its terms subject to bankruptcy and other creditors' rights laws and principles of equity.

(e) Averitt Express represents that the Application does not contain any untrue statement or omit to state a material fact necessary to make the statements therein or in this Lease, in light of the circumstances in which they were made, not misleading. No representation of Averitt Express, or information disclosed by Averitt Express, in the Application omits to state a material fact necessary to make the statements therein, in light of the circumstances in which they were made, not misleading.

(f) Each of Tenant and Averitt Express is not in material default under or violating, and none of the execution and delivery of this Lease, consummation of the transactions contemplated hereby or compliance with the terms and conditions hereof will conflict with, constitute a breach of or a default under, or violate, any material agreement or instrument to which Tenant or Averitt Express is a party or by which Tenant or Averitt Express or any of Tenant's or Averitt Express's property is bound and which has not been waived, or to Tenant's or Averitt Express's knowledge, any Legal Requirement. To Tenant's and Averitt Express's knowledge no event has occurred or is continuing which constitutes a default under or which, with the lapse of time or giving of notice or both, would constitute a default under any of the foregoing.

(g) There is no action, suit or proceeding at law or in equity or by or before any Governmental Authority now pending or, to the knowledge of Tenant or Averitt Express, threatened against Tenant or Averitt Express or any of its properties which might adversely affect the validity of this Lease or the transactions contemplated hereby.

(h) Neither the execution and delivery of this Lease or the other Tenant Documents nor the consummation or performance of any of the transactions contemplated thereby will, directly or indirectly (with or without notice or lapse of time):

(i) breach (A) any provision of any of the Organizational Documents of Tenant or (B) any resolution adopted by the members, managers or board members or the shareholders of Tenant;

(ii) breach any of the transactions contemplated by the Tenant Documents or give any Governmental Authority or other Person the right to exercise any remedy or obtain any relief under any Legal Requirement or any judgment or order to which Tenant may be subject;

(iii) contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any license, permit, or other authorization that is held by Tenant or that otherwise relates to the Real Property and Improvements or to the business of Tenant; or

(iv) breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any agreement, document or contract to which Tenant is a party or by which Tenant may be bound.

(i) Except as may be required by its Organizational Documents or any consents already received, neither Tenant nor Averitt Express is required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Lease, the other Tenant Documents, or the consummation or performance of any of the transactions contemplated therein or herein.

(j) Tenant and Averitt Express estimate the cost of all Improvements and Equipment for acquiring, constructing and equipping the Project to be **\$20,000,000**.

(k) Tenant and Averitt Express jointly assume responsibility for and will comply with all covenants and deed restrictions on the Premises, if any, including those of record in the Register of Deeds' office for Knox County, Tennessee, and any covenants and restrictions specifically listed on Exhibit A.

(l) Late Fee. In addition to any other amounts payable pursuant hereto, in the event of the occurrence of a Default by Tenant or Averitt Express in connection with obligation, including any payment obligation hereunder, upon demand by Landlord, Tenant and Averitt Express shall pay to Landlord a late fee equal to \$150.00, such late fee constituting a reasonable estimate of the additional costs incurred by Landlord in connection with such Default.

**Section 5.03 Acceptance of Improvements, No Warranties. Tenant and Averitt Express acknowledge and agree that (a) each has examined and is fully familiar with the Premises, (b) the Plans and Specifications for the construction of the Improvements have been prepared at Averitt Express's direction and (c) the Improvements are to be constructed under Tenant's supervision. Accordingly, Landlord makes no representation or warranty, either express or implied, and offers no assurance to Tenant, Averitt Express or any other Person regarding the condition or title of the Premises, the suitability of the Improvements for Averitt Express's or Tenant's purposes or needs, or the availability or sufficiency of funds to pay in full the cost of the Project. As to Landlord, Tenant accepts the Real Property and Improvements in their AS-IS CONDITION WITH ALL FAULTS as of the date of the commencement of the Term, and assumes all risks, if any, resulting from the failure of the Project to be completed or to comply with all applicable Legal Requirements.**

Section 5.04 Failure or Defect in Title. Landlord shall not be liable to Tenant or to anyone for any damages resulting from (a) failure of, or any defect in, Landlord's title which interferes with, prevents, or renders burdensome the use or occupancy of the Real Property and Improvements or the compliance by Tenant with any of the terms of this Lease, or (b) delay in obtaining possession of all or any part thereof, from any cause whatsoever. No such failure of, or defect in, Landlord's title or delay in possession shall

terminate this Lease or entitle Tenant to any abatement in whole or in part, of Base Rent, Additional Rent, or any other sums payable by Tenant pursuant to the terms of this Lease. Notwithstanding the foregoing, Landlord will use its best efforts to avoid any failure of, or defect in, Landlord's title or delay in possession, other than the exercise by Landlord of any of its rights or remedies hereunder.

Section 5.05 Release and Indemnification.

(a) Tenant and Averitt Express each releases and forever discharges Landlord, including any incorporator, member, director, officer, employee, counsel or agent of Landlord, and its successors and assigns from any claims, demands, causes of action, accounting, or any other matter arising in connection with the Project, except to the extent caused by the intentional acts or gross negligence of Landlord.

(b) Tenant and Averitt Express each covenants and agrees, at its expense, to pay, and to indemnify and save harmless Landlord, and any incorporator, officer, director, agent, counsel, or employee of Landlord (collectively, "Landlord's Agents"), against and from any and all claims by or on behalf of any Person, other than those resulting from the intentional acts or gross negligence of Landlord, arising from (i) the occupation, use, possession, conduct, or management of, or from any work done in or about, the Real Property and Improvements or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, and Legal Requirements affecting the Project or the occupancy or use of the Real Property and Improvements, (ii) any condition of the Real Property and Improvements and the adjoining sidewalks and passageways, (iii) any breach or default on the part of Tenant or Averitt Express in the performance of any covenant or agreement to be performed by Tenant or Averitt Express pursuant to this Lease, (iv) any act or negligence of Tenant or Averitt Express, or any of its agents, contractors, servants, employees, or licensees, (v) any accident, injury, or damage whatsoever caused to any Person in or about the Real Property and Improvements or upon or under the sidewalks, (vi) Landlord's ownership of the Real Property and Improvements, the making of this Lease or any transactions related thereto, and from and against all costs, reasonable attorneys' fees, expenses, and liabilities incurred by reason of any claim referred to in this Section, and (vii) any obligations arising under any easements granted by Landlord at the request of Tenant or Averitt Express.

(c) Upon notice from Landlord, Tenant and Averitt Express shall defend Landlord or any of Landlord's Agents, in any action or proceeding brought in connection with any of the above. In the event Tenant or Averitt Express shall fail or refuse to defend Landlord or Landlord's Agents after receipt of such notice or shall fail to diligently prosecute or defend any action subject to this Section 5.05, Landlord shall be entitled to provide its own defense of itself and Landlord's Agents and charge Tenant with the costs and expenses incurred in connection therewith which such amount shall be payable by Tenant upon demand by Landlord.

(d) The provisions of this Section 5.05 shall survive the termination of this Lease.

Section 5.06 Reports; Compliance Report.

(a) On or before the February 28 after the anniversary of the execution of this Lease and thereafter on or before the February 28 of each year during the Term of this Lease, Averitt Express shall file or cause to be filed with Landlord a report in the form of Exhibit C attached hereto and incorporated herein by reference, as such form may be revised by Landlord from time to time (the "Report"), containing all information required by Landlord to determine Averitt Express's and Tenant's compliance with the terms and requirements of this Lease and the Application and such other information reasonably requested by Landlord ("Lease Compliance Information"). Each Report shall be certified by an officer of Averitt Express. Upon the request of Landlord, Averitt Express shall provide any other additional information

reasonably requested by Landlord to determine Averitt Express's compliance with the Lease and the Application.

