

VILLAGE OF ROUND LAKE PARK

ORDINANCE NO. 12-12

*AN ORDINANCE APPROVING A "HOST COMMUNITY AGREEMENT" BETWEEN
THE VILLAGE OF ROUND LAKE PARK, ILLINOIS AND GROOT INDUSTRIES, INC.*

ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES

OF THE

VILLAGE OF ROUND LAKE PARK, ILLINOIS

ON

October 16, 2012

Published in pamphlet form by authority of the Village Board
of the Village of Round Lake Park, Lake County, Illinois,
this 16th day of October, 2012.

JEAN M. McCUE	President	ROBERT SEMINARY	Trustee
		CANDACE KENYON	Trustee
CINDY FAZEKAS	Clerk	PATRICIA WILLIAMS	Trustee
		PAT GRAHAM	Trustee
PETER S. KARLOVICS	Attorney	BOB CERRETTI	Trustee
		LINDA M. LUCASSEN	Trustee

ORDINANCE NO. 12 - 12

AN ORDINANCE APPROVING AN "HOST COMMUNITY AGREEMENT" BETWEEN THE VILLAGE OF ROUND LAKE PARK, ILLINOIS AND GROOT INDUSTRIES, INC.

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Round Lake Park, Illinois, as follows:

SECTION I: That the attached "***HOST COMMUNITY AGREEMENT***" between the Village of Round Lake Park, Illinois and Groot Industries, Inc. (hereinafter "Agreement") be and is hereby approved and ratified.

SECTION II: That the Mayor is hereby directed and authorized to execute said Agreement on behalf of the Village of Round Lake Park and the Clerk shall attest to her signature and affix the seal of the Village to her certification.

SECTION III: That the Agreement shall be executed in several duplicate originals and duplicates of the executed Agreement shall be delivered to all parties thereto.

SECTION IV: That this ordinance shall be in full force and effect from and after its passage and approval as required by law.

Passed this 16th day of October, 2012.

<u>TRUSTEES</u>	<u>Ayes:</u>	<u>Nays:</u>	<u>Absent/Abstain</u>
ROBERT SEMINARY	X	—	—
CANDACE KENYON	X	—	—
PATRICIA WILLIAMS	—	—	X
PAT GRAHAM	X	—	—
BOB CERRETTI	X	—	—
LINDA M. LUCASSEN	X	—	—

APPROVED:

By Jean M. Cline, Date: October 16, 2012
Village President

ATTEST:

By: Genetia Fugles
Village Clerk

Presented and read, or reading having been waived, at a duly convened meeting of the Corporate Authorities on October 16, 2012.

I hereby certify that the above ordinance was published in pamphlet form on October 16, 2012, as provided by law.

By: Cynthia Taggas
Village Clerk

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HOST COMMUNITY AGREEMENT

This Host Community Agreement is made this the 16th day of October, 2012 by and between Groot Industries, Inc. (the "Company") and the Village of Round Lake Park, an Illinois Municipal Corporation (the "Village").

WITNESSETH:

WHEREAS, the Company desires to file with the Village a request for siting approval to construct and operate a transfer facility (the "Transfer Facility") on some or all of the property that is legally described on Exhibit A (the "Subject Property"), attached hereto and made a part hereof; and

WHEREAS, the Village is authorized by the State of Illinois, pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 39.2) to, among other things, receive, hold hearings and decide an application for site location of a pollution control facility proposed to be located in the corporate boundaries of the Village; and

WHEREAS, Section 39.2 of the Illinois Environmental Protection Act expressly acknowledges a local government's power to negotiate and enter into a host community agreement with an applicant for site location of a pollution control facility within the corporate boundaries of the Village; and

WHEREAS, the Company desires to provide certain benefits to the Village with respect to the Transfer Facility if the Transfer Facility obtains all required approvals; and

WHEREAS, the Village is desirous of obtaining certain benefits as set forth herein, provided that under no circumstance shall the Village be under any obligation to grant site location approval of the Transfer Facility unless and until, through the pollution control facility site location review process, it finds that the Transfer Facility meets or exceeds all criteria set forth in 415 ILCS 5/39.2; and

WHEREAS, if the Village grants siting approval for the Transfer Facility, the Illinois Environmental Protection Agency issues permits for the development and operation of the Transfer Facility on the Subject Property, and the Transfer Facility is constructed and receives waste, then the Company is willing to afford certain benefits, as hereinafter set forth herein, to the Village; and

WHEREAS, the Village generally favors properly designed and operated Transfer Facilities, which can be of great benefit to the citizens of the Village and surrounding areas, and that such facility could facilitate and enhance the clean, efficient, lawful, convenient and economical movement of municipal waste and recyclables from homes, businesses and industries located within the Village and surrounding areas to waste diversion and other material recovery centers and

landfills (respectively) which are properly licensed and permitted to accept the same; and

