

**This instrument was prepared by,
and after recording, return to:**

Michele Simmons Allgood
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
425 W. Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201

**RECOGNITION OF PRIOR INTERESTS, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS RECOGNITION OF PRIOR INTERESTS, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made this ____ day of _____, 2016, among FMH CONVEYORS LLC, a Delaware limited liability company ("Lessee"), the CITY OF JONESBORO, ARKANSAS, a political subdivision of the State of Arkansas ("Lessor"), and _____, an [insert state of formation] [insert type of entity] ("Lender").

RECITALS

A. Lessor has issued industrial revenue bonds (the "Bonds") for the purpose of financing a portion of the costs of the acquisition of land and/or leasehold rights, construction of buildings, infrastructure and improvements, and acquisition and installation of equipment for the manufacture, fabrication or processing of custom-engineered conveyors to be located at the intersection of Barnhill Road and Highland Drive in Jonesboro, Arkansas (the "Project").

B. In connection with the issuance of the Bonds, (i) Lessee has transferred or will transfer to Lessor title to certain personal property, including all machinery and equipment, and certain real property described on **Exhibit A**, attached hereto and incorporated by reference, acquired or constructed in furtherance of the Project (herein called the "Leased Premises") and (ii) Lessor and Lessee have entered into a Lease Agreement, dated on or about the date hereof (the "Lease"), pursuant to which Lessor demised to Lessee a leasehold interest in the Leased Premises ("Lessee's Leasehold Interest"), in each case subject to the Pre-Transfer Liens (as defined in Recital C, below).

C. Lessee has obtained loans (the “Loans”) from Lender secured by liens on, or security interests in, title to all or part of the Leased Premises granted pursuant to the following documents:

1. [Insert title and filing information for any mortgage documents]; and
2. [Insert title and information relating to security agreements affecting personal property].

Items 1 and 2 above are collectively referred to as the “Pre-Transfer Liens” or, as appropriate, the “Security Documents.”

D. By this Agreement, the parties desire to establish and acknowledge certain rights, obligations, protections and priorities with regard to their respective interests in the Leased Premises.

AGREEMENT

In consideration of the premises and other good and valuable consideration, receipt of which is hereby acknowledged, and the mutual benefits to accrue to the parties hereto, the parties hereto agree as follows:

1. **Recognition of Prior Liens and Interests.** Lessor hereby acknowledges and consents to all liens and encumbrances on, security interests in and rights to, the title to the Leased Premises and Lessee’s Leasehold Interest created by or pursuant to the Security Documents, and acknowledges that Lessor’s interest in the title to the Leased Premises has been, or will be, transferred to Lessor subject to the Pre-Transfer Liens and subordinate to the Lender’s interest created under the Pre-Transfer Liens. In the event that the Lender attempts to obtain title to the Leased Premises by foreclosure, replevin, sale, transaction or other action or proceeding for the enforcement of the Pre-Transfer Liens, the Lessor shall, upon receipt of written notice thereof, cooperate with such Lender in executing a deed in lieu of foreclosure or such other conveyance or consent to such foreclosure, replevin, sale, transaction or other action or proceeding as such Lender may request. Such action shall include and not be limited to execution of a deed in lieu of foreclosure, consent to any decree regarding a foreclosure or replevin action with respect to the Leased Premises, and any other action that will assist or effectuate the transfer of title to any Lender.

2. **Notice and Opportunity to Cure; Nondisturbance.** If any default or breach under the Lease occurs (a “Lessee Default”), then Lessor shall promptly provide Lender a notice describing in reasonable details such Lessee Default and the potential remedies to be pursued in connection therewith (a “Lessee Default Notice”). Lessor shall accept the Lender’s cure of any Lessee Default at any time until the later of (i) 30 days after provision of the Lessee Default Notice (or if the Lender reasonably cannot cure the Lessee Default within such 30-day period, then the period to cure shall be extended to the period reasonably required to effect the cure), or (ii) the expiration of any applicable cure period provided under the Lease. At any time after the occurrence of a Lessee Default and before expiration of the applicable cure period set forth herein or in the Lease, (a) Lessor shall not terminate the Lease, accelerate rent, or otherwise interfere with Lessee’s or the Lender’s possession or quiet enjoyment as long as the Lender

otherwise complies with its obligations under this Agreement and (b) the Lender may enter or use the Leased Premises to seek to cure a Lessee Default. Notwithstanding the foregoing, the Lender has no obligation to cure a Lessee Default.