(b) Within ninety (90) days after the Determination Date, Averitt Express shall file or cause to be filed with Landlord the following (collectively, the "Compliance Report"):

(i) a report in the form attached hereto as Exhibit C detailing the information required pursuant to Section 5.06(a) above as of the Determination Date;

(ii) a certified listing of all full time employees of Averitt Express employed at the Project as of the Determination Date which includes for each employee their title, date hired, and annual wage (assuming 2080 hours per year for hourly employees) ("Employee Listing"), and attaching (in each case, redacting any personally identifiable information of any employees, as applicable) (A) a copy of Averitt Express's most recently filed Form 940, highlighting the information applicable to the employees employed at the Project, (B) a copy of each Form 941 filed by Averitt Express since such most recently filed Form 940, highlighting the information applicable to the employees employed at the Project, and (C) statements from Averitt Express's payroll processor detailing unemployment insurance premiums paid to the state of Tennessee during the Determination Period, together with a copy of Averitt Express's most recently filed wage and premium filings with the Department of Labor and Workforce Development for the State of Tennessee and, if applicable, the most recently filed Multiple Worksite Report filed with such department;

(iii) a certification by Averitt Express, certifying the total Capital Investment of Tenant and Averitt Express with respect to the Project as of the Determination Date in form and substance reasonably satisfactory to Landlord together with copies of or access to such other supporting documentation as Landlord may reasonably request; and

(iv) such other detail, backup and supporting information requested by Landlord in its reasonable discretion which confirms the expenditures evidencing the Capital Investment and the number of Jobs and average Wages, in each case, as of the Determination Date.

Such Compliance Report shall be certified by an authorized representative of Averitt Express. The obligations of Averitt Express under this Section 5.06(b) shall survive the termination of this Lease. The parties acknowledge that Landlord shall utilize the information required to be provided pursuant to this Section 5.06(b) to assist in determining whether a Recapture Payment is due and payable by Tenant pursuant to Section 9.04(c).

(c) Averitt Express shall prepare and file with the State of Tennessee's State Board of Equalization by October 1 of each year during the term hereof an annual report containing all of the information required pursuant to Tennessee Code Annotated § 7-53-305(e), together with such other information, and using such forms, as such Board of Equalization may require from time to time. A copy of the annual report so filed by Averitt Express shall be filed with the property assessor's office of Knox County, Tennessee by the immediately succeeding October 15, and a copy concurrently provided to Landlord.

(d) Upon the request of Landlord, Tenant and Averitt Express shall provide any and all information reasonably requested by Landlord to determine Tenant's and Averitt Express's compliance with the Lease and the Application. Further, Landlord shall have the right during the Term and for three

(3) years thereafter to audit, at Averitt Express's expense, the books and records of Tenant and Averitt Express to ensure compliance with Section 5.06 and any other provisions of this Lease.

**ARTICLE VI  
TAXES, OTHER CHARGES AND EXPENSES OF LANDLORD**

Section 6.01 Agreement to Pay Additional Rent. Tenant or Averitt Express, as applicable, agrees to pay and discharge, as Additional Rent, during the Term hereof, punctually, as and when the same shall become due and payable:

(a) All expenses and obligations of every kind and nature, foreseen or unforeseen, for the payment of which Landlord or Tenant is or shall become liable by reason of their respective estates or interests in the Real Property and Improvements or any portion thereof, by reason of any right or interest of Landlord or Tenant in or under this Lease, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use, or occupancy of the Real Property and Improvements or requirements of this Lease.

(b) All taxes of every type and description, assessments (including, but not limited to, assessments for public improvements or benefits), payments in lieu of taxes, and all other impositions and charges of every kind and nature, extraordinary or ordinary, general or special, which at any time during the Term shall be or become due and payable by Landlord or Tenant which shall be levied, assessed, or imposed in connection with the Project or the Real Property and Improvements.

(c) All charges for gas, water, sewer, electricity, light, heat, power, telephone, and other utilities and services used, rendered or supplied to or in connection with the Real Property and Improvements which are required to be paid by Landlord. Tenant agrees that Landlord is not, nor shall it be required, to furnish to Tenant or any other occupant, any gas, water, sewer, electricity, light, heat, power, or any other facilities, equipment, labor, materials, or services of any kind. Landlord will extend any rights it may have to Tenant, and will cooperate with Tenant, at Tenant's expense, in connection with obtaining the use of any such utilities and other facilities and services.

(d) The reasonable out of pocket expenses of Landlord which are incurred in connection with administering the Real Property and Improvements and the Project or performing any act which it is required to do under this Lease, but specifically excluding salaries, office overhead, depreciation, or security.

(e) All of Landlord's closing costs and reasonable expenses, including reasonable attorneys' fees, incurred in connection with the acquisition of the Real Property by Landlord and the negotiation, execution and delivery of this Lease.

(f) Averitt Express shall not pay a closing fee and the IDB expressly waives such fee.

(g) Averitt Express shall pay all fees and charges required by the Application.

Tenant covenants to furnish to Landlord, promptly upon request, proof of the payment of any amount or charge required to be paid by Tenant hereunder.

Section 6.02 Payments in Lieu of Taxes.

(a) Landlord and Tenant recognize that under present law, including specifically Section 7-53-305 of the Act, the properties owned by Landlord are exempt from all taxation in the State of Tennessee. Tenant agrees, however, as long as this Lease is in effect, to make payments in lieu of taxes (“PTIP Payments”) to Knox County, Tennessee, in accordance with the provisions of this Section 6.02.

(i) Beginning on the date of the Lease and continuing on April 1 of each successive Tax Year during the Term, Tenant shall be required to pay to Knox County, Tennessee as payments in lieu of taxes an amount approximating fifty percent (50%) of the ad valorem taxes which would otherwise be payable with respect to the subject real property each year, such amount to be determined by Landlord in its reasonable discretion using the most recent assessment of value of the Real Property and Improvements by the Knox County, Tennessee Property Assessor’s Office or, in the absence of such assessment, using an estimated assessment reasonably determined by Landlord in consultation with the Knox County, Tennessee Property Assessor’s office (the “Tax Payment”), provided that in no event shall the amount payable as payments in lieu of taxes hereunder be less than the amount of ad valorem taxes assessed with respect to the subject real property as of the date hereof. The parties agree that any amounts payable with respect to any partial Tax Years included within the Term will be prorated based upon the actual number of days included within the Term. Any obligation to make a payment in lieu of tax pursuant to this Lease that is not due until after the date this Lease expires or terminates shall survive the expiration or termination of this Lease.

(ii) It is the parties’ intent that during the Tax Years identified above, Tenant shall not be required to pay payments in lieu of taxes with respect to the Real Property and Improvements constituting the Project in excess of the Tax Payment. Such reduction shall not apply (a) in the event that either Tenant or Averitt Express assumes ownership of the Real Property and Improvements; or (b) with regard to any other tax assessed against Tenant, its income, or its other real or personal property. Upon the acquisition of the Project by Tenant, Tenant shall begin paying all applicable ad valorem and other taxes directly to Knox County, Tennessee, as assessed, but shall not make, from the date of such acquisition, any PTIP Payments, Tax Payments or any other in lieu payments with respect to such property. “Tax Year” means each annual period beginning on January 1 in each year.

(iii) It is the intent of this Section 6.02 that Knox County, Tennessee shall receive the amounts that would be payable if the Project were privately owned and fully subject to property taxation, minus those applicable reductions detailed above, notwithstanding Landlord’s ownership of all or any part thereof. However, nothing contained in this Section 6.02 is intended or shall be construed to require the payment by Tenant of any greater amounts in lieu of taxes than would be payable as taxes if the Project was privately owned as aforesaid. It is accordingly understood and agreed that the amount payable by Tenant in any Tax Year under the provisions of this Section 6.02 shall be reduced by the amount of any taxes lawfully levied by Knox County upon the Project or any part thereof, or upon Tenant’s leasehold estate therein, and actually paid by Tenant pursuant to the requirements of Section 6.02 hereof.

(iv) The payments in lieu of taxes provided in this Section 6.02 for each year shall accrue on October 1 of each Tax Year and shall be due on or before the last day of the February immediately following the Tax Year with respect to which such payment relates, and the obligation to make any such payments shall survive the termination of this Lease as to any payments that accrue prior to such termination. With respect to any payments made pursuant to this Section, prior to the date they are due, Tenant shall be entitled to the same discounts, if any, as any taxpayer in



Knox County is entitled to receive with respect to the payment of property taxes prior to the date such taxes are due.