WHEREAS, the Section 4.2.5 of the Lake County Solid Waste Management Plan (the "Plan"), and, more specifically, the 2009 Plan Update, states: "Solid waste transfer stations, if developed in accordance with the applicable requirements of the Lake County Solid Waste Management Plan (Recommendations T.2 through T.6), will be considered consistent with the Plan; and

WHEREAS, all words used in this Agreement, which are not defined herein but are defined in the Act, and its corresponding regulations shall have the same definitions and meanings as found in the Act and its corresponding regulations in effect on the date of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and the Company agree as follows:

1. INCORPORATION OF RECITALS

The Village and the Company agree that the foregoing recitals are material to this Agreement, and are hereby incorporated and made a part of this Agreement as if they were fully set forth herein.

2. DEFINITIONS

"Act" means the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*

"Agreement" means this Host Community Agreement.

"Anniversary Date" means the date that Municipal Waste or Recyclables are first received at the Transfer Facility.

"Application" means the Company's Application for siting approval for the Transfer Facility pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 39.2).

"Authorized Waste" means Municipal Waste and Recyclables as defined by Section 2 of this Agreement.

"Company" means Groot Industries, Inc. an Illinois corporation.

"Host Benefit Fee" means the per ton fee payable to the Village, commencing on the Anniversary Date, as more fully set forth *infra*.

"Host Benefit Fee Adjustment" means the upward adjustment of the Host Benefit Fee, as set forth in this Agreement.

"Waste Subject to the Host Fee" means Municipal Waste, as defined herein, and any other material that is received by the Transfer Facility to the exclusion of only Landscape Waste and source separated recyclables collected curbside. Landscape Waste and source separated recyclables collected curbside shall be included within Waste Subject to the Host Fee if they are transported to a landfill or other disposal facility. However, Village waste accepted free of charge by the Transfer Facility as an additional benefit

described in Exhibit C hereof is not within the definition of Waste Subject to the Host Fee.

"Landscape Waste" means landscape waste as defined in Section 3.270 of the Act.

"Municipal Waste" means garbage, general household and commercial waste, industrial lunchroom or office waste, landscape waste, construction or demolition debris, in accordance with Section 3.290 of the Act. Further, the term municipal waste does not include any: 1) hazardous substance, as defined by Section 3.215 of the Act, 2) hazardous waste, as defined by Section 3.220 of the Act, 3) industrial process waste, as defined by Section 3.235 of the Act, 4) pollution control waste, as defined by Section 3.335 of the Act, 5) sludge, as defined by Section 3.465 of the Act, and 6) special waste, as defined by Section 3.475 of the Act. Municipal Waste includes non-hazardous industrial wastes.

"Operating Year" means the year commencing on the Anniversary Date.

"Parties" means the Village of Round Lake Park and Groot Industries, Inc.

"Recyclables" means any material, which would otherwise be disposed or discarded, which is separated from Municipal Waste at the source of generation or at the Transfer Facility so as to render it useable in a process, or alone, such that it can be returned to the economic mainstream in the form of raw materials or products.

"Subject Property" means the site described and shown in Exhibit A.

"Transfer Facility" means "transfer station" as defined by Section 3.500 of the Act, including the property on which the transfer station is located, which may

include some or all of the property as described and shown in Exhibit A.

“Village” means the Village of Round Lake Park, an Illinois Municipal Corporation.

3. TERM OF AGREEMENT

This Agreement commences on the date of execution, and shall remain in force and effect until the Transfer Facility is closed and permanently ceases to operate. The Company agrees to exercise all commercially reasonable efforts to operate the Transfer Facility for a minimum of twenty (20) years. In addition, this Agreement will terminate if: (1) the Company elects (in writing) to cease its efforts to site a transfer station on the Subject Property, (2) if the Company ceases to use all reasonable and timely efforts to site a transfer station on the Subject Property, or (3) the Company ceases to use all reasonable and timely efforts to commence operation of the transfer facility after (if ever) it receives final, nonappealable siting approval for the transfer facility.

4. AUTHORIZED WASTE

The Transfer Facility shall receive only waste that is acceptable pursuant to permit issued by the Illinois Environmental Protection Agency, which is anticipated to include Authorized Waste. The Transfer Facility shall not knowingly receive any hazardous substance or hazardous waste, as those terms are defined in the Act. If any waste, other than Authorized Waste, is received at the Transfer Facility, it shall be promptly removed from the waste stream and transferred to an appropriate facility to be legally recycled or disposed of within an appropriate time frame or legally placed back on the vehicle that transported

said waste to the Transfer Facility.

