

CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY

TO

DP 49, LLC

AMENDED AND RESTATED LEASE AGREEMENT

Marina Lease Agreement

*5 John E. Walsh Boulevard, City of Peekskill,
Westchester County, New York*

Tax Map Numbers:

[32.19-1-2]

Dated as of October 31, 2014

TABLE OF CONTENTS

	<u>Page</u>	
ARTICLE I	REPRESENTATIONS AND COVENANTS	2
Section 1.1.	Representations and Covenants of the Agency.....	2
Section 1.2.	Representations and Covenants of the Company.....	3
Section 1.3.	Public Authorities Law Representations.....	4
ARTICLE II	FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS	4
Section 2.1.	Agency Fee Title; No Option to Purchase	4
Section 2.2.	Operation, Maintenance, Rehabilitation and Use of the Facility.....	5
Section 2.3.	Demise of Facility.....	5
Section 2.4.	Remedies to be Pursued Against Contractors and Subcontractors and their Sureties	5
Section 2.5.	Duration of Lease Term; Quiet Enjoyment	6
Section 2.6.	Rents and Other Consideration	7
Section 2.7.	Obligations of Company Hereunder Unconditional	8
ARTICLE III	MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE	8
Section 3.1.	Maintenance and Modifications of Facility by Company.....	9
Section 3.2.	Installation of Additional Equipment.....	9
Section 3.3.	Taxes, Assessments, PILOT Payments and Utility Charges	9
Section 3.4.	Insurance Required	10
Section 3.5.	Additional Provisions Respecting Insurance	10
Section 3.6.	Application of Net Proceeds of Insurance	11
Section 3.7.	Right of Agency to Pay Taxes, Insurance Premiums and Other Charges	11
ARTICLE IV	DAMAGE, DESTRUCTION AND CONDEMNATION	11
Section 4.1.	Damage or Destruction	11
Section 4.2.	Condemnation	12
Section 4.3.	Condemnation of Company-Owned Property	13
ARTICLE V	SPECIAL COVENANTS	13
Section 5.1.	No Warranty of Condition or Suitability by the Agency	13
Section 5.2.	Hold Harmless Provisions.....	13
Section 5.3.	Right to Inspect the Facility	14
Section 5.4.	Agreement to Provide Information	14
Section 5.5.	Books of Record and Account; Financial Statements.....	14
Section 5.6.	Compliance With Orders, Ordinances, Etc	14
Section 5.7.	Discharge of Liens and Encumbrances.....	15

ARTICLE VI	RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS.....	15
Section 6.1.	Restriction on Sale of Facility Release of Certain Land.....	15
Section 6.2.	Removal of Equipment.....	16
Section 6.3.	Assignment and Subleasing.....	16
ARTICLE VII	DEFAULT.....	17
Section 7.1.	Events of Default Defined	17
Section 7.2.	Remedies on Default.....	18
Section 7.3.	Remedies Cumulative	19
Section 7.4.	Agreement to Pay Attorneys' Fees and Expenses	19
Section 7.5.	No Additional Waiver Implied by One Waiver.....	19
ARTICLE VIII	EARLY TERMINATION OF AGREEMENT; OBLIGATIONS OF COMPANY	19
Section 8.1.	Early Termination of Agreement	19
ARTICLE IX	MISCELLANEOUS	20
Section 9.1.	Notices	20
Section 9.2.	Binding Effect.....	20
Section 9.3.	Severability	20
Section 9.4.	Amendments, Changes and Modifications	20
Section 9.5.	Execution of Counterparts	21
Section 9.6.	Applicable Law.....	21
Section 9.7.	Recording and Filing.....	21
Section 9.8.	Survival of Obligations	21
Section 9.9.	Section Headings Not Controlling	21
Section 9.10.	No Broker.....	21
Section 9.11.	No Recourse; Special Obligation.....	21
Section 9.12.	No Joint Venture Created.....	22
EXHIBIT A -	Legal Description of Leased Premises.....	A-1
EXHIBIT B -	Schedule of Basic Rent	B-1
EXHIBIT C -	Form of Sublease Rider	C-1

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT (hereinafter the "Lease Agreement"), dated as of October 31, 2014, is by and between 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, Peekskill, New York 10566 (the "Agency") and **DP 49, LLC**, a New York limited liability company having offices at 333 North Bedford Road, Mount Kisco, New York 10549 (the "Company"), with acknowledgment and guaranty of **DIAMOND PROPERTIES, LLC**, a New York limited liability company having offices at 333 North Bedford Road, Mount Kisco, New York 10549.

WITNESSETH:

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 671 of the Laws of 1974 of the State of New York, as amended (hereinafter collectively called the "Act"), the **CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called the "Agency") was created with the authority and power to own, lease and sell property and to issue bonds for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, the Agency is the fee owner of that certain parcel of realty (the "Premises", as more particularly described herein) located within the City of Peekskill (the "City") and more particularly described as (i) that certain approximately 6.41 acre waterfront parcel of real estate identified as TMID No. 32.19-1-2, including all upland realty (the "Upland Parcel"), including buildings and improvements located thereon including a certain 20,000 sf restaurant building commonly referred to as the "Gin Building", a certain multipurpose warehouse and commercial building, along with certain boat and vehicle storage and maintenance buildings and improvements, parking, curbage and other improvements (collectively, the "Upland Improvements"), and (ii) those portions of such Premises including that certain underwater realty (the "Water Parcel"), including all marina and waterfront docking and cribbage improvements located thereon (the "Marina Improvements", and collectively herein with the Upland Improvements, the "Existing Improvements"); and

WHEREAS, the Agency has leased the Premises over time to certain tenants pursuant to (i) that certain Lease Agreement, dated as of February 13, 1987, as amended by that certain Lease Modification Agreement, dated as of December 27, 2000 (and collectively herein, the "Upland Lease"), such Upland Lease relating to the Upland Parcel and Upland Improvements, and (ii) that certain Lease Agreement, originally dated as of December 7, 1988, as modified by Lease Modification Agreement dated as of December 22, 1989, as further modified by that certain letter agreement, dated as of October 20, 1994, and as modified by that certain Lease Modification Agreement dated as of December 27, 2000 (herein, the "Water Lease"), such Water Lease relating to the Water Parcel and Marina Improvements; and

WHEREAS, at the request of the existing tenant, the Agency and Company desire to memorialize the assumption by the Company of the leasehold interests under the Upland Lease and Water Lease through the amendment and restatement thereof whereby the leasehold interests

thereof are hereby merged into a single instrument, which shall fully amend and restate the Upland Lease and Water Lease to effectuate the lease of the Premises and Existing Improvements by the Agency to the Company pursuant to and in accordance with the terms and conditions hereof; and

WHEREAS, the Agency proposes to lease the Premises and Existing Improvements (collectively referred to herein as the "Facility") to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions hereinafter set forth in this Lease Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I **REPRESENTATIONS AND COVENANTS**

Section 1.1. Representations and Covenants of the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Lease Agreement and to carry out its obligations hereunder.

(b) The Agency has duly authorized the execution and delivery of this Lease Agreement.

(c) Pursuant to the terms of this Lease Agreement, the Agency will lease the Facility to the Company, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the City of Peekskill and improving their standard of living.

(d) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

(e) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to pay the rentals and undertake the obligations contained herein, including the continued operation, repair and maintenance the Facility, along with the creation and retention of related jobs in the City of Peekskill, New York.

Section 1.2. Representations and Covenants of the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a domestic limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to enter into this Lease Agreement and has duly authorized the execution and delivery of this Lease Agreement.

(b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and/or the Company shall provide evidence to the Agency that to the extent occupants are relocating from one plant or facility to another, the relocation to the Facility is reasonably necessary to discourage the relocating subtenant or occupant from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(d) The Facility and the operation thereof will conform to all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d). The Company shall operate the Facility in accordance with this Lease Agreement and as a qualified "project" under the Act.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Lease Agreement.

(f) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto

any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that to the best of the Company's knowledge, no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the reasonable expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(g) The Company has provided to the Agency a certificate or certificates of insurance containing all of the insurance provision requirements included under Sections 3.4 and 3.5 hereof. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

Section 1.3. Public Authorities Law Representations. The granting by the Agency of an extended leasehold term herein for the period after February 12, 2024 (the "Extended Term") is exempt from publicly advertising for bids and obtaining fair market value pursuant to Section 2897(7)(ii) of the Public Authorities Law ("PAL") as it is within the purposes of the Agency as set forth within the Act. Pursuant to PAL Section 2897(6)(d)(i)(C), an explanatory statement (the "Explanatory Statement") of the circumstances of the provision of the Extended Term by the Agency is required to be prepared and issued by the Agency. As set forth within Section 2.5(c), hereof, the Extended Term shall not be granted or enforceable until Ninety (90) days after the issuance of said Explanatory Statement by the Agency. The Agency shall issue said Explanatory Statement within Five (5) business days of the date hereof.

ARTICLE II **FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS**

Section 2.1. Agency Fee Title; No Option to Purchase. The Agency is the fee owner of the Premises, including all buildings, structures or improvements thereon, described in **Exhibit A** attached hereto (the "Facility"). The parties hereto agree that this Lease Agreement shall fully amend, restate and replace and supersede the Upland Lease and Water Lease in all respects. The Company agrees that the interests in the Facility resulting from the within conveyances is sufficient for the purposes intended by this Lease Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability arising out of

any defect in title or a lien adversely affecting the Facility created by the Company (other than those liens allowed pursuant hereto) and will pay all reasonable expenses incurred by the Agency and Agency in defending any such action respecting title to or a lien affecting the Facility. The parties hereto acknowledge and agree that this Lease Agreement does not and shall not provide the Company or any other parties with an option to acquire fee title to the Upland Parcel, Water Parcel or Facility.

Section 2.2. Operation, Maintenance, Rehabilitation and Use of the Facility.

Pursuant to the terms hereof, the Company is granted the right, obligation and authority to undertake the operation, maintenance and rehabilitation, and equipping of the Facility, including the right and obligation to undertake a certain Project, as defined within that certain Agent and Financial Assistance Agreement, entered into by the Agency and the Company and dated as of the date hereof (the "Agent Agreement"). The Facility shall be used and occupied only for the purpose of operating maintaining, rehabilitating and use of the Existing Improvements (and Improvements, as defined within the Agent Agreement) to support and facilitate the Company's restaurant, marina, and commercial leasing operations all of which shall serve and be made generally available to the public in accordance with legal requirements, as well as such related uses as the Agency may specifically from time to time approve. The Company covenants and agrees that the Marina Improvements shall be made available for access and use by the general public as waterfront amenity in accordance with applicable laws. The Company, or an authorized designee or subtenant, shall provide for and maintain sufficient staffing for the Marina Improvements for a minimum of 8 hours per day from Memorial Day to Labor Day inclusive and also staff as needed to serve the public between May 1 and October 31 of each year. The Company shall not use or occupy the Facility (i) contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto; (ii) in any manner which would violate any certificate of occupancy affecting the same, or (iii) in any manner which would constitute a public or private nuisance or waste.

Section 2.3. Demise of Facility. The Agency hereby demises and leases the Facility to the Company and the Company hereby rents and leases the Facility from the Agency upon the terms and conditions of this Lease Agreement, excepting and reserving unto the Agency, its successors and assigns, which may include the City of Peekskill on behalf of the general public, a certain strip of land measuring fifteen (15) feet inland from the mean water line of the Hudson River whereupon the Agency and its assigns may construct and maintain a river access walkway and bike path for use by the general public, all as more particularly described and set forth within **Exhibit A**, hereto..

Section 2.4. Remedies to be Pursued Against Contractors and Subcontractors and their Sureties. In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which the Company

deems reasonably necessary, and in such events the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency (including but not limited to reasonable attorneys' fees) in any such action or proceeding.

Section 2.5. Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to the provisions of Sections 5.3 and 7.1 hereof) and the leasehold estate created hereby shall commence on the date hereof.

(b) The leasehold estate created hereby shall, without any further action of the parties hereto, terminate at 11:59 P.M. on February 12, 2024, or on such earlier date as may be permitted by Section 8.1 hereof.

(c) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the Lease Term. The Company is hereby granted Two (2) Options (each an "Option") to extend the Lease Term for individual periods of Nineteen (19) Years, with the maximum allowable Lease Term, as may be extended upon the Company's timely exercise of successive Options, running through February 12, 2063, such maximum Lease Term (as extended) being absolute. The Option shall be granted and enforceable Ninety (90) days after the issuance of the Explanatory Statement, as defined within Section 1.3, above.

For purposes of exercising any Option to extend the Lease Term, the Company shall provide written notice (an "Option Notice") to the Agency no less than six (6) months prior to the end of the end of the Lease Term or any individual Nineteen year extension. No such exercise shall be valid or enforceable unless the Company is in full compliance with the terms hereof and no uncured Event of Default hereunder is occurring or is incurred between the date of such Option Notice and the beginning of the extended Lease Term.

(d) The Agency shall, subject to the provisions of Sections 5.3 and 7.1 hereof and in the absence of an uncured Event of Default hereunder, neither take nor suffer nor permit any action, other than pursuant to Articles VII or VIII of this Lease Agreement, to prevent the Company, during the term of this Lease Agreement, from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

(e) The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing and delivering and recording any necessary terminations of lease together with any documents required in connection therewith and to take such other and further actions in accordance with this Lease Agreement as shall be reasonably necessary to terminate this Lease Agreement. Notwithstanding any such expiration or termination of this Lease Agreement, the Company's obligations under Sections 3.3 and 5.2 hereof shall continue notwithstanding any such termination or expiration.

(f) Surrender. Upon the termination of this Lease Agreement, whether by forfeiture, lapse of time or otherwise, or upon the termination of the Company's right to possession of the Facility, the Company will at once surrender and deliver up the Facility, together with all improvements and fixtures located thereon, including docks whether installed by the Company or its predecessors. The Company may remove its personal property and non-Fixture Equipment and any personal property or Non-Fixture Equipment remaining on the Facility after the date of termination shall become property of the Agency. Except as otherwise expressly provided herein, the Facility shall be returned to the Agency in a similar condition and repair as compared to their condition at the commencement of this Lease Agreement, reasonable wear and tear excepted.

(g) Any holding over by the Company beyond the Lease Term (as may be terminated hereunder) shall operate and be construed to be a tenancy from month to month only, at a prorated monthly rental equal to two hundred percent (200%) of the then-effective required rentals hereunder, payable in advance, plus all sums otherwise due hereunder. Nothing contained in this Section shall be construed to give the Company the right to hold over after the expiration of this Lease Agreement, and the Agency may exercise any and all remedies at law or in equity to recover possession of the Facility.

Section 2.6. Rents and Other Consideration. The rental obligations during the Lease Term are hereby reserved and the Company shall pay rent for the Facility as follows:

(a) Upon execution of this Lease Agreement, the sum Five Thousand Thirteen Dollars and Seventy Cents (\$5,013.70) for the period commencing on the date hereof and ending on December 31, 2014, and on February 1 of each calendar year thereafter during the Lease Term (as may be extended pursuant to the terms hereof), the amounts set forth within Exhibit B, hereto (the "Basic Rent").

(b) In addition to the payments of Basic Rent pursuant to Section 2.6(a) hereof, throughout the term of this Lease Agreement, the Company shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred in connection with the Agency's enforcement of any Event of Default incurred by the Company hereunder.

(c) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event the Company shall fail to timely make any payment required in this Section 2.6 (on or before February 1), the Company shall pay a \$500.00 monthly penalty accruing on the first day following the date of non-payment and the first day of each calendar month following the date of non-payment.

(d) Marina Improvements Capital Repair and Maintenance Requirements. As a component of rentals payable by the Company hereunder, without diminishment or offset to the rentals payable pursuant to Section 2.6(a), above, the Company shall, at its exclusive cost and expense and completed no later than May 1, 2018, use commercially reasonable efforts to undertake the following capital improvements and repairs: (i) repair and upgrade the existing docking and cribbage components of the Marina Improvements and expand the existing

approximately 60 boat slips to no less than 110 boat slips; and (ii) undertake the dredging of the lands under water within the Water Parcel to allow for no less than three and one half (3.5) feet of draft for vessels entering and existing the Marina Improvements (collectively, the "Capital Repair Requirements"). The Company may undertake the Capital Repair Requirements in one or more phases to be undertaken within the years 2014-2018, however, if and to the extent that the dredging components of the Capital Repair requirements are delayed due to inaction or delay by any applicable regulatory agency, the completion date for such dredging shall be delayed until one (1) year following the receipt of all necessary permits and approvals for same. The types of materials and equipment to be installed by the Company as part of the Capital Repair Requirements shall be subject to prior review and approval by the Agency. The Company shall provide the Agency and City with advance notice of commencement of each phase of the Capital Repair Requirements to be undertaken and shall further provide the Agency and City with all invoices and documentation relating to expenses incurred for materials and labor. In furtherance of the foregoing, the Agency shall use commercially reasonable efforts to apply for and secure grant funding that may be utilized by (or in the alternative, reimbursed to) the Company in connection with undertaking the Capital Repair Requirements. The Agency and City shall work cooperatively with the Company to assist with securing all necessary permits and governmental approvals for the Capital Repair Improvements.

(e) The Company acknowledges and agrees that the foregoing Capital Repair Requirements (collectively, the "Capital Improvement Obligations") are a material inducement for the Agency's provision of this Lease Agreement and failure to undertake same in accordance with the terms hereof shall be a material Event of Default hereunder. The Company further acknowledges and agrees that failure to timely complete the Capital Improvement Obligations will result in loss of the Option, as defined herein.

Section 2.7. Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement or (iii) except as provided in Section 8.1 hereof, terminate this Lease Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by condemnation of title to or the use of all or any part the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement, or otherwise.

ARTICLE III MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 3.1. Maintenance and Modifications of Facility by Company.

(a) The Company agrees that during the term of this Lease Agreement it will (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen and/or undertaken in the ordinary course of business); (iii) operate the Facility in a sound and prudent manner; (iv) operate the Facility such that it continues to qualify as a "project" under the Act and pursuant to the terms contained herein; and (v) indemnify and hold the Agency harmless from any liability or expenses from the failure by the Company to comply with (i), (ii), (iii) or (iv) above.

(b) Upon at least Ninety (90) days' written request to the Agency, and subject to the Agency's sole discretion, the Company, at its own expense, from time to time may make any structural addition, modifications or improvements to the Existing Improvements (or Improvements, as defined within the Agent Agreement) within the Facility or any additional building structures within the Facility, modifications thereto or improvements to any part thereof which it may deem desirable for its business purposes and uses. The Agency's failure to respond to any request submitted by the Company to make any structural addition, modifications or improvements to the Existing Improvements within the Facility or any additional building structures within the Facility, modifications thereto or improvements to any part thereof within such ninety (90) day period shall be deemed consent by the Agency to such request. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility. The Company shall be subject to and shall comply with all applicable zoning, planning and land use laws and regulations with respect to any Agency-approved structural addition, modifications or improvements to the Facility, including, but not limited to applicable local site plan regulations and/or State or Federal regulations.

Section 3.2. Installation of Additional Equipment. The Company, from time to time, may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such non-fixture machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company, from time to time, may remove or permit the removal of such machinery, equipment or other personal property.

Section 3.3. Taxes, Assessments, PILOT Payments and Utility Charges.

(a) The Company agrees to pay, as the same may respectively become due, (i) all payments required pursuant to that certain Payment in Lieu of Taxes Agreement, dated as of the date hereof and entered into by the Agency and the Company (the "PILOT Agreement") and in the event of termination of the PILOT Agreement due to an uncured event of default by the Company, an amount equal to full taxes on the Facