

ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS AGREEMENT, dated as of April 16, 2021 (the "Environmental Compliance Agreement"), is given by **216 SOUTH DIVISION LLC**, a New York limited liability company, with offices at 10 Julia Lane, Suite 103, Cold Spring, New York 10516 (the "Company") and the persons, firms or corporations, if any, identified as Indemnitors at the end of this Agreement (collectively, the "Indemnitors") to the **CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 840 Main Street, City of Peekskill, New York 10566 (the "Agency").

RECITALS

WHEREAS, the Company is the owner of, or is acquiring title to or other interest in, certain real property located at 216 South Division Street, City of Peekskill, State of New York and described more fully in Exhibit A attached hereto and made a part hereof (the "Premises"); and

WHEREAS, Company is requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition by the Agency of a leasehold interest in a parcel of real property located at 216 South Division Street, Peekskill, New York (the "Land", being more particularly described tax parcels 33.37-4-6) along with the existing improvements thereon consisting principally of a vacant residential structure (the "Existing Improvements"); (ii) the demolition of the Existing Improvements and the planning, design, construction, and operation of an approximately 27,000 sf 3-story mixed use facility comprised of 22 market rate apartment units and approximately 2,300 sf of commercial space along with related site improvements, access and egress improvements, utility improvements, signage, curbage, sidewalks, and landscaping improvements (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Existing Improvements and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land, the Existing Improvements and the Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"); and

WHEREAS, the Company has requested that the Agency provide financial assistance (the "Agency Financial Assistance") to the Company to undertake the Project in the form of (a) a sales and use tax exemption for purchases and rentals related to the undertaking of the Project and (b) a mortgage recording tax exemption from all New York State and local mortgage recording taxes; and

WHEREAS, in furtherance of the Agency Financial Assistance, the Agency has been asked to take title to, or a leasehold interest in, the Premises and to lease the Premises back to the Company or its designee; however, any leasehold or title interest in the Premises shall be for the

sole purpose of the Agency conferring the Agency Financial Assistance in its sovereign and/or municipal capacity and such ownership or other interest undertaken by the Agency shall not include the right, authority or potential for the Agency to control operations on or at the Premises, nor shall (or has) the Agency participate(d) in the management or participate(d) in the development of the Premises; and

WHEREAS, the Agency is unwilling to take title to or a leasehold interest in the Premises even in the limited capacity defined above, or to otherwise consummate the Agency Financial Assistance unless the Company and the Indemnitors execute and deliver this Environmental Compliance Agreement to the Agency.

NOW, THEREFORE, in consideration of the foregoing and to induce the Agency to accept a leasehold interest in the Premises in the limited capacity as set forth above, and to consummate the Agency Financial Assistance, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Indemnitors hereby covenant and agree with the Agency as follows:

1. DEFINITIONS. All capitalized terms used in this Environmental Compliance Agreement and not heretofore defined shall have the meanings set forth below.

(a) Environment means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

(b) Environmental Laws mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

(c) Environmental Permits mean all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, use and/or operation of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Premises.

(d) Hazardous Substance means any substance (i) the presence of which requires investigation or remediation under any Environmental Law; or (ii) which is or becomes defined as a "hazardous waste", "hazardous substance", "toxic substance", pollutant or contaminant under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.) as amended and/or the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.) and/or the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), and/or Articles 15 or 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law or any regulations promulgated under any of the foregoing; or (iii) which is toxic (including, but not limited to, toxic mold), explosive, corrosive, flammable, infectious, radioactive, carcinogenic,

mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of New York or any political subdivision thereof; or (iv) the presence of which on the Premises causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or (v) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

(e) Improvements mean any buildings, structures and other improvements (if any) presently or hereafter located on the Premises.

(f) Indemnatee means the Agency, its successors and assigns, and their respective officers, directors, employees, agents, representatives, contractors and subcontractors.

(g) Release has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), and the regulations promulgated thereunder.

2. REPRESENTATIONS AND WARRANTIES. The Company and the Indemnitors each represent and warrant to the Agency that to the best of their respective knowledge, information and belief:

(a) Neither the Premises nor any property adjacent to or within the immediate vicinity of the Premises is being or has been used for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance except in compliance with Environmental Laws or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products except in compliance with Environmental Laws.

(b) Underground storage tanks are not and have not been located on the Premises, except as set forth in Exhibit B hereto.

(c) The soil, subsoil, bedrock, surface water and groundwater of the Premises are free of any Hazardous Substances.

(d) There has been no Release nor is there the threat of a Release on, at or from the Premises, or any property adjacent to or within the immediate vicinity of the Premises which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on the Premises, and the Company has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Premises or any property adjacent to or within the immediate vicinity of the Premises or any other person with regard to a Release or the threat of a Release on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

(e) All Environmental Permits have been obtained and are in full force and effect.

(f) No event has occurred with respect to the Premises which, with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law or non-compliance with any Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Premises which require any change in the present condition of the Premises or any work, repairs, construction, containment, clean-up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Premises.

(h) There are no actions, suits, claims or proceedings, pending or overtly threatened in writing, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or any other remedy that arise out of, relate to or result from (i) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, (ii) the presence of any Hazardous Substance or a Release or the threat of a Release on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises or (iii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof.

3. COVENANTS OF COMPANY. The Company covenants and agrees with the Agency as follows:

(a) The Company shall keep, and shall cause all operators, tenants, subtenants, licensees and occupants of the Premises to keep, the Premises free of all Hazardous Substances except in compliance with Environmental Laws and shall not cause or permit the Premises or any part thereof to be used for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substances except in compliance with Environmental Laws.

(b) The Company shall comply with, and shall cause all operators, tenants, subtenants, licensees and occupants of the Premises to comply with, all applicable Environmental Laws, and shall obtain and comply with, and shall cause all operators, tenants, subtenants, licensees and occupants of the Premises to obtain and comply with, all Environmental Permits.

(c) The Company shall not cause or permit any change to be made in the present or intended use of the Premises which would (i) involve the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or the use of the Premises as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, except in compliance with Environmental Laws, (ii) violate any applicable Environmental Law, (iii) constitute non-compliance with any Environmental Permit or (iv) increase the risk of a Release.

(d) The Company shall promptly provide the Agency with a copy of all written notifications which it gives or receives with respect to any past or present Release or the threat of a Release on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

(e) The Company shall undertake and complete all investigations, studies, sampling and testing and all removal and other remedial actions required by Environmental Laws necessary to contain, remove and clean up all Hazardous Substances that are determined to be present at the Premises in accordance with all applicable Environmental Laws and all Environmental Permits.

(f) If at any time the Agency obtains any evidence or information which suggests that potential material environmental problems may exist at the Premises, the Company shall at all times allow the Agency and its officers, employees, agents, representatives, contractors and subcontractors reasonable access to the Premises for the purposes of ascertaining site conditions, including, but not limited to, subsurface conditions.

(g) If at any time the Agency obtains any evidence or information which suggests that potential material environmental problems may exist at the Premises, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Premises of a scope and level of detail reasonably satisfactory to the Agency be prepared by an environmental engineer or other qualified person reasonably acceptable to the Agency, at the Company's expense. Said audit may include a physical inspection of the Premises, a visual inspection of any property adjacent to or within the immediate vicinity of the Premises, personal interviews and a review of all Environmental Permits. If the Agency reasonably requires, such inspection shall also include a records search and/or subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report (which the Company may reasonably contest based upon delivery of a third-party report analyzing the same data and test results) indicates the presence of any Hazardous Substance or a Release or the threat of a Release on, at or from the Premises in violation of any Environmental Law, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions, using methods recommended by the engineer or other person who prepared said audit report and acceptable to the appropriate federal, state and local agencies or authorities.

(h) Attached hereto as Exhibit C is a complete list of all Environmental Permits presently required for the ownership, use or operation of the Premises and the businesses located thereon. The Company agrees to notify the Agency of any additions, deletions, or modifications of any Environmental Permits and the list thereof. Upon written request of the Agency, the Company shall furnish true and complete copies of all Environmental Permits.

4. INDEMNIFICATION PROVISIONS. The Company and the Indemnitors hereby jointly and severally covenant and agree, at their sole cost and expense, to indemnify, protect, defend, and save harmless each and every Indemnitee from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation,

reasonable attorneys' and experts' fees for attorneys and experts selected by the Indemnitee, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee relating to, resulting from or arising out of (a) the use of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, (b) the presence or claimed presence of any Hazardous Substance or a Release or the threat of a Release on, at or from the Premises, (c) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally required and authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release on, at or from the Premises, (d) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof, (e) a violation of any applicable Environmental Law, (f) non-compliance with any Environmental Permit, (g) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Environmental Compliance Agreement, and (h) the designation by the New York State Department of Environmental Conservation, the United States Environmental Protection Agency or any other governmental authority of the Agency as a party responsible or potentially responsible for the remediation of any condition on the Premises (collectively, the "Indemnified Matters").

The liability of the Company and Indemnitors to each Indemnitee hereunder shall be perpetual and shall survive, and shall in no way be limited, abridged, impaired or otherwise affected, by (i) any amendment or modification of any of the documents (a) entered into in connection with any indebtedness associated with the Agency Financial Assistance (the "Loan Documents") or (b) otherwise entered into in connection with the Agency Financial Assistance (the "Financing Documents") by or for the benefit of the Agency, any lender, or any subsequent owner of the Premises, (ii) any extensions of time for payment or performance required by any of the Loan Documents or the Financing Documents, (iii) the release of the Company or any Indemnitor, any guarantor of any of the indebtedness associated with the Agency Financial Assistance, or any other person, from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents, the Financing Documents or this Environmental Compliance Agreement by operation of law, the lender's or Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Loan Documents or the Financing Documents, (v) any exculpatory provision contained in any of the Loan Documents or the Financing Documents limiting the lender's or the Agency's recourse to property encumbered by a mortgage or to any other security, (vi) any applicable statute of limitations, (vii) any investigation or inquiry conducted by or on the behalf of the Agency or any other Indemnitee or any information which the Agency or any other Indemnitee may have or obtain with respect to the environmental or ecological condition of the Premises, (viii) the sale or assignment of any indebtedness associated with the financing or the foreclosure of any mortgage, (ix) the sale, transfer or conveyance of all or part of the Premises, (x) the dissolution or liquidation of the Company, (xi) the release or discharge, in whole or in part, of the Company or any Indemnitor in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, (xii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in

whole or in part, of the Company under any bond, note or mortgage entered into in connection with the Agency Financial Assistance or of any Indemnitor under this Environmental Compliance Agreement, (xiii) the expiration or termination of any lease between the Agency and the Company or any other person with respect to the Agency Financial Assistance (the "Lease"), or (xiv) the reconveyance of title to the Premises by the Agency to the Company or any other person, whether in accordance with the terms of the Lease, by foreclosure or deed in lieu of foreclosure, sale or otherwise.

The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement heretofore given to the Agency or any other Indemnitee, as part of the application process for the Agency Financial Assistance or otherwise.

5. AGENCY'S LIMITED ROLE: Under no circumstances shall the Agency's limited involvement herein be deemed to be (because it is not) participating in the management or development of the Premises as those terms are used in Title 13, Section 27-1323 of the N.Y. Environmental Conservation Law ("ECL"), nor has decision-making control, day-to-day management of environmental compliance or responsibility for hazardous waste handling or disposal practices at the Premises. The Agency's limited involvement herein results from its acquiring a nominal security interest in the Premises in exercise of its statutory purposes, and for no other reason, and such acquisition was undertaken under circumstances where it amounts to an involuntary acquisition as that term is defined under ECL Section 27-1323.