5. HOST BENEFIT FEE

a. Host Benefit Fee. The Company shall pay to the Village a Host Benefit Fee, commencing on the Anniversary Date and continuing thereafter for the term of this Agreement on each ton of Waste Subject to the Host Fee. No such Host Benefit Fee shall be paid on Recyclables or Landscape Waste unless transported to a landfill or other disposal facility. The Host Benefit Fee shall be considered general revenue to the Village and shall be calculated in accordance herewith. The Village agrees that it will neither levy nor collect or attempt to collect any additional fees or taxes or increase the amount of fees or taxes impacting the Company, the Company's property or any of the operations conducted thereon; provided, however, the foregoing restriction on the levy and collection of any additional fees or taxes by the Village shall not apply to: (i) any fee or tax which is uniformly assessed upon all members of a class of taxpayers of which the Company is a member (other than a class of taxpayers based on ownership or operation of a waste transfer station or solid waste management facility), (ii) real estate taxes, (iii) ad valorem taxes similarly assessed on other property or operations, (iv) utility taxes (v) telecommunication taxes, (vi) any other fee or tax which the Company is obligated to pay pursuant to county, state, or federal law, or pursuant to the laws or regulations of any governmental entity with jurisdiction and (vii) sales taxes. If, despite the aforesaid, the Village levies, collects or attempts to levy or collect a fee or tax prohibited by this Agreement, the Company, may (subject to the Village's right to challenge the propriety of

such deduction/offset), elect to pay such fee or tax, with written notice to the Village and deduct the amount thereof from any host benefit fee payable to the Village.

b. Calculation. The Company shall pay the Village a Host Benefit Fee on each ton of Waste Subject to the Host Fee in accordance with the following schedule:

Table 1. Host Benefit Fee Schedule	
Daily Volume of Waste Subject to the Host Fee	Per Ton Fee
0 – 600 tons per day	\$1.75
601 – 1000 tons per day	\$2.10

Should, at any time, the Company wish to transport from the Transfer Facility more than 1000 tons per day of Waste Subject to the Host Fee the Company and the Village shall, prior thereto and in good faith, negotiate a host fee acceptable to the Parties.

The Host Benefit Fee shall be calculated on a quarterly basis, and applied to each ton of Waste Subject to the Host Fee during the previous quarter of each Operating Year. Each quarter upon which the Host Benefit Fee is calculated shall coincide with the Village's fiscal year, which runs from May 1st of each year to April 30th of the following year.

The Host Benefit Fee shall not apply to waste accepted from the Village at no charge to the Village pursuant hereto where such material would otherwise fall within the definition of Waste Subject to the Host Fee.

c. Host Benefit Fee Adjustment. The Host Benefit Fee shall be increased on an annual basis beginning on the third (3rd) year from the Anniversary Date of this Agreement, by the percentage change during the previous calendar year in the Consumer Price Index for All Urban Consumers for Chicago, Illinois-Gary, Indiana-Lake County, Illinois (1982-1984=100) published by the United States Department of Labor Statistics ("CPI") and calculated consistent with Exhibit B. The annual Host Benefit Fee adjustment shall be capped at three (3) percent through the tenth (10th) year from the Anniversary Date of this Agreement. Thereafter, the annual Host Benefit Fee adjustment shall be capped at five (5) percent.

However, if the percentage change in CPI is negative it shall be treated as being unchanged. Should, at any time, such calculation in Exhibit B become impossible, the Parties shall negotiate in good faith to agree on an alternative method as close as reasonably possible in terms of results to that provided in Exhibit B.

d. Additional Host Benefit Fee. The Village shall receive an Additional Host Benefit Fee of \$0.15 (fifteen cents) per ton applied to each ton of Waste Subject to the Host Fee contingent upon and for such time that the Village is under direct contract with the Company for the Company to provide exclusive residential waste collection, transfer and disposal services. This Additional Host

Benefit Fee payment will continue to be paid only as long as the Company remains under contract with the Village to provide all of the aforesaid services. This Additional Host Benefit Fee shall be adjusted as provided herein.

e. Right to Inspect, Audit and Contest. The Village shall have the right to inspect, audit and contest any determination made by the Company that the Host Benefit Fee was not payable on any material transported to the Transfer Facility. The Village may dispute any payment statement submitted by the Company within two (2) years of receipt of such statement. In any such dispute, the Parties agree that if the Company has failed to maintain the records required under this Agreement, the Company shall carry the burden of proving that the Host Benefit Fee was not payable on said material. During the pendency of any dispute, the Company shall under any circumstances and in all events pay the undisputed portion of any such Host Benefit Fee.

f. Payment. The Host Benefit Fee and the Additional Host Benefit Fee shall be payable to the Village on a quarterly basis. Each quarter upon which the Host Benefit Fee is calculated shall coincide with the Village's fiscal year, which runs from May 1st of each year to April 30th of the following year. Such quarterly payments shall be paid to the Village by the 30th day following the end of each quarter. Each payment shall be accompanied by a report documenting the data and methodology used to determine the payment amount.

g. Paving of Porter Drive. In addition to the aforesaid and within one (1) year of the Anniversary Date, the Company shall pave Porter Drive from Route 120 to Route 134 utilizing then current Illinois Department of

Transportation specifications but in any event, with no less than a one and one half (1 1/2) inch thick binder course of asphalt and a one (1) inch thick surface course of asphalt.