3. **Recognition, Non-Disturbance and Attornment.** If any transfer of the Lessee's Leasehold Interest by foreclosure, replevin, sale, transaction or other action or proceeding for the enforcement of the Security Documents or deed or assignment in lieu thereof (a "Transfer") occurs, upon receipt of written notice setting forth in reasonable detail the terms of the Transfer, Lessor shall recognize the transferee(s), including the Lender ("Successor"), as the lessee under the Lease upon the same terms, provisions and conditions as are set forth in the Lease. If Lessor shall have received written notice from Successor that Successor has succeeded to the interest of Lessee under the Lease or otherwise has the right to use or occupy the Leased Premises or to require Lessor to perform its obligations under the Lease, Lessor shall perform all of the obligations of Lessor pursuant to the Lease for the benefit of Successor and shall not disturb the possession of Successor so long as no Lessee Default exists beyond any applicable notice and cure period. Successor shall attorn to Lessor and recognize all of the rights of Lessor under the Lease, and the Lease shall continue in full force as a direct lease between Lessor and Successor, and the respective executory rights and obligations of Lessor and Successor, to the extent of the then-remaining balance of the term of the Lease, shall be and are the same as set forth therein. This recognition, non-disturbance and attornment shall be effective and self-operative, without the execution of any further instrument on the part of any of the parties hereto, immediately upon Successor succeeding to Lessee's Leasehold Interest.

4. **Amendments to Lease.** Without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed, Lessor shall not (a) enter into any agreement amending, modifying or terminating the Lease or (b) request a waiver by Lessee of Lessee's rights or remedies under the Lease.

5. **Limitation on Lender's Performance and Liability.** Lessor acknowledges that (a) Lender shall have no duty, liability or obligation whatsoever under the Lease unless and until Lender, as Successor, succeeds to Lessee's Leasehold Interest or obtains possession of the Leased Premises under the terms of the Security Documents and (b) Successor shall have no duty, liability or obligation whatsoever under the Lease unless such duty, liability or obligation accrues during the period after Successor succeeds to Lessee's Leasehold Interest or obtains possession of the Leased Premises under the terms of the Security Documents.

6. **Lessor Bankruptcy.** Upon the filing by or against the Lessor of a petition pursuant to applicable provisions of the United States Code relating to bankruptcy as now constituted or hereafter amended or under any other applicable Federal or State Bankruptcy law or other similar law (hereinafter referred to as the Bankruptcy Code), and the subsequent rejection of the Lease by Lessor, Lessee shall not, without the prior written consent of the Lender (i) elect to treat the Lease as terminated pursuant to Section 365(h)(i) of the Bankruptcy Code, or (ii) pursuant to Section 365(h)(2) of the Bankruptcy Code, offset against the rents reserved under the Lease the amount of any damages caused by the Lessor's rejection of the Lease. Lessee shall promptly, and so as to be received prior to all hearing dates, return dates or other deadlines, send to Lender copies of all notices, summonses, pleadings, applications and other documents received by Lessee in connection with such petition or proceeding by Lessor.

7. **Notices under Lease.** Pursuant to the terms hereof, Lessor shall give Lender, concurrently with giving any material notice to Lessee, a copy of any such notice given to Lessee by Lessor under the Lease, in the manner set forth below. No such notice given to Lessee by Lessor which is not concurrently given to Lender shall be valid or effective for any purpose with respect to Lender.

8. **Miscellaneous.**

(a) **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or e-mail (with .pdf copy attached and confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on **Exhibit B**, or such other address for a party as specified in a notice given in accordance with this Section.

(b) **Interpretation.** For purposes of this Agreement, (i) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; and (iii) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to sections, schedules and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(c) **Entire Agreement.** This Agreement and the Lease contain all of the terms and conditions of the parties' agreement regarding the subject matter set forth herein. If there is any conflict between the provisions of this Agreement and those of the Lease, the provisions of this Agreement shall prevail.

