

216 SOUTH DIVISION LLC

TO

CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY

LEASE AGREEMENT

216 South Division Street
Peekskill, New York 10566

TMID No. 33.37-4-6
City of Peekskill, New York 10566

IDA Project Number 5504-21-02A

Dated as of April 16, 2021

**LEASE AGREEMENT
(Company to Agency)**

THIS LEASE AGREEMENT, dated as April 16, 2021 (the "Effective Date"), by and between **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 **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").

WITNESSETH:

The Company desires to rent to the Agency the real property, including any buildings, structures or improvements thereon, described in Exhibit A attached hereto (the "Leased Premises") pursuant to the terms contained herein (this "Lease Agreement"), during the term of that certain leaseback agreement, dated as of the date hereof, by and between the Agency and the Company (the "Leaseback Agreement").

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

1. Granting Clause. The Company hereby leases to the Agency the Leased Premises, upon the terms and conditions of this Lease Agreement.
2. Warranty of Title. The Company warrants that it has good and marketable title to the Leased Premises and forever warrants the title to the Leased Premises.
3. Term. The term of this Lease Agreement shall be coterminous with the term of the Leaseback Agreement (the "Lease Term").
4. Rent. The Agency agrees that it will pay to the Company, for the use of the Leased Premises, rent of One Dollar (\$1.00) per annum.
5. Taxes. The Company agrees to pay all taxes to be assessed on, or charges or expenses incurred with respect to, the Leased Premises during the Lease Term.
6. Maintenance and Insurance of Premises. The Company shall maintain and insure the Leased Premises. The Agency shall not be required to maintain the Leased Premises or incur any costs with respect to the Leased Premises. All insurance or condemnation proceeds shall be distributed and governed by the Leaseback Agreement.
7. Lease Expiration. The parties agree that at the expiration of the Lease Term the Agency will surrender the Leased Premises to the Company pursuant to the terms and conditions of this Lease Agreement and the Leaseback Agreement in the then condition of the Leased Premises. Upon the expiration and/or termination of the Lease Term, the Agency shall execute

such documentation as is reasonably necessary to evidence same for recording with the Office of the Westchester County Clerk.

8. Hold Harmless. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members and employees, and their respective successors or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Leased Premises or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Leased Premises or as a result of a breach by the Company of its representations or agreements contained herein or in the Leaseback Agreement, or (ii) liability arising from or expense incurred by the Agency's financing, construction, renovation, equipping, owning and leasing of the Leased Premises, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law.

9. Subordination of Lease Agreement to Mortgage(s). The Agency agrees that this Lease Agreement shall be subordinate to all mortgages hereafter placed on the Leased Premises with the consent of the Agency and any applicable mortgagee, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in, or assign its Unassigned Rights as defined within the Leaseback Agreement. Subject to the provisions of the Leaseback Agreement, the Agency agrees if requested by the Company, to further subordinate this Lease Agreement to, and to join in, any further mortgage (each a "Mortgage"), at no cost or liability to the Company (other than reasonable counsel fees), and without the granting of any further benefits to the Company beyond those contemplated by the application for financial assistance related to this Lease Agreement, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in, or assign its rights to receive the rentals described in Section 2.6 or payments under Section 3.3 of the Leaseback Agreement or its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a), 3.3, 3.4 and 5.2 of the Leaseback Agreement. Notwithstanding anything stated in this Section 9 to the contrary, the Agency shall provide to the holder of any Mortgage (each a "Lender") and Company all documentation reasonably required to grant such Mortgage and/or deed of trust and to evidence such subordination. ANY SUCH MORTGAGE SHALL BE A LIMITED, NON-RECOURSE OBLIGATION OF THE AGENCY AND SHALL IN NO EVENT REQUIRE THE PAYMENT BY THE AGENCY TO ANY PARTY OF ANY AMOUNT INCLUDING, BUT NOT LIMITED TO, PRINCIPAL, INTEREST OR OTHER AMOUNT SECURED BY ANY SUCH MORTGAGE. The Agency shall agree to any amendments hereto that are reasonably required by a Lender and that are consistent with the policies of the Agency

10. Non-Merger. So long as any leasehold or sub-leasehold mortgage is in existence, unless all mortgagees shall otherwise expressly consent in writing, fee title to the Leased Premises and the leasehold estate of the Agency therein created by this Lease Agreement shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Company or by Agency or by a third party, by purchase or otherwise.

11. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: City of Peekskill Industrial Development Agency
840 Main Street
City of Peekskill, New York 10595
Attn: Executive Director

With Copy To: Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company: 216 South Division LLC
10 Julia Lane, Suite 103
Cold Spring, New York 10516
Attn: Allan Rothman

With Copy To: Allan Rothman
10 Julia Lane, Suite 103
Cold Spring, New York 10516

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Agency and Company shall, at the Company's expense, also give any Lender courtesy copies of any notice given to Company or Agency by such other party at the address provided by such Lender.

12. No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in

his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State of New York (the "State") or the City of Peekskill, New York, and neither the State of New York nor the City of Peekskill, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Leased Premises (except for revenues derived by the Agency with respect to the Unassigned Rights (as such term is defined in the Leaseback Agreement)).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

13. Effective Date; Counterparts. This Lease Agreement shall become effective on the Effective Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

14. Law Governing. This Lease Agreement shall be governed by, and construed in accordance with, the laws of the State.

15. Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

16. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Agency and Company and their respective successors and assigns.

(Signature Page to Lease Agreement)

IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first above written.

216 SOUTH DIVISION LLC

By: 

Name: Paul F. Guillaro

Title: Authorized Signatory

**CITY OF PEEKSKILL INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Name: Matthew Rudikoff

Title: Executive Director

(Signature Page to Lease Agreement)

IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first above written.

216 SOUTH DIVISION LLC

By: _____
Name: Paul F. Guillaro
Title: Authorized Signatory

**CITY OF PEEKSKILL INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Name: Matthew Rudikoff
Title: Executive Director

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



Notary Public

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

Notary Public

(Acknowledgment Page to Lease Agreement)

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

On the ___ day of April in the year 2021, before me, the undersigned, personally appeared **PAUL F. GUILLARO** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF ~~WESTCHESTER~~ **MONROE**)

On the 12th day of April in the year 2021, before me, the undersigned, personally appeared **MATTHEW RUDIKOFF**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Virtual Notary

Susan E. McStravick
Notary Public

SUSAN E MCSTRAVICK
Notary Public, State of New York
Monroe County
Registration No. 01MC8301744
Commission Expires April 21, 2022

EXHIBIT A

Description of Property

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.