6. WEIGHING OF TRANSFER STATION RECEIPTS

For the purpose of calculating the Host Benefit Fee and the Additional Host Benefit Fee (if applicable), the Company shall maintain, utilize and operate a certified scale, which shall be inspected and certified by the State of Illinois at the expense of the Company, at least once each calendar year.

7. RECORDS

a. The Company shall maintain daily records of the amounts and detailed description of the types of all material received at the Transfer Facility. Such records shall be maintained for a period of at least two (2) years. Such records shall include both waste receipts and waste scale weights, disposal tickets and logs (electronic and hard copies), including, without limitation, those showing the amount in tons of all material including, without limitation, Landscape Waste, source separated recyclable material collected curbside, and Waste Subject to the Host Fee for all material entering or processed at the Transfer Facility. In addition, all records shall be kept and shall be provided to the Village upon written request regarding: (i) the hours of operation of the Transfer Facility, and (ii) the amount of the Host Benefit Fee (and Additional Host Benefit Fee, if applicable) payable on each ton of Waste Subject to the Host Fee in each calendar quarter, and the total Host Benefit Fee payable during each

calendar quarter.

b. The Village shall have the right to audit the records of the Company upon five (5) business days notice. At the Village's discretion, the audit may be performed by an accountant or other consultant selected by the Village.

c. The Company covenants and agrees to fully cooperate with the Village and its designee during any audit and/or inspection, to respond timely and fully to any questions or request, and to make pertinent Company employees available for interviews.

d. Where such audit determines that the Company has underpaid the Host Benefit Fee (including the Additional Host Benefit Fee if applicable) the Company shall pay the reasonable cost of the audit, if the Company has underpaid by 5% or more.

Upon reasonable notice, the Village, its authorized agents and representatives shall be permitted to inspect such records maintained by the Company. The Village shall also be permitted to inspect any and all records maintained by the Company concerning the Waste Subject to the Host Fee, compliance with this Agreement, and/or compliance with any and all applicable federal, state and local laws, statutes, regulations, rules and/or ordinances relating to the operation of the Transfer Facility. The Company shall provide digital or hard copies of any records at its cost if and in the format requested by the Village.

8. ADDITIONAL HOST BENEFITS

During the term of this Agreement, provided that the Transfer

Facility continues to operate, the Company will provide to the Village those additional benefits described in Exhibit C hereof.

9. ENVIRONMENTAL BENEFITS

The Transfer Facility will reduce the amount of emissions otherwise generated by packer trucks by reducing the number of miles packer trucks need to travel within and outside of Lake County transporting waste for ultimate disposal. Reduced packer truck miles will also result in less wear and tear on Lake County roads, and also reduce the overall traffic impact of packer trucks within Lake County.

10. COMPLIANCE WITH LAWS

The Company shall strictly comply with all applicable laws, regulations and ordinances (including the municipal code of the Village), as well as all final and non-appealable conditions of site location approval pursuant to Section 39.2 of the Act (should it be approved by the Village) as well as the terms, conditions, and requirements of any permit that is issued for the development and operation of the Transfer Facility and the terms and provisions of this Agreement.

11. TRANSFER FACILITY CONTROL MEASURES

a. Litter Control. The Company shall control litter by discharging and loading all waste within the enclosed portion of the Transfer Facility. The Company shall use its best efforts to assure that vehicles hauling waste to, or removing waste from the Transfer Facility shall be suitably covered so as to prevent waste from leaving the vehicles. A fence to aid in the interception of any blowing litter shall surround the Transfer Facility. The Company shall diligently

patrol the Subject Property during hours of operation to collect any litter. In addition, the Company shall abide by the litter control plan approved by the Village as a result of the siting process. At a minimum the Company will diligently patrol and remove litter from the Subject Property, all property owned or controlled by the Company, and public street and corresponding right-of-way within 1500 feet of the Subject Property. In addition, the Company shall, at a minimum, patrol and remove litter from property within five hundred (200) feet of the aforesaid public streets and corresponding rights-of-way with the permission of the owner of said property, which permission the Company will diligently attempt to obtain.