(v) These payments in lieu of taxes shall be paid in the same manner and to the same tax collector as are ad valorem taxes paid in Knox County. Notwithstanding the foregoing or any other provisions of this Lease, however, it is the express intention of the parties hereto that, pursuant to the provisions of Tennessee Code Annotated Section 7-53-305, the Real Property and Improvements and the leasehold interests therein of Tenant, or any sublessee, shall be exempt from all taxation in the State of Tennessee, and that the PTIP payments as provided for in this Section 6.02 shall be made by and accepted from Tenant in lieu of all ad valorem taxes which are or may be assessed against the Real Property and Improvements and the leasehold interests therein of Tenant or any sublessee for and during the term of this Lease. If, following an Event of Default, the Real Property and Improvements should legally be placed on the ad valorem tax rolls of either the City of Knoxville or Knox County or both, the payment in lieu of taxes shall terminate and Tenant shall thereafter pay ad valorem taxes as required of a tax-paying entity, subject to Section 3.07 above. In the event Tenant's leasehold interest, but not Landlord's fee interest, shall become subject to ad valorem taxation, the payment in lieu of taxes called for hereunder shall continue, but shall be reduced on a cumulative basis by the amount of ad valorem taxes paid by Tenant with regard to its leasehold estate in the Real Property and Improvements. In the event the payment in lieu of taxes obligation terminates, Tenant shall still have the right to exercise its option to purchase the Real Property and Improvements as set forth in Section 11.01 hereof. In such event, the provisions of Sections 11.01 and 11.03 shall apply and Landlord shall convey the Real Property and Improvements to Tenant, subject to any then existing indebtedness created or incurred by or at the request of Tenant; and Tenant shall pay to Landlord, as consideration therefore, the sum of One Thousand Dollars (\$1,000.00).

(vi) All bills for payments in lieu of taxes as provided for in Section 6.02 shall be sent to Tenant at: \_\_\_\_\_, or to such other entity or address as Tenant may hereafter designate and provide to the tax collectors.

(vii) Notwithstanding the foregoing, if the Term of this Lease expires and Tenant remains in possession of the Premises, Tenant shall pay in full all ad valorem taxes which are or may be assessed against the Real Property and Improvements and the leasehold interests therein with respect to such period as and when due.

(b) In the event that the Premises are not, at the commencement of the Term hereof, situated within the City of Knoxville, Tennessee or some other municipality (collectively, a "Municipality") so as to be subject to ad valorem taxation as a part of a Municipality, but subsequently, by annexation or incorporation, becomes part of a Municipality during the Term, then Tenant shall make additional payments in lieu of taxes, as Additional Rent, in lieu of the ad valorem taxes of the Municipality from and after the effective date of the annexation or incorporation of the Real Property and Improvements into the Municipality. These payments will be billed to Tenant, and Tenant shall pay the same to the appropriate tax collector for the Municipality, upon the same terms and conditions and in the same manner as provided for the PTIP Payments provided in subsection XI above.

(c) If any such PTIP Payments are not paid by the applicable dates on which they are due, then Tenant shall pay a penalty with respect to such delinquent PTIP Payment from and after the delinquency date in the same amount as the penalty and all other charges which would be due on the corresponding Knox County ad valorem taxes.

Section 6.03 Other Taxes, Assessments, or Other Charges. Except as provided for in Sections Section 6.02(b) and (c) above, if any Governmental Authority enacts or imposes any tax, assessment, or other charge on realty or leasehold interests which are not in existence or collected as of the date of this Lease, Tenant shall pay said tax, assessment, or other charge as Additional Rent under this Lease and said tax, assessment, or other charge, if based on the assessment assigned to realty, shall be calculated on an assessment determined as though the Real Property and Improvements were owned by a tax-paying entity.

Section 6.04 Limitation on Averitt Express's Responsibility. Other than the closing fee described in Section 6.01(f) above, Averitt Express shall not be responsible for any obligations under this Article VI arising prior to the Commencement Date of the Averitt Express Lease, all of which shall be borne by Tenant.

Section 6.05 Survival. The obligations of Tenant or Averitt Express to pay any amount due at the termination of this Lease pursuant to this Article VI, shall survive the termination of this Lease.

## **ARTICLE VII INSURANCE**

Section 7.01 General Requirements. Tenant or Averitt Express shall keep, or cause to be kept, the Real Property and Improvements, now existing or hereafter constructed, erected, installed and purchased constantly and satisfactorily insured by an insurance company or companies lawfully doing business in Tennessee against losses under an All Risks Special Form Policy, in an amount not less than the full replacement costs of the Real Property and Improvements without deduction for depreciation. The policy evidencing this coverage shall be endorsed with a Replacement Cost Endorsement. The amount of the coverage shall be reviewed annually and increased if necessary so as to provide coverage at all times in an amount necessary to restore the Real Property and Improvements to the conditions existing just prior to the destruction or damage.

Tenant shall further keep or maintain or cause to be carried commercial general liability insurance on the Real Property and Improvements covering claims for bodily injury, death and property damage with a combined single limit of not less than Two Million Dollars (\$2,000,000.00), with "umbrella" liability coverage in an amount not less than Five Million Dollars (\$5,000,000.00), or such greater amounts as may from time to time be reasonably required by Landlord. Landlord shall be named as an additional insured on policies referred to in this paragraph.

Tenant shall further maintain or shall cause to be maintained the following insurance:

(a) During the course of any construction or repair of improvements on the Real Property and Improvements, Builder's Risk insurance under a Builder's All Risk Policy against "all risks of physical loss," including collapse and transit coverage, during construction of such improvements covering the total value of work performed and equipment, supplies and materials furnished.

(b) If any part of the Real Property and Improvements lies within a "special flood hazard area" as defined and specified by the United States Department of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973, Tenant shall (i) promptly purchase and pay the premiums for flood insurance policies as Landlord deems required so that Landlord shall be deemed in compliance with the rules and regulations and provisions of the Flood Disaster Protection Act of 1973 as then in effect; and (ii) deliver such policies to Landlord together with evidence satisfactory to Landlord that the premiums

therefor have been paid. Such policies of flood insurance shall be in a form reasonably satisfactory to Landlord, shall name Landlord as an insured thereunder, shall be for an amount at least equal to the maximum limit of coverage made available with respect to the Real Property and Improvements under the National Flood Insurance Act of 1968, as amended, whichever is less.

(c) Such other insurance on the Real Property and Improvements, or any replacements or substitutions therefor, in such amounts as may from time to time be reasonably required by Landlord against other insurable casualties which at that time are commonly insured against in the case of properties of similar character and location, due regard being given to the height and type of the Improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor.

Provided that no Event of Default has occurred and remained uncured for any applicable cure period, Tenant shall have the option to apply all insurance proceeds either to the repair, restoration and replacement of the Real Property and Improvements, or to retain the proceeds upon the exercise of its option to purchase the Real Property and Improvements in accordance with Article XI. Notwithstanding the foregoing, Landlord's or Tenant's entitlement to insurance proceeds shall be subject to the rights of any Lender under a Security Instrument.

Section 7.02 Additional Covenants. All insurance policies and renewals thereof shall be in form reasonably acceptable to Landlord, shall be issued by a company or companies acceptable to Landlord, and shall name Landlord as the named insured or an additional insured, as its interest may appear. Said policies and renewals shall provide for no less than thirty (30) days' written notice to Landlord of any cancellation or amendment thereof. Certificates of said insurance policies and renewals satisfactory to Landlord shall be provided Landlord prior to the effective date thereof, or, upon written request, Landlord shall have the right to hold the policies and renewals thereof. Upon the request of Landlord, Tenant shall promptly furnish to Landlord all renewal notices and all receipts for paid premiums. At least thirty (30) days prior to the expiration date of any of the policies, Tenant shall deliver to Landlord renewal policies in form reasonably satisfactory to Landlord together with receipts evidencing the payment for such policies and renewals. If Tenant fails to maintain the insurance required hereunder, Landlord may, at its option, pay such premiums, or take such other actions, as may be necessary in order to keep any such insurance in full force and effect. In such event, Tenant shall promptly reimburse Landlord for any such payments on demand, or, at the option of Landlord, all sums so paid by Landlord shall bear interest at the lesser of (i) the prime rate of interest as published in the Wall Street Journal, as adjusted from time to time, plus 2.00% per annum, or (ii) the maximum rate allowed by law at the time of the advance. All premiums on insurance policies shall be paid promptly when due.

## **ARTICLE VIII MAINTENANCE, REPAIR, IMPROVEMENTS AND REPLACEMENT**

Section 8.01 Tenant's Agreement to Maintain and Repair. Tenant acknowledges that Tenant is accepting the Real Property and Improvements "As-Is" and "With All Faults" and that LANDLORD MAKES NO WARRANTY TO TENANT WHATSOEVER, WHETHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE REAL PROPERTY AND IMPROVEMENTS ALL OF SUCH WARRANTIES BEING EXPRESSLY DISCLAIMED BY LANDLORD, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Tenant and Averitt Express each agrees that at its expense it will keep and maintain the Improvements and the Premises in good repair and condition, reasonable wear and tear, and damage by fire or other casualty expressly excepted. Tenant and Averitt Express each shall promptly make or cause to be made all interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen repairs, including the maintenance, repair, and replacement necessary to keep the

equipment installed in the Premises in good repair and operating condition to the end that the Improvements and the Premises are kept in good and lawful order and condition, wear and tear from reasonable use and damage by fire and other casualty being expressly excepted, whether or not such repairs are due to any Legal Requirement. All permanent replacements, renewals, attachments, and accessories made to, placed on, or affixed to any part of the Real Property, which become fixtures under applicable law, shall become a part of the Real Property, provided, however, in the event that the Real Property and Improvements are transferred to Tenant, whether as a result of the exercise by Tenant of its right to purchase pursuant to Article XI hereof, or otherwise, any deed or instrument of transfer shall include not only the Improvements to the Real Property, but also all such replacements, renewals, attachments and accessories constituting fixtures.

Section 8.02 Landlord's Repairs. At any time an Event of Default has occurred and is continuing, and if such Event of Default is not cured within any applicable cure period, then after notice to Tenant, Landlord may, but shall not be required to, rebuild or make any repairs, replacements, or renewals of any nature or description in connection with this Lease or maintain the Improvements or the Premises in any way. Tenant expressly waives the right contained in any Legal Requirement now or hereafter in effect to make any repairs at the expense of Landlord. If Landlord shall (in its sole discretion) advance funds with which to make such repairs, replacements, renewals, or other expenditures, such sums shall be payable by Tenant as Additional Rent hereunder pursuant to Section 4.04 above.

Section 8.03 Additions to Real Property and Improvements. Subject to Sections 2.01 and 3.04, Tenant shall have the right to make replacements for, additions to, alterations of, and improvements to the Real Property and Improvements, structural or otherwise, to construct and equip additions thereto, to attach machinery, equipment, and fixtures thereto, as part of the real estate, and to modify all of the above at its expense, as Tenant in its discretion may determine appropriate, provided that the same shall not materially decrease the value of the Real Property and Improvements or materially change the use thereof. All work done in connection with such additions, alterations or improvements shall be done promptly and in a good and workmanlike manner. Tenant shall pay the cost of such replacements, additions, alterations and improvements. Upon the expiration or termination of this Lease, all such replacements, additions, alterations and improvements which have been affixed to the Real Property and are fixtures under applicable law, shall remain and shall belong to and be the property of Landlord, subject, however, to Averitt Express's option to purchase under Section 11.01.

Section 8.04 Personal Property. Tenant, Averitt Express or its permitted sublessee(s) may at any time or times during the Term hereof install or commence the installation of any machinery, equipment, furnishings, trade fixtures, and other personal property to such extent as Tenant or Averitt Express may deem desirable, provided however, that such installation shall not be permitted to interfere materially with the use and operation of the Real Property and Improvements as set forth in the Application.

## **ARTICLE IX DEFAULT; REMEDIES**

Section 9.01 Events of Default. Any one or more of the following events shall constitute an "Event of Default":

(a) Tenant fails to pay the Base Rent or any Additional Rent, as and when due and within thirty (30) days after written notice of such failure to Tenant from Landlord.

(b) To the extent provided in this Section 9.01(b), Tenant and Averitt Express breach the representations, warranties, and covenants contained in the Application or in Section 3.01(a), Section

4.04(a) or Section 5.02(j) of this Lease or the PILOT lease by and between Landlord and Averitt Express (the “Averitt Express PILOT Lease”) concerning (i) the incurrence of the required amount of Capital Investment within the Measurement Period in this Lease or in the Averitt Express PILOT Lease, (ii) the creation and/or maintenance of Jobs or Wages within the Measurement Period, or (iii) and the maintenance during the Term of this Lease following the Measurement Period, at least 238 Jobs paying average Wages of \$75,000.00 per Job.

Notwithstanding the foregoing, no Event of Default shall be deemed to occur hereunder (A) respecting the incurrence of Capital Investment unless and until Tenant and Averitt Express fail to incur Capital Investment as of the Determination Date in an amount of at least 80% of the amount required to be made by Tenant and Averitt Express as set forth above and in the Averitt Express PILOT Lease and (B) respecting the maintenance of Jobs as of or following the Determination Date, unless and until Averitt Express fails to maintain a number of Jobs at the Project which is less than 80% of the Jobs required to be retained/created and maintained by Averitt Express as set forth above, and (C) respecting the average Wages of the Jobs at the Project, unless and until Averitt Express fails to maintain an average Wage for such Jobs as of or following the Determination Date which are less than 80% of the Wages required to be maintained by Averitt Express as set forth above. Furthermore, in the event Averitt Express fails to submit to Landlord a Report by the date required under Section 4.02 or Section 5.06(c) hereof and within thirty (30) days of Averitt Express’s receipt of notice of such failure from Landlord, or in the event the Report contains information which is untrue in any material respect, an Event of Default shall be conclusively deemed to have occurred under this Section 9.01(b).

(c) Except with respect to the matters set forth in Section 9.01(b) above (which Section shall govern with respect to such matters), any other representation or warranty made by Tenant or Averitt Express herein or by Averitt Express in the Application, or any other representation or warranty made by Tenant or Averitt Express in any statement or certificate furnished by Tenant or Averitt Express either required hereby or in connection with the execution and delivery of this Lease, proves to be untrue in any material respect as of the date it was made.

(d) Averitt Express ceases to operate the Project or abandons the Project for a period of sixty (60) days or more.

(e) Tenant fails to complete construction of the Improvements by the time set forth in the Application, subject to the provisions of Section 9.02 hereof.

(f) Averitt Express fails to file on time any Report or Compliance Report (or any related financial statements) required under Section 5.06.

(g) Any information contained in any Report or Compliance Report proves to be untrue in any material respect.

(h) A default or an event of default (including, in any case, the expiration of any permitted period for the curing of any such default) occurs under any Tenant Document or other agreement between Landlord and Tenant, or any default occurs under any document executed by Tenant related to the Project or the Real Property and Improvements, including, without limitation, any Security Instrument, but only if any such default or event of default causes the Real Property and Improvements to be disqualified as, or cease to constitute, a “project” within the meaning of the Act.

(i) Any material adverse change occurs in the use or operation of the Real Property and Improvements and/or the Project from that set forth in the Application without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

(j) Averitt Express fails to continuously operate a going business on the Premises, in such a manner as to cause an Event of Default pursuant to Section 9.01(b).

(k) the occurrence of an Event of Default under the Averitt Express Lease which is not waived by Tenant or cured within applicable notice and cure periods, the termination of the Averitt Express Lease, or the assignment of Averitt Express's interests under or subletting by Averitt Express of Averitt Express's interests under the Averitt Express Lease.

(l) Tenant or Averitt Express fails in the due performance of, or compliance with, any of the other terms of this Lease.

Except for (i) Events of Default based on subsection (a) and (b) above, for which cure periods have been specifically provided, or (ii) Events of Default based on subsections (c), and (g), no Event of Default shall occur under this Section 9.01 until a default continues for thirty (30) days after Landlord shall have given Tenant written notice of such default. Further, in the event the Event of Default is caused by the action or inaction of Averitt Express, no Event of Default shall be deemed to have occurred unless such default continues for a period sixty (60) days after Landlord shall have given Tenant written notice of such default by Averitt Express and Tenant has failed to cure such default.

Section 9.02 Force Majeure. The provisions of Sections 9.01 and 2.01 are subject to the limitation that if by reason of Force Majeure, as defined below, Tenant is unable, in whole or in part, to carry out its agreements and covenants herein contained, other than its obligation to pay Base Rent and Additional Rent, Tenant shall not be deemed in default during the continuance of such inability.

The term "Force Majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts, acts of public enemies, order of any Governmental Authority, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fire, hurricanes, storms, floods, washouts, droughts, arrests, pandemics, restraint of government and people, or any other cause or event not reasonably within the control of Tenant.

Tenant agrees, however, to remedy with all reasonable dispatch the cause or causes preventing it (as the case may be) from carrying out its agreements and covenants.

Section 9.03 Rights to Cure. Except with respect to the matters set forth in Section 9.01(b) above, if an Event of Default occurs, Landlord may (but shall not be obligated to), advance funds, make payments and perform any such acts for the account of Tenant and at its expense, may enter upon the Premises for any purpose, and take all other actions as may be reasonably necessary or appropriate to protect its interest under this Lease. No such entry shall be deemed an eviction of Tenant. All sums so paid by Landlord and all necessary and incidental costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Landlord, together with interest at the lesser of (i) the prime rate of interest as published in the Wall Street Journal, as adjusted from time to time, plus 2.00% per annum, or (ii) the maximum rate of interest allowed by law, shall be due and payable by Tenant as Additional Rent and may be credited against any sums due to Tenant.

Section 9.04 Landlord's Rights Upon Default.

Subject to the terms of Article XI, Landlord shall have the following rights upon the occurrence of an Event of Default which is not cured during the applicable grace or cure period; provided, however, in the event Tenant exercises its right to purchase the Real Property pursuant to the terms of Article XI hereof, this Lease shall be deemed terminated.

(a) Except as otherwise expressly provided herein, specifically including without limitation the provisions of Section 3.07 above, if any Event of Default, as defined in Section 9.01, occurs and is not cured within any applicable cure period, Landlord may exercise its right to terminate this Lease under Section 9.01 and without further notice may enter upon and repossess the Real Property and Improvements and may remove Tenant and all other persons and any and all property from the Real Property and Improvements.

(b) Except as otherwise expressly provided herein, specifically including without limitation the provisions of Section 3.07 above, if an Event of Default occurs and is not cured within any applicable cure period, Landlord shall have the right of entry, repossession, and removal prior to the expiration of the Term of this Lease. Landlord shall be under no obligation to terminate this Lease prior to exercising its rights of entry, repossession and removal. If Landlord exercises such rights without terminating this Lease, this Lease shall continue in full force and effect for the balance of its Term, except that Tenant shall have no right of possession from the date of the exercise of such right.

(c) If an Event of Default described in Section 9.01(b) occurs, but subject to the provisions of Section 3.07 above, Tenant shall be obligated to pay (or cause to be paid) to the appropriate tax collectors, as an additional payment in lieu of taxes under Section 6.02 hereof an amount (hereinafter called the "Recapture Payment") equal to the amount of ad valorem taxes which would otherwise be payable with respect to the Project had Tenant owned fee simple title to the Project for a number of years equal to the difference, if any, between (i) the number of years within the Term of this Lease (after taking into account any early termination of the Lease), and (ii) the total number of years of a Lease Term for which Tenant qualifies as of the Determination Date under the standard scoring matrix set forth in the PTIP Policies and Procedures in effect as of the date hereof, such determination to be made using the Determination Date Compliance Points described in Section 4.02 hereof. The obligation for any Recapture Payment(s) required pursuant to this Section 9.04(c) shall survive the termination of this Lease and shall be the obligation of Tenant, and the same shall constitute a lien upon the Real Property and Improvements. The right to the Recapture Payment shall be Landlord's sole and exclusive remedy for monetary damages as a result of any Event of Default under Section 9.01(b).

(d) Tenant covenants and agrees to pay, and to indemnify Landlord from and against, all costs and charges, including reasonable attorneys' fees, lawfully and reasonably incurred in (i) obtaining possession of the Real Property and Improvements after default by Tenant or upon expiration or earlier termination of the Term hereof, and (ii) enforcing any provision of this Lease.

(e) Tenant hereby (i) irrevocably submits to the exclusive jurisdiction of the state courts of the State of Tennessee located in Knox County, Tennessee and to the jurisdiction of the United States District Court for the Eastern District of Tennessee located in Knox County, Tennessee, for the purpose of any suit, action, or other proceeding arising out of or based upon this Lease, the Tenant Documents or any other document or transaction related directly or indirectly to the transactions contemplated herein; and (ii) waives and agrees not to assert by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim (A) that each is not subject personally to the jurisdiction of the above-named courts, (B) that the suit, action, or proceeding is brought in any inconvenient forum, (C) that the venue of the suit,

action, or proceeding is improper, or (D) that this Lease or any of the Loan Documents or the subject matter hereof or thereof may not be enforced in or by such court.

Section 9.05 Reletting. Except as otherwise provided herein, at any time or from time to time after the termination of this Lease pursuant to Section 9.04(a), Landlord may, (but shall be under no obligation to) relet the Real Property and Improvements or any part thereof for the account of Tenant, in the name of Tenant or Landlord, or otherwise without notice to Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease), on such conditions and for such uses as Landlord in its discretion may determine. Landlord may collect and receive the rents therefor. Landlord shall have the same right to relet if it exercises its right of entry, repossession, or removal without termination of this Lease as provided in Section 9.04(b). Landlord shall not be responsible or liable for any failure to relet the Real Property and Improvements or any part thereof, or for any failure to collect any rent due upon any such reletting. Any such reletting pursuant to this Section 9.05 shall, in all events, be subject to and expire upon the exercise of Tenant's purchase option set forth in Article XI.

Section 9.06 Survival of Tenant's Obligations. No termination of this Lease pursuant to Section 9.04(a) or repossession of the Real Property and Improvements pursuant to Section 9.04(b), or otherwise, shall relieve Tenant of its respective liabilities and obligations hereunder, all of which shall survive any such termination or repossession. If this Lease is terminated pursuant to Section 9.04(a) or if Landlord exercises its right of entry without termination of the Lease as provided in Section 9.04(b), Tenant shall pay to Landlord the Base Rent and all Additional Rent and other charges required to be paid under this Lease or otherwise, by Tenant up to the time of such termination or repossession.

Section 9.07 Additional Remedies. Subject to Section 9.04(c), in addition to the right to terminate this Lease and any other remedies provided for herein, when any Event of Default occurs and is not cured within any applicable cure period, Landlord may take whatever other action at law or in equity may appear necessary or desirable to collect the Base Rent, Additional Rent, and any other monetary obligation of Tenant hereunder when due. If Landlord elects to terminate this Lease after an Event of Default, Landlord's remedies shall include, but are not limited to, Landlord's right to convey the Real Property and Improvements to Tenant and retain a vendor's lien for all sums due and payable to Landlord by Tenant at the time of the conveyance.

## **ARTICLE X CONDEMNATION AND CASUALTY**

Section 10.01 Condemnation Proceeds. If all or any part of the Real Property and Improvements is taken by the exercise of the power of eminent domain or condemnation, Tenant shall receive the entire award for the taking. If the award is disbursed by the condemning authorities to Landlord, Landlord shall immediately pay the award to Tenant. Tenant shall be entitled to the proceeds of any condemnation award or portion thereof separately awarded for damages to, or takings of, Tenant's property, or for damages on account of the taking or an interference with Tenant's right to possession, use, or occupancy of the Real Property and Improvements.

Section 10.02 Termination of Lease Upon Condemnation. If all or substantially all of the Real Property and Improvements are taken by the exercise of the power of eminent domain or condemnation, or if the exercise of the power of eminent domain renders the Real Property and Improvements and the use thereof unsatisfactory to Tenant for the purposes for which they were intended, Tenant shall have the right to either acquire the Real Property and Improvements pursuant to the provisions of Section 11.01 or



terminate this Lease. Until the purchase or termination has taken place, this Lease shall continue in full force and effect without abatement of rent.

Section 10.03 Continuation of Lease Upon Condemnation. If a lesser portion of the Real Property and Improvements are taken by the exercise of the power of eminent domain or condemnation, this Lease shall nevertheless continue in full force and effect without abatement of rent. If such taking causes damage to, or necessitates the restoration or rebuilding of the Real Property and Improvements or a portion thereof, Tenant, at its sole cost and expense, shall promptly and diligently restore and rebuild to such condition as it shall deem reasonable in view of the nature of the taking and the then intended use of the Real Property and Improvements by Tenant.

Section 10.04 Minor Casualty. If a minor part of the Real Property and Improvements is destroyed or damaged, Tenant shall promptly notify Landlord and at Tenant's expense, Tenant shall promptly and diligently rebuild, restore, replace, and repair the same to such condition as it shall deem reasonable in view of the nature of the damage and the then intended use of the Real Property and Improvements by Tenant.

Section 10.05 Substantial or Complete Casualty. If the entire Real Property and Improvements, or a substantial part thereof, shall be damaged or destroyed to such an extent that restoration thereof cannot be accomplished within ninety (90) days from the date of damage, Tenant shall have the right to either restore the Real Property and Improvements as provided in Section 10.04, acquire the Real Property and Improvements pursuant to the provisions of Section 11.01, or terminate this Lease. If Tenant acquires the Real Property and Improvements, Landlord shall then assign to Tenant (to the extent not previously paid to Landlord) or shall then pay to Tenant (to the extent the same have previously been paid to Landlord but not applied to the repair or restoration of the Real Property and Improvements) all insurance proceeds arising out of such damage or destruction. The foregoing shall in no way, however, supersede or modify the rights of Tenant and any permitted sublessee.

## **ARTICLE XI OPTION TO PURCHASE, INVESTMENT TAX CREDIT AND LIMITATIONS**

Section 11.01 Option to Purchase. Tenant shall have the option (the "Purchase Option") at any time during the Term of this Lease or within one hundred eighty (180) days after the expiration or termination of this Lease for any reason whatsoever, including, without limitation, an Event of Default, to purchase the Real Property and Improvements, subject to any then existing indebtedness created by or for the account of Tenant, as permitted or provided for in this Lease. The purchase price will be the sum of One Thousand Dollars (\$1,000.00), payable in collected funds. If the Lease is terminated by Landlord for any reason prior to the expiration of the Term, and Tenant has not exercised the Purchase Option, the Landlord shall provide written notice of same to Tenant within ten (10) days after the date of such termination. The exercise of such option by Tenant shall not relieve Tenant from the payment of any monetary obligations which shall be due and payable, or shall have accrued, under this Lease as of the date of conveyance. Tenant shall notify Landlord in writing thirty (30) days before the proposed date of purchase that Tenant desires to exercise its option to purchase hereunder. Upon payment by Tenant of the purchase price in collected funds plus all expenses related thereto and any other sums due and payable hereunder, Landlord shall convey the Real Property and Improvements to Tenant or its assigns, subject always to the liens of any Security Instrument.

Section 11.02 Investment Tax Credit. Landlord, Tenant and Averitt Express hereby elect and agree that Averitt Express shall be entitled to any investment tax or similar credit, or grants, with respect to the Real Property and Improvements now or hereafter authorized by the Internal Revenue Code, or other

legislation, and Landlord and Tenant each agrees to take all reasonable action necessary to make such investment tax election and obtain the benefits for same for Averitt Express at Averitt Express's request and expense, and to obtain such grants.

Section 11.03 Conveyance of Title. In the event of any purchase of the Real Property and Improvements or any portion thereof by Tenant pursuant to any provision of this Lease, Landlord shall convey title by a quitclaim deed to Tenant, subject to Permitted Encumbrances and other encumbrances and interests thereafter created by or for the account of Tenant. Landlord shall not otherwise be obligated to convey any better title to Tenant than existed on the first day of the Term of this Lease; provided, however, that Landlord acknowledges and agrees that Landlord has no authority or right to encumber the Real Property and Improvements or Landlord's interest therein by any encumbrances other than (i) the Permitted Encumbrances, including the Averitt Express Lease, (ii) those which Tenant has subsequently requested to be placed, or caused to be placed, against the Real Property and Improvements, (iii) those which Tenant has subsequently approved in writing to be placed against the Real Property and Improvements, and (iv) those for which Tenant is responsible under the terms and provisions of this Lease and which arise out of any default by Tenant in the performance of its obligations under this Lease. Any other conveyance or encumbrance (other than those described in clauses (i) through (iv) inclusive of the preceding sentence) by or for the account of Landlord shall in all respects be subject and subordinate to Tenant's leasehold interest as created under this Lease and to Tenant's right to acquire title to the Real Property and Improvements, free and clear of any such other conveyances or encumbrances, pursuant to Tenant's exercise of its option to purchase the Real Property and Improvements pursuant to this Article XI; and any such other conveyance or encumbrance, and any rights or liens created thereunder or arising therefrom shall be automatically terminated, released and extinguished by the conveyance of the Real Property and Improvements to Tenant by Landlord by a Quitclaim Deed as provided for in this Section 11.03, and thereafter all such conveyances, encumbrances, rights or liens shall be void and of no further effect. Tenant shall accept such title, subject, however, to (i) any liens, encumbrances, charges, exceptions, and restrictions not created or caused by Landlord or Landlord's Agents, and (ii) any Legal Requirements.

This Lease shall terminate upon any conveyance of the Real Property to Tenant, but in such event the Averitt Express Lease shall nonetheless remain in full force and effect and Averitt Express's right to peaceable possession of the Premises under the Averitt Express Lease during the Term shall not be disturbed so long as Averitt Express performs all of its obligations under the Averitt Express Lease and is not otherwise in default, and further provided that Tenant's rights and obligations under the Averitt Express Lease shall not be modified or impaired as a result thereof.

Section 11.04 Survival of Rights. All provisions of this Article XI shall survive the expiration of the Term of this Lease (including any extensions therefore) or the termination of this Lease pursuant to any provision hereof (including, but not limited to, any termination pursuant to Article IX or Article X).

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

Section 12.01 Recording. This Lease or a memorandum thereof shall be executed and recorded in the proper public office for the recordation of deeds in Knox County, Tennessee.

Section 12.02 Waivers. No waiver of any breach shall affect or alter this Lease or constitute a waiver of any other then-existing or subsequent breach.

Section 12.03 Remedies. Subject to the express provisions and limitations of this Lease, each right, power, and remedy of Landlord, Tenant or Averitt Express provided for in this Lease shall be

cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers, and remedies are sought to be enforced. The exercise of any one or more of the rights, powers, or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord, Tenant or Averitt Express of any or all such other rights, powers, or remedies.

Section 12.04 No Claims against Landlord. Except as provided herein, nothing contained in this Lease shall constitute any consent or request by Landlord, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof, nor give Tenant any right, power, or authority to contract for, or permit the performance of, any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any personal claim against Landlord.

Section 12.05 Quiet Enjoyment. Landlord does not make any representation or covenant that Tenant shall have quiet and peaceful possession of the Real Property and Improvements. Landlord, however, agrees that it will not take any action to interfere with Tenant's peaceful and quiet enjoyment of the Real Property and Improvements and that in the event the peaceful and quiet enjoyment of the Real Property and Improvements shall be denied to Tenant or contested by anyone, Landlord shall upon request of Tenant join when necessary in any proceeding to protect and defend the quiet enjoyment of Tenant, provided that Tenant shall pay the entire cost of any such proceeding and reimburse, indemnify, and hold harmless Landlord from any cost or liability whatsoever.

Section 12.06 Governing Law; Entire Agreement. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee, and, together with the action taken by Landlord granting the PTIP incentives with respect to the Project set forth in the minutes of the meeting of the Board of Directors of Landlord held on January 10, 2023, and the Application (collectively, the "Related Documents"), expresses the entire agreement of the parties hereto. No party hereto shall be bound by any agreement or representation to any other party which is not expressly set forth in this Lease, the Related Documents, or Reports.

Section 12.07 Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 12.08 Notice. All notices, certificates, demands, requests, consents, approvals, and other similar instruments under this Lease shall be in writing and shall be deemed to have been properly given and received if (i) delivered in person, (ii) sent by United States certified or registered mail, postage prepaid, or (iii) sent by recognized overnight service providing proof of delivery, to Landlord or Tenant, as applicable at such addresses as either may have designated from time to time in writing, and if to any Lenders under Section 3.05, or any permitted sublessee(s) under Section 3.06, addressed to their principal offices, or at such addresses as said Lenders or said permitted sublessee(s) shall have designated from time to time in writing to Landlord and Tenant. At the commencement of this Lease:

Landlord's address is 17 Market Square #201, Knoxville, Tennessee 37902 with a mandatory copy to counsel for the Board, R. Christopher Trump, Egerton, McAfee, Armistead & Davis, P.C., 900 South Gay Street, 14<sup>th</sup> Floor, Knoxville, Tennessee 37902;

Tenant's address is 1415 Neal St., Cookeville, TN 38501, Attn: Rhonda Otto, with a mandatory copy to Averitt Express's advisor, John Polizzano, Rockefeller Center, 600 5th Avenue, 9th Floor, New York, New York 10020.

Averitt Express's address is Averitt Express, Inc., 1415 Neal St., Cookeville, TN 38501, Attn: Rhonda Otto, with a mandatory copy to Averitt Express's advisor, John Polizzano, Rockefeller Center, 600 5<sup>th</sup> Avenue, 9<sup>th</sup> Floor, New York, New York 10020.

Delivery in person shall be effective on the date of delivery. Delivery by mail shall be effective three (3) days from the date of posting in the United States Mail. Delivery by recognized overnight courier shall be effective the next business day following the date the notice is delivered to the recognized overnight courier for the delivery.

Section 12.09 Signs. At the request of Landlord and the expense of Tenant any development or construction signs located at or on the Premises shall read: "The Industrial Development Board of the County of Knox has provided financial incentives and other assistance for this Project."

Section 12.10 No Default Certificates. Landlord and Tenant agree at any time and from time to time, upon not less than twenty (20) days prior written request by the other party or by any Lender, or by any permitted sublessee(s), to execute, acknowledge, and deliver a statement in writing certifying that this Lease is in full force and effect and that they know of no default (or if there is a default, the grounds therefor) and the date to which the Base Rent and other charges have been paid in advance, if any.

Section 12.11 Headings. Headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof.

Section 12.12 Successors. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 12.13 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signature of any party on a signature page intended by such party to be appended to a counterpart shall be deemed to be a signature to, and may be appended to, any counterpart, and the signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

Section 12.14 Amendments. This Lease may be modified or amended only by an instrument in writing signed by the parties (or their respective successors or assigns).

Section 12.15 Landlord's Limitation of Liability - No Personal Liability. Anything in this Lease to the contrary notwithstanding, Tenant agrees that it shall look solely to the Real Property and Improvements for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord. No other property or assets of Landlord shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies hereunder.

Section 12.16 Tenant's Limitation of Liability - No Personal Liability. Anything in this Lease to the contrary notwithstanding, Landlord agrees that it shall look solely to the Real Property and Improvements for the collection of any judgment (or other judicial process) requiring the payment of money

by Tenant in the event of any default or breach by Tenant with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Tenant. No other property or assets of Tenant shall be subject to levy, execution or other procedures for the satisfaction of Landlord's remedies hereunder. This section shall in no way effect or limit the obligations or other liability of Averitt Express under the terms of this Lease.

### **ARTICLE XIII ENVIRONMENTAL MATTERS**

Section 13.01 Tenant's Environmental Representations and Warranties. Tenant represents, warrants and covenants to Landlord and its successors and assigns that:

(a) In connection with the ownership, use, maintenance or operation of the Real Property and Improvements and the conduct of the business related thereto and therein, Tenant is not in violation of, and has not violated and will not violate, any applicable federal, state, county or local statute, law, regulation, rule, ordinance, code, license or permit relating to environmental matters, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act of 1976 as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 et seq., the Clean Air Act of 1986, as amended, 42 U.S.C. § 7401, et seq., the Clean Water Act of 1977, as amended, 33 U.S.C. § 1251, the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, et seq., the National Environmental Policy Act of 1975, 42 U.S.C. § 4321, the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300, et seq., the Emergency Planning and Right-to-Know Act of 1982, 42 U.S.C. § 11001, et seq., the Tennessee Water Quality Control Act, Tenn. Code Ann. § 69-3-101, et seq., the Tennessee Air Quality Act, Tenn. Code Ann. § 68-201-101, et seq., the Tennessee Solid Waste Disposal Act, Tenn. Code Ann. § 68-211-101, et seq., the Tennessee Hazardous Waste Management Act, Tenn. Code Ann. § 68-212-101, et seq., the Tennessee Petroleum Underground Storage Tank Act, Tenn. Code Ann. §68-215-101, et seq., or any other Legal Requirements regulating, relating to or imposing liability or standards of conduct concerning any petroleum, petroleum byproduct (including, but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, and all other liquid hydrocarbons, regardless of specific gravity), natural or synthetic gas, or hazardous, toxic, radioactive or any other regulated substance, product, material, waste, pollutant or contaminant which are defined as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," or other similar designations by Legal Requirements (hereinafter "Hazardous Waste"), as may now or at my time hereafter be in effect (hereinafter "Environmental Laws").

(b) Without limiting the generality of Section 13.01, Tenant represents and warrants to Landlord, its successors and assigns that:

(i) Prior to the conveyance of the Real Property and Improvements to Landlord, Tenant has not (except in strict compliance with all applicable Environmental Laws) received, handled, used, stored, treated, shipped or disposed of any Hazardous Waste on the Premises; and subsequent to the conveyance of the Premises to Landlord, Tenant will (and will require any permitted sublessee of the Premises) at all times receive, handle, use, store, treat, ship and dispose of all Hazardous Waste in strict compliance with all applicable Environmental Laws, and will continue to do so during the Term of this Lease and any extension thereof.

(ii) Tenant has delivered (or caused to be delivered) to Landlord a copy of that certain Phase I Environmental Site Assessment dated [\_\_\_\_\_, 20\_\_ prepared by \_\_\_\_\_] for Tenant (the "Phase I Report") concerning the environmental condition

of the Premises. Except as may be shown in the Phase I Report, Tenant has no knowledge of or information regarding any Hazardous Waste on the Premises.

(iii) There are no violations of any Environmental Laws requiring any work, repairs, construction or capital expenditures with respect to the Premises, and Tenant has no knowledge or information, nor has Tenant received any notice of any such violations.

(iv) Other than matters disclosed in the Phase I Report, Tenant is not aware of any of the following circumstances or events related to the presence of Hazardous Wastes at, on, or near the Premises:

A. any release into the environment, deposit, discharge, placement, or disposal of Hazardous Wastes at, on, or near the Premises, or the use of the Premises at any time by any person or entity as a landfill or a waste disposal site.

B. any violation of any Environmental Laws relating to the Premises or the use of the Premises; any writs, injunctions, decrees, orders or judgments outstanding relating to the Premises or the use of the Premises in violation of Environmental Laws; any lawsuits, claims, proceedings or investigations pending or threatened relating to the ownership, use, maintenance or operation of the Premises in violation of Environmental Laws; or any basis for such lawsuits, claims, proceedings or investigations being instituted or filed.

C. monitoring wells for monitoring Hazardous Waste; underground storage tanks; PCB contamination from any power transformer, capacitor, or any other source; or asbestos containing material.

D. any fact or circumstance that may give rise to any future civil, criminal, or administrative proceedings against it relating to Hazardous Waste involving the Premises.

Section 13.02 Tenant's Continuing Responsibility for Environmental Matters.

(a) Tenant covenants at its sole cost and expense, to remove or take remedial action required by any Environmental Law with regard to any Hazardous Waste released to the environment at, on, or from the Premises while under Tenant's possession and control during the Term of this Lease or any extension thereof.

(b) No removal or remedial action shall be taken except after reasonable advance written notice to Landlord; provided, however, that no notice shall be required if immediate action is required in order to comply with the requirements of any Legal Requirements or if immediate action would diminish the extent of any environmental problem or hazardous condition.

(c) Tenant shall indemnify Landlord for any action taken by Tenant, in accordance with Section 13.03 hereof to Landlord's satisfaction.

(d) Tenant shall at all times retain any and all liabilities arising from the handling, treatment, storage, transportation or disposal of any Hazardous Waste by Tenant or by any of Tenant's contractors.

Section 13.03 Tenant's Indemnification.

(a) Tenant shall indemnify and hold Landlord and its officers, directors, agents, counsel and employees harmless from and against any and all liabilities, losses, claims, penalties, damages (including, without limitation, consequential damages, interest, penalties, fines and monetary sanctions), and costs, and reasonable attorneys' and consultants' fees and expenses, court costs and all other out-of-pocket expenses incurred or suffered by Landlord by reason of, resulting from, or in connection with, or arising in any manner whatsoever out of the following ("Environmental Claims"):

(i) the breach of any warranty or covenant or the inaccuracy of any representation of Tenant contained or referred to in this Article XIII.

(ii) any violation or breach by Tenant or the Premises of any Environmental Laws, or the violation or breach of any obligations imposed on Tenant or the Premises under any Environmental Laws;

(iii) to the extent arising out of, or relating to Tenant or the Premises, any of the following: (A) pollution or contamination of the environment; (B) handling, treatment, storage, disposal, or transportation of Hazardous Waste; (C) exposure to Hazardous Waste; (D) the manufacture, processing, distribution in commerce, use, or storage of Hazardous Waste; (E) injury to or death of any person or persons directly or indirectly connected with Hazardous Waste on, under, over, or transported or released to or from the Premises or any portion thereof; or (F) contamination of any property caused by Hazardous Waste on, under, over, or transported or released to or from the Premises or any portion thereof;

(iv) the failure by Tenant, or any other party directly or indirectly connected with the Premises, or any portion thereof, to obtain, maintain, or comply with any permit, license, approval, or other authorization with respect to any activities, operations, or businesses conducted on or in relation to the Premises, or any portion thereof, required under any applicable Environmental Laws; or

(v) the presence or existence of Hazardous Waste on, under, over, or released or transported from the Premises, or any portion thereof,

Landlord shall be entitled to conduct its own investigation in connection therewith and provide its own defense and charge Tenant with its reasonable and actual expense incurred in connection therewith. The term "Environmental Claim" also includes (i) the costs of removal of any and all Hazardous Waste from all or any portion of the Premises, (ii) costs required to take necessary precautions to protect against the release of Hazardous Waste on, in, under, or affecting the Premises, or any portion thereof, and (iii) costs incurred to comply, in connection with all or any portion of the Premises or any surrounding areas affected by Hazardous Waste on, under, over, or transported or released to or from the Premises, with all applicable Environmental Laws.

(b) All representations, warranties, covenants, agreements and indemnities of Tenant contained in this Article XIII shall survive the Term of this Lease or any extensions hereof and the consummation of the transactions contemplated in this Lease, and shall not be affected by an investigation by or on behalf of Tenant or by any information Tenant may have or obtain with respect thereof.

Section 13.04 Cost Benefit Analysis. Pursuant to Tenn. Code Ann. § 7-53-305(b), the Cost Benefit Analysis created in accordance with the PTIP is attached hereto as Exhibit E.

*[Signatures on Following Page]*



[SIGNATURE PAGE FOR LEASE AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

**“Tenant”**

**AVERITT PROPERTIES, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF TENNESSEE  
COUNTY OF KNOX**

Before me, the undersigned authority, a Notary Public in and for said county and state, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the \_\_\_\_\_ of **AVERITT PROPERTIES, INC.**, the within named bargainor, a Tennessee corporation, and that he/she as such officer being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said company by himself/herself as such \_\_\_\_\_.

Witness my hand and official seal at office in the aforesaid county, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SIGNATURE PAGE FOR LEASE AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

**“Averitt Express”**

**AVERITT EXPRESS, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF TENNESSEE  
COUNTY OF KNOX**

Before me, the undersigned authority, a Notary Public in and for said county and state, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the \_\_\_\_\_ of **AVERITT EXPRESS, INC.**, the within named bargainor, a Tennessee corporation, and that he/she as such officer being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said company by himself/herself as such \_\_\_\_\_.

Witness my hand and official seal at office in the aforesaid county, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

[SIGNATURE PAGE FOR LEASE AGREEMENT]

**“Landlord”**

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF KNOX**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF TENNESSEE  
COUNTY OF KNOX**

Before me, the undersigned authority, a Notary Public in and for said county and state personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the \_\_\_\_\_ of **The Industrial Development Board of the County of Knox** within named bargainor a corporation, and that he/she as such officer being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said Public nonprofit corporation by himself/herself as such \_\_\_\_\_.

WITNESS my hand, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT A  
PROPERTY DESCRIPTION**

**[to be provided]**

**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

**EXHIBIT C**

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF KNOX  
PROPERTY TAX INCENTIVE PROGRAM (PTIP)**

***PTIP COMPLIANCE REPORT***

Please complete the following contact information:

Company Name: \_\_\_\_\_

Local Contact: \_\_\_\_\_

Title: \_\_\_\_\_

Local Address: \_\_\_\_\_

\_\_\_\_\_

Local Phone: \_\_\_\_\_

Local Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Person Responsible for completing Report (If different from the local contact)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Please submit completed and signed materials to:  
The Development Corporation of Knox County  
Attn: Todd Napier  
17 Market Square, #201  
Knoxville, TN 37902-1405

**DEADLINE:** \_\_\_\_\_

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF KNOX  
PROPERTY TAX INCENTIVE PROGRAM (PTIP)**

**PTIP REPORT/COMPLIANCE REPORT**  
as of \_\_\_\_\_, 20\_\_

**Project Data:**

Recipient of Property Tax Incentive (Company Name): \_\_\_\_\_

Address of Property Subject to Payment in Lieu of Tax Transaction (PILOT):

\_\_\_\_\_

\_\_\_\_\_

**Capital Investment:**

Identify the total Capital Investment in the Project as of \_\_\_\_\_, 20\_\_.

Purpose	Amount
Land Acquisition	\$ _____
Site Development Costs	\$ _____
Building Improvements	\$ _____
Machinery and Equipment	\$ _____
Air Quality/Pollution Control Equipment	\$ _____
Other (please describe)	\$ _____
Total	\$ _____

Capitalized terms not specifically defined will have the meanings assigned to them in the Lease Agreement between the IDB and the Company and in the Policies and Procedures of the PTIP.

**Employee Report / Job Creation & Wages:**

List the following information for all new employees of the Company currently holding positions as a result of the Project. In a separate document list part-time, contract, or seasonal workers who reside in Knox County or a contiguous county and the gross salaries of employees who reside in Knox County or a contiguous county. (These jobs shall be reported in job classifications as required by the Board.) Also indicate the total on-site employment as of \_\_\_\_\_, 20\_\_.

Position	Number of Employees	Annual Wage
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(job classification or title)	(full time equivalent)	(salary without benefits)
TOTALS:		

**TOTAL ON-SITE EMPLOYMENT:** \_\_\_\_\_

**Vendor Support Report:**

The annual and cumulative gross dollars spent locally on supplier and professional service contracts, to demonstrate the amounts by contract awarded and performed by Knox County Persons.

Knox County Suppliers (by type)	Calendar Expenditures	Year	Cumulative Expenditures for PILOT Term

**Minority/Small Businesses:**

The dollar amount of contracts awarded to Minority/Small Business for the term of the PILOT.

Minority/Small Business by Type	Amount of Contract
Total	

**Insurance Requirements:**

In accordance with the Lease Agreement provide a certificate of insurance showing insurance coverage in the proper amounts and listing The Industrial Development Board of the County of Knox as an additional insured on all liability policies. The form of the Certificate must comply with the Lease



Agreement. It should provide an obligation on the part of the insurer to provide 30 days' notice of cancellation or a material change in coverage.

The following language normally contained in Accord Certificate 25-S is NOT acceptable:

- (i) the insurer "will endeavor to mail notice to "the certificate holder""; and
- (ii) "This certificate is issued as a matter of information only and confers no rights upon the certificate holder. The certificate does not amend, extend, or alter the coverage afforded by the policies below."

The Company may provide an insurance binder, a summary of declarations showing the coverage and the notice requirements, or a copy of the actual policies.

### CERTIFICATE

The undersigned hereby represents, warrants and certifies to The Industrial Development Board of the County of Knox ("IDB") as follows:

- (i) The undersigned is the incumbent holder of the office or official position set forth below and is authorized by the Company to execute and deliver this Compliance Report to the IDB;
- (ii) the undersigned has examined the information contained in this Compliance Report and the accompanying Employee Listing and accompanying Capital Improvements Invoice Listing, if applicable, and the information contained therein is true, complete and accurate as of the date set forth below;
- (iii) no Event of Default has occurred under the Lease Agreement between the Company and the IDB, or would have occurred but for the giving of notice or the passage of time, or both;
- (iv) no circumstance exists that could serve as the basis for an Event of Default referred to above; and
- (v) the Company has performed all of its obligations under the Lease Agreement between the Company and the IDB, as amended, that are required to be performed by it at or prior to the date set forth below.

\_\_\_\_\_  
Print name and title of authorized Company representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

STATE OF TENNESSEE  
COUNTY OF KNOX

Before me, the undersigned authority, a Notary Public in and for said county and state, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself/herself to be the \_\_\_\_\_ of \_\_\_\_\_, the within named bargainor, a \_\_\_\_\_, and that he/she as such \_\_\_\_\_ being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said \_\_\_\_\_ by himself/herself as such \_\_\_\_\_.

Witness my hand and official seal at office in the aforesaid county, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

---

Notary Public  
My Commission expires: \_\_\_\_\_

**Please submit completed and signed materials to:**  
The Development Corporation of Knox County  
Attn: Todd Napier  
17 Market Square, #201  
Knoxville, TN 37902-1405  
**For assistance call: 865-546-5887**

**EXHIBIT D**

**PTIP POLICIES AND PROCEDURES**

**EXHIBIT E**

**COST BENEFIT ANALYSIS**

**EXHIBIT F**

**BOARD OF EQUALIZATION REPORT**