6. GOVERNING LAW. This Environmental Compliance Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of New York.

7. SUCCESSORS AND ASSIGNS. This Environmental Compliance Agreement shall be binding upon the Company and Indemnitors, their successors and assigns, all subsequent owners of the Premises, the Indemnitors and their respective successors, assigns, executors, administrators, legal representatives, distributes and fiduciaries and shall inure to the benefit of each Indemnitee.

8. WAIVER OF TRIAL BY JURY. THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS ENVIRONMENTAL COMPLIANCE AGREEMENT OR THE PREMISES, OR ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS ENVIRONMENTAL COMPLIANCE AGREEMENT.

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DAVID M. GLADSTONE
Notary Public, State of New York
Registration No. 01GL4678167
Qualified in Westchester County
Commission Expires Sept. 30, 2022

EXHIBIT A

Legal Description of Leased Premises

The land referred to in this certificate is described as follows:

AMENDED 4-7-2021

ALL that certain parcel of land situate in the City of Peekskill, County of Westchester, and State of New York that was heretofore conveyed by Patrick Brown & Kimberly R. Turner to 216 South Division LLC by that certain deed dated December 5, 2019, and recorded in the Westchester County Clerk's office as Document No. 593383560, that by more recent survey is bounded and described as follows:

BEGINNING at the point on the northwesterly line of Second Street where it is met by the line dividing the land so conveyed to 216 South Division LLC, on the northeast, from lands formerly of Wiley, formerly of Clinton and now or formerly of Alsina, on the southwest, which point is distant 119.94 feet southwesterly, measured along the said northwesterly line of Second Street from the southerly end of the curve with a radius of 6.64 feet and a length of 13.98 feet that connects it to the southwesterly line of South Division Street, which point occupies coordinate position

N 894,902.87 (y)

E 651,684.76 (x)

of the New York State Coordinate System, East Zone (NAD 83, expressed in feet).

THENCE from the said point of beginning along the said Alsina lands and continuing along lands formerly of Clinton and now or formerly of Deutsche Bank National Trust Company, Trustee

N 30°58'30" W 100.62 feet, and

N 27°36'20" W 113.84 feet,

to a point on the southeasterly line of Fr. Ambro Way (formerly known as 1st Street). Thence northeasterly along the said southeasterly line of Fr. Ambro Way

N 62°23'40" E 6.00 feet

to a point on the southwesterly line of South Division Street. Thence southeasterly along the southwesterly line of South Division Street, first on a non-tangent curve to the left, the center of which bears N41°27'59"E, the central angle of which is 19°32'07", the radius of which is 449.97 feet for 153.42 feet, and then

S 68°04'08" E 67.91 feet

to a point. Thence southeasterly along the aforementioned tangent curve to the right, the central angle of which is $120^{\circ}37'48''$, the radius of which is 6.64 feet for 13.98 feet, to a point on the northwesterly line of Second Street. Thence southwesterly along the northwesterly line of Second Street

S $52^{\circ}33'40''$ W 119.94 feet

to the point or place of beginning, containing 13,144 square feet, more or less.

N.B. The meridian (North Point) and coordinate values used in the foregoing description refer to the New York State Coordinate System, East Zone, NAD 1983, expressed in feet. The meridian is True North at $74^{\circ}30'00''$ West Longitude and bears $27^{\circ}20'00''$ clockwise from the meridian in the deed, Document No. 593383560. The distances used in this description are Grid Distances. To obtain Ground Distances divide the Grid Distances by the Combined Scale Factor 0.9999262. The substance of this note should remain with this description in any instrument to which it may become a part.

Note: Address, Section, Block & Lot shown for informational purposes only.

Designated as Section 33.37 Block 4 Lot 6 and also known as 216 South Division Street, Peekskill, NY 10566.

EXHIBIT B

Underground Storage Tanks

EXHIBIT C

Environmental Permits Required