b. Dust Control. All access drives, parking areas, storage areas and vehicle-maneuvering areas on the Subject Property shall be paved. The Company agrees to provide a street sweeper to remove mud and dust tracked on to hard surfaces inside and outside the Transfer Facility, on property owned or controlled by the Company as well as well as public roads and right-of-ways included within the roadway boundaries within, at a minimum, one thousand (1,000) feet of the Subject Property on an as needed basis, but not less frequently than daily. Further a misting system shall be provided to help control dust inside the transfer building.

c. Odor Control. The Company agrees to conduct all waste handling and transfer operations completely indoors and will not emit any noticeable odor beyond the Transfer Facility boundary. The Company further agrees to have the tipping floor free of waste by the end of each operating day and incorporate

appropriate odor controls within the Waste Transfer Station Building. Further an odor neutralization system shall be provided, which system may be included within the facility's misting system.

d. Noise Control. All equipment utilized for operations shall be equipped with mufflers or other sound suppressing devices required for compliance with applicable State statutes and regulations.

e. Rodent/Vector Control. The Company shall retain a pest control service on an on-going basis to address the potential for infestation by rodents and other vectors, whereby such service shall inspect the Transfer Facility on an as needed, but no less than monthly, basis.

f. Fire Control and Prevention. The Transfer Facility shall be equipped with a sprinkler system that is designed in accordance with the requirements of the Greater Round Lake Area Fire District.

g. Storage. No waste or other material shall be left on the floor inside the transfer building or outside the transfer building on the Subject Property overnight. Waste may be kept temporarily in transfer trailers for no more than 24 hours (except on weekends and holidays), provided that such trailers are stored indoors and suitably covered. Empty transfer trailers may be stored outdoors for no more than 24 hours (except on weekends and holidays).

h. Minimum Measures. The various control measures contained herein represent minimum control measures which in no way limit the application of or ability to take any action regarding a nuisance and/or enforce any applicable law, ordinance or regulation and in no way limits the Village's ability to impose

more stringent control measures by way of special condition on any grant of siting.

i. The Company shall conduct all operations in a manner that does not cause a nuisance and is protective of the public health, safety, welfare and the environment.

12. APPLICATION

a. The Village has not, by entering into this Agreement with the Company predetermined whether it will approve, approve with conditions, or disapprove any Application, and has not pre-judged whether Company and the proposed Transfer Facility will meet the criteria for approval under Section 39.2 of the Act.

b. The Village shall review the Application in accordance with the criteria set forth in 415 ILCS 5/39.2. If requested by the Company and if sufficient time is available, the Village shall conduct a pre-filing review of the siting application at the Company's sole cost and expense, including, but not limited to all reasonable and necessary fees, costs and expenses related to consultants, experts and attorneys retained by the Village for this express purpose.

c. The Company shall be responsible for the payment of all costs and the reimbursement of all fees reasonably related in any manner to the siting process pursuant to Section 39.2 of the Act and the Siting Ordinance, including but not limited to public education, hearing facilities, consultants, hearing officers, attorneys and court reporters in any way associated with the Village's review of,

hearing and any appeal related to the Application, provided, however, that if the Village denies the Application and the Company does not appeal such denial, the fees and costs shall stop accruing upon the Company providing written notice to the Village that it will not appeal the denial. The Company agrees to pay any required filing fee and escrow and replenish funds to cover fees and costs as required by ordinance including by way of a Village Siting Ordinance and Chapter 158 of the Village Code.

13. INSPECTIONS BY VILLAGE OFFICIALS

The Village shall have the right to inspect the Transfer Facility during the Facility's permitted hours of operation as well as at times that the Company has staff present on site. During the course of each calendar year under this Agreement, the Village shall designate a Village official(s) to conduct inspections of the Transfer Facility. The Village agrees that any inspecting Village official shall be accompanied by at least one (1) Company representative during the site inspection, and that all applicable safety rules will be followed by the Village.

14. ASSIGNMENT OF RIGHTS

This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. The Company shall not subcontract, assign or transfer this Agreement, in whole or in part, or its rights or obligations hereunder, directly or indirectly, by operation of law or otherwise without the express written consent of the Village, which consent shall not be unreasonably withheld.

15. INSURANCE

The Company shall purchase and maintain or cause to be purchased and maintained in full force and effect at all times on and after the construction of the Transfer Facility and continuing at all times that waste is received at the Transfer Facility for the term of this Agreement, at a minimum, the following insurance coverage:

- a. Commercial General Liability insurance in an amount not less than \$1,000,000 per occurrence and a combined limit of \$2,000,000.
- b. Excess liability insurance covering claims in excess of the underlying insurance described herein with a \$3,000,000 minimum limit.
- c. Workers Compensation Insurance as required by Illinois law and regulations. Employer's Liability Insurance in the amount of \$1,000,000 per accident Environmental Impairment and Liability Insurance (both onsite and offsite) in an amount not less than \$1,000,000 per occurrence and a combined limit of \$2,000,000 in the aggregate. The Company agrees to add and maintain the Village as an additional insured on all such policies of insurance coverage for the term of the Agreement at no cost to the Village.

16. INDEMNIFICATION

To the fullest extent permitted by law, the Company hereby agrees to defend, indemnify and hold harmless the Village, its officials, agents and employees, against all injury in any way related to the Facility or the operation thereof including but not limited to all harm, deaths, loss, damages, claims, suits, proceedings (administrative, judicial or otherwise), liabilities, judgments, costs of

defense, expenses and fees including, but not limited to, attorney and expert fees, (all hereinafter collectively referred to as "injuries") which may in anyway accrue against the Village, its officials, agents and employees regardless of whether those injuries result in whole or in part as a consequence of any action or approval by the Village or the acts or conduct of the Company, or its successors or assigns, its employees, agents, or subcontractors. Further, the Company shall pay, without limitation, all reasonable costs, fees and expenses in any manner related to those injuries regardless of whether they may be characterized as fees of experts and attorneys chosen by the Village to represent it, all costs and expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against the Village, its officials, agents and employees in such action, the Company shall, at its own expense, satisfy and discharge the same. In the circumstance that the Company disputes all or any portion of its liability hereunder, the Company first shall pay the reimbursement for costs, experts and attorneys fees and expenses listed above within 30 days of receiving an invoice from the Village, and shall continue to pay all such fees and costs until such time as a court of competent jurisdiction determines, and the Village has exhausted all of its appellate rights, that: 1. the above paid fees and costs are not reasonable, at which time the difference between the amount paid by the Company and the amount found to be reasonable by the Court shall be refunded to the Company; and/or 2. The Company is not liable for such fees and costs, at which time the entire amount paid by Company shall be refunded to the Company. If a court makes either of the above determinations, the Village shall

repay any such money owed to Company within 90 days of the final determination or exhaustion of appellate rights.

The Company expressly understands and agrees that any performance bond or insurance policies required by this contract, or otherwise provided by the Company, shall in no way limit the responsibility of the Company to indemnify, keep and save harmless and defend the Village, its officials, agents and employees as herein provided.

17. BREACH AND REMEDIES

- a. The Company shall be in default under this Agreement upon the happening or occurrence of any of the events or conditions described below, each of which shall be an "Event of Default" for purposes of this Agreement:
 - i. The Company breaches or fails to observe or perform any of the Company's material obligations under this Agreement, unless within thirty (30) days after notice from Village specifying the nature of such breach or failure, the Company fails to cure such breach or failure;
 - ii. The Company is dissolved, or the Company existence is terminated and its business is permanently discontinued;
 - iii. The Company fails to pay, when due, any amount due hereunder, and such failure continues for a period of thirty (30) days following the receipt by the Company of notice of such failure; or
 - v. The Company is adjudicated as bankrupt or insolvent, or any order is entered for relief under any bankruptcy law with respect to the Company.
- b. Upon an Event of Default described in Section 17(a)(i) through and

including Section 17(a)(iv), the Village shall be entitled to exercise all remedies available at law or in equity (including set-off and recoupment, and injunctive relief, and notwithstanding the requirements in Section 17(c) applicable to termination of this Agreement) or other appropriate proceedings, including, without limitations, bringing an action or actions from time to time for recovery of amounts due and unpaid by the Company.

c. In addition to, and not exclusive of the Village's remedies under Section 17(a) and 17(b), the Village shall have the right to terminate this Agreement without any further obligation hereunder, and in which case (subject to this Section 17(c)), the Company shall permanently cease any further operation of the Facility where there have been three (3) or more uncured Events of Default in any calendar year by the Company under this Agreement which materially and adversely impact the public health, safety and welfare. However, should the Company fail to comply with the indemnification requirements of this Agreement, there need be no other Events of Default prior the Village terminating this Agreement requiring the Company to cease any further operation of the Facility.

