

**BNS I, LLC**

**TO**

**CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY**

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**LEASE AGREEMENT**

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1 Park Place  
Peekskill, New York 10566

TMID No. 33.30-5-1  
City of Peekskill, New York 10566

**IDA Project Number 5504-21-01A**

**Dated as of March 5, 2021**

**LEASE AGREEMENT  
(Company to Agency)**

THIS LEASE AGREEMENT, dated as March 5, 2021 (the "Effective Date"), by and between **BNS I, LLC**, a New York limited liability company, with offices at 3110 37th Avenue, Suite 500, Long Island City, New York 11101 (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").

W I T N E S S E T H:

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:     BNS I, LLC  
3110 37th Avenue, Suite 500  
Long Island City, New York 11101  
Attn: John Mavroudis

With Copy To:       William Florence, Esq.  
1 Park Place  
Peekskill, New York 10566

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.

**BNS I, LLC**

By: 

Name: John Mavroudis

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.

**BNS I, LLC**

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

Name: John Mavroudis

Title: Authorized Signatory

**CITY OF PEEKSKILL INDUSTRIAL  
DEVELOPMENT AGENCY**

By: Matthew Rudikoff

Name: Matthew Rudikoff

Title: Executive Director

(Acknowledgment Page to Lease Agreement)

STATE OF NEW YORK )

COUNTY OF Queens )

) ss.:

On the 22<sup>nd</sup> day of December in the year 2020, before me, the undersigned, personally appeared **JOHN MAVROUDIS** 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.

REKHA GOYAL  
Notary Public-State of New York  
No. 01GO6223804  
Qualified in Queens County  
Commission Expires June 21, 2022



Notary Public

STATE OF NEW YORK )

COUNTY OF ULSTER )

) ss.:

On the \_\_\_ day of December in the year 2020, 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.

Notary Public



(Acknowledgment Page to Lease Agreement)

STATE OF NEW YORK )

) ss.:

COUNTY OF \_\_\_\_\_)

On the \_\_\_ day of December in the year 2020, before me, the undersigned, personally appeared **JOHN MAVROUDIS** 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 ULSTER )

On the 23<sup>rd</sup> day of December in the year 2020, 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.

  
\_\_\_\_\_  
Notary Public  
MITCHELL GORDON  
Notary Public, State of New York  
No. 02GO4659494  
Qualified in Ulster County  
Commission Expires 10/24/23

## EXHIBIT A

### **Description of Property**

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of Peekskill, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at the Southerly intersection of Park Street (a/k/a Park Place), as same is reopened and relocated with the Westerly line of Broad Street;

RUNNING THENCE Southerly along the Westerly line of Broad Street, South 1 degree 19 minutes 15 seconds East, 199.94 feet to a point of curve;

THENCE along a curve to the right having a radius of 30.00 feet an arc distance of 47.30 feet to the Northerly line of Brown Street;

THENCE Westerly along the Northerly line of Brown Street, South 89 degrees 00 minutes 25 seconds West, 383.18 feet to the point of curve;

THENCE along said curve to the right having a radius of 30 feet an arc distance of 47.14 feet to the Easterly side of James Street, as widened;

THENCE Northerly along James as widened, North 0 degrees 57 minutes 15 seconds West 199.92 feet to the Southerly line of Park Street (a/k/a Park Place) as relocated;

THENCE Easterly along the Southerly line of Park Street (a/k/a Park Place), North 88 degrees 59 minutes 07 seconds East, 441.90 feet to the point or place of BEGINNING.

For information only: Premises is known as 1 Park Place, Peekskill NY