(d) **Amendments and Modifications; Release.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. Upon full payment of any Loan, the Lender shall promptly execute and deliver to Lessee upon request a release of this instrument in recordable form, if this Agreement has been recorded.

(e) **Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not

expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(f) **Governing Law.** This Agreement shall be governed by the law of the State of Arkansas, without regard to the choice of law rules of that State.

(g) **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(h) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(i) **Counterparts and Original Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other form of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Notwithstanding the foregoing, each party hereto shall deliver original counterpart signatures to the Lessee promptly after execution.

9. **Waiver of Jury Trial.** EACH OF THE LENDER, LESSOR, TO THE EXTENT PERMITTED BY LAW, AND LESSEE SHALL, AND THEY HEREBY DO, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST ANY OTHER PARTY ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF THE LENDER, LESSOR AND LESSEE AND ANY EMERGENCY STATUTE OR ANY OTHER STATUTORY REMEDY.

10. **Subordination in Bankruptcy.** If the Lease is at any time determined to be a secured financing by a court of competent jurisdiction, then the Lessor agrees: (a) any and all liens determined to exist or be created or arise in favor of the Lessor securing the obligations of the Lessee under the Lease, regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise are expressly junior in priority, operation and effect to any and all liens on the Leased Premises existing or hereafter created or arising in favor of Lender, notwithstanding (i) anything to the contrary contained in any agreement or filing to which Lessor or Lessee may now or hereafter be a party, and regardless of the time, order or method of grant, attachment, recording or perfection of any financing statements or other security interests, assignments, pledges, deeds, mortgages and other liens, or any defect or deficiency or alleged defect or deficiency in any of the foregoing, (ii) any provision of the Uniform Commercial Code or any applicable law or any financing document or security document between Lessee and Lender or any other circumstance whatsoever and (iii) the fact that any such liens in favor of the Lender are otherwise subordinated, voided, avoided, invalidated or lapsed. Notwithstanding any

failure by Lender to perfect its security interests in the Project or the Leased Premises or any avoidance, invalidation or subordination by any third party or court of competent jurisdiction of the security interests in the Project or the Leased Premises granted to the Lender, the priority and rights as between the Lender and the Lessor with respect to the Project or the Leased Premises shall be as set forth herein.

11. **Validity of Lender's Liens.** To the extent permitted by law, the Lessor shall not object to or contest, or support any other person in contesting or objecting to, in any proceeding (including any bankruptcy proceeding), the validity, extent, perfection, priority or enforceability of any security interest in the Project or the Leased Premises granted to Lender.

[Signature Pages Follow]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed on its behalf on the date and year first above written and appropriate seals to be hereunto affixed pursuant to the proper authorities which have been duly delegated to them.

LESSOR:

CITY OF JONESBORO, ARKANSAS,
an Arkansas municipality

By: _____
Harold Perrin, Mayor

ATTEST:

By: _____
Donna Jackson, City Clerk

(S E A L)

STATE OF ARKANSAS)
)ss. ACKNOWLEDGMENT
COUNTY OF CRAIGHEAD)

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named **HAROLD PERRIN** and **DONNA JACKSON**, being the persons authorized by said municipality to execute such instrument stating their respective capacities in that behalf, to me well known, who stated that they are the Mayor and City Clerk, respectively, of **CITY OF JONESBORO, ARKANSAS**, an Arkansas municipality, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and on behalf of said municipality, and further stated and acknowledged they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2016.

(SEAL)

Notary Public
My commission expires: _____

Exhibit A

Description of Leased Premises

The Leased Premises is located in Craighead County, Arkansas and described as follows:

[Insert Property Description]

Exhibit B

Notices

If to Lessor: City of Jonesboro, Arkansas
P.O. Box 1845
Jonesboro, Arkansas 72403
Attn: Mayor

with a copy to: Carol M. Duncan
Attorney at Law
410 W. Washington Ave
Jonesboro, AR 72401

If to Lessee: FMH Conveyors LLC

with a copy to: _____
Attention: Member
[insert contact information for Company Counsel]

If to Lender: [insert contact information for Lender]

with a copy to: [insert contact information for Lender's Counsel]