Pursuant to this Section, the Village must serve the Company with notice of its exercise of the remedy under this Section 17 to terminate this Agreement. Thereafter, the Company shall have thirty (30) days to cure any of such Event or Events of Default. The Company agrees that the Village shall not have an adequate remedy at law if the Village terminates the Agreement under this Section 17(c), and that the Village shall be entitled to equitable relief (including

preliminary and permanent injunctive relief) to enforce this Section 17(c).

d. Regardless of whether the Village exercises any of its rights under this Section, or whether the Company covers and cures any breach or failure as described and included in this Section, in the event there are five (5) or more material breaches of the Agreement in any calendar year the Village may, at its sole discretion, terminate this Agreement without any further obligation hereunder.

e. All rights and remedies of the Village set forth in this Agreement shall be cumulative, and no remedy available to the Village shall be exclusive of any other remedy. Rights and remedies afforded to the Village herein shall survive termination of this Agreement.

f. In no event shall either party, or its agents, employees, successors, assigns, consultants, suppliers or contractors be liable to the other party under this Agreement or to its members, officers, directors, partners, affiliates, agents, employees, successors, assigns, suppliers or contractors for special, indirect, consequential, punitive or exemplary damages of any nature of kind whatsoever, including loss of profits or revenue, loss of contracts, cost of capital or claims of customers, and each party hereby releases and covenants not to sue the other party therefore.

18. NO CAUSE OF ACTION BY COMPANY FOR ACTIONS TAKEN BY VILLAGE PURSUANT TO SECTION 39.2 OF THE ACT.

The Company covenants and agrees that, notwithstanding any provisions in this Agreement to the contrary, the Village has no duty or obligation under this Agreement, express or implied, to act or to not take action with respect to the

Company's request for siting approval for the Transfer Facility pursuant to Section 39.2 of the Act. The Company covenants and agrees that if the Village does not grant siting approval for the Transfer Facility pursuant to Section 39.2 of the Act, for any reason whatsoever, whether proper or improper, or whether due to mistakes or misstatements of law or fact during such siting approval process, the Company shall in no event have any claim or cause of action against the Village under this Agreement. Nothing in this Agreement shall be construed or deemed to be a covenant by the Village with respect to the Village's obligations under Section 39.2 of the Act, which obligations shall be separate and apart from any other obligations owed by the Village to the Company under the terms of this Agreement. The Company agrees that it shall not have any claim or cause of action against the Village under this Agreement for the City's failure to comply with Section 39.2 of the Act, and that its sole remedy for the City's failure to comply with Section 39.2 of the Act shall be to seek administrative/judicial review of the City's actions and conduct as provided for in the Act. Moreover, nothing herein shall be construed to limit either party's rights of appeal under the Act for actions taken by either Party pursuant to Section 39.2 of the Act.

19. COVENANTS RUN WITH THE LAND

The parties agree that the covenants, agreements and understandings contained in this Agreement, including without limitation the obligation to pay the Host Benefit Fee, (and the Additional Host Benefit Fee if applicable) touch and concern the Subject Property, and that such covenants, agreements, and understanding shall run with the Subject Property and any nonpayment

hereunder shall constitute a lien on the Subject Property. The Company agrees that the Village may prepare, and the Company shall promptly execute duplicate originals of an instrument, in recordable form, which will constitute a memorandum of Host Community Agreement, attaching an executed copy of this Agreement as an exhibit, and record such Memorandum in the Office of the Lake County, Illinois Recorder of Deeds.

20. NOTICES

Any notices to be given hereunder by either party to the other shall be in writing and be sent by personal delivery, by overnight delivery service or by registered or certified mail, postage prepaid, return receipt requested. Such notice shall be deemed communicated when delivered or two (2) business days from the date of mailing whichever is earlier. Notices shall be addressed as set forth below, but each party may change its address by written notice to the other in accordance with this Section.

TO THE VILLAGE AT:

Village of Round Lake Park
Attn: Mayor
203 E. Lake Shore Drive
Round Lake Park, IL 60073

WITH A COPY TO:

The Law Offices of Rudolph F. Magna
Attn: Peter S. Karlovics
P.O. Box 705
Gurnee, IL 60031

TO THE COMPANY AT:

Lee Brandsma
Chief Executive Officer
Groot Industries, Inc.
2500 Landmeier Road
Elk Grove Village, IL 60007-2627

21. ASSURANCE OF PERFORMANCE AND GUARANTEE

The Company shall take in timely fashion all steps that are necessary to insure the prompt and complete performance and satisfaction of all liabilities, obligations, payments and duties of any type, kind or sort which may arise by operation of federal, state and local statute, law, rule, directive, ordinance or mandate, as well as the terms and conditions of this Agreement.

22. SEVERABILITY

If a court of competent jurisdiction holds or adjudges any provision of this Agreement invalid, said judgment shall not affect, impair, or invalidate the remainder of this Agreement, but shall be confined in its operation to the provision, clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of this Agreement that this Agreement would have been approved had such invalid provision, clause, sentence, paragraph, section, or part thereof not been included. However, should any provision hereof be held or adjudged to be invalid or if data required to be utilized herein becomes unavailable, the Parties shall negotiate in good faith reach agreement of a substitute provision or data (as the case may be) for inclusion herein by amendment which is valid and conforms to the intent of the Parties when entering into this Agreement.

No amendment, modification or changes to this Agreement shall be effective unless the same shall be in writing and duly executed by both the

Village and the Company.

23. POLICE POWER SAVINGS CLAUSE

Notwithstanding any provision herein to the contrary, nothing in this Agreement shall abridge, impair, or affect the police powers of the Village, and the Company shall comply with all applicable laws, regulations and ordinances (including applicable ordinances of the Village).

24. GOVERNING LAW AND VENUE

The laws of the State of Illinois shall govern this Agreement. Venue for the purposes of any dispute, which may arise between the Village and the Company, shall be deemed to be the Circuit Court in and for Lake County, Illinois.

25. ASSURANCE OF PERFORMANCE AND GUARANTEE

The Company shall take in a timely fashion all steps that are necessary to insure the prompt and complete performance and satisfaction of all liabilities, obligations, payments and duties of any type, kind, or sort which may arise by operation of federal, state and local statute, law, rule, directive, ordinance or mandate, as well as the terms and conditions of this Agreement.

In the event that final, nonappealable siting approval is granted by the Village to the Company for the Transfer Facility, in consideration of the benefits which would be received by the Village as set forth herein, the Village agrees to cooperate with the Company in the Company's efforts to obtain any and all necessary state and local permits and approvals for development and operation of the Transfer Facility at the Company's sole cost and expense. The Company

agrees to escrow and replenish funds to cover all reasonably related fees and costs as required by Chapter 158 of the Village Code.

26. FORCE MAJEURE

Neither the Village or the Company shall be liable for its failure to perform under this Agreement to the extent due to contingencies beyond its reasonable control, including, without limitation, strikes, riots, war, fire, acts of God, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any other governmental body or any instrumentality thereof, whether now existing or hereafter created.

27. AUTHORITY TO ENTER INTO AGREEMENT

The Company and the Village hereby represent and warrant to each other that the individuals executing this Agreement in their official capacities have been duly authorized and empowered to sign this Agreement. The Village shall provide the Company with a certified copy of the ordinance of its Village Board authorizing the execution of this Agreement by the undersigned representatives of

(left intentionally blank)

the Village. The Company shall provide the Village with a copy of the corporate resolution authorizing the execution of this Agreement by the undersigned representatives of the Company.

28. BINDING EFFECT

This Agreement shall bind the Parties, their successors, and assigns.

IN WITNESS WHEREOF, the Village and Company have caused this Agreement to be executed by their duly authorized representatives on the day and year written above.

VILLAGE OF ROUND LAKE PARK

GROOT INDUSTRIES, INC.

By:

Jean McCle

Its:

Mayor

By:

Joe Bawden

Its:

CEO

EXHIBIT A

SUBJECT PROPERTY DESCRIPTION

EXHIBIT B

The Consumer Price Index can currently be accessed from the United States Department of Labor, Bureau of Labor Statistics, website at the following address:

<http://bls.gov/cpi/#data>

The index pertaining to the Chicago-Gary-Kenosha, IL-IN-WI Area can be found under this “CPI Databases” section of the webpage. Select the “one-screen data search” option for the first database named “All Urban Consumers (Current Series).”

Upon opening the database search box, select “Chicago-Gary-Kenosha, IL-IN-WI” as the Area (listed under the “Midwest urban” category). For the Item, select “All items less food and energy.” Click the “Not Seasonally Adjusted” box, and then the grey “Get Data” button. This will pull up the monthly CPI data values for the Chicago-Gary-Kenosha MSA.

To calculate the percentage increase over the past calendar year, the following formula will be used:

$$\left(\left(\frac{CPI_{cm}}{CPI_{pm}} \right) - 1 \right) \times 100 = INF_{cy}$$

Where:

CPI_{cm} = Index value for the current month

CPI_{pm} = Index value for the same month, one calendar year prior

INF_{cy} = The percentage rate of inflation over the prior calendar year

For example, the percentage increase that occurred in the Core CPI for Chicago-Gary-Kenosha over the calendar year from January 2011 to January 2012 was approximately 1.209 percent. This is calculated as follows:

$$\left(\left(\frac{221.403}{218.759} \right) - 1 \right) \times 100 = 1.209039088$$

Where:

CPI_{cm} = Index value for the current month (Jan 2012) = 221.403

CPI_{pm} = Index value for the same month, one calendar year prior (Jan 2011) = 218.759

INF_{cy} = The percentage rate of inflation over the calendar year (Jan 2011- Jan 2012) = 1.209

EXHIBIT C
ADDITIONAL HOST BENEFITS

The Company agrees to provide free waste collection and disposal services for :

Village events and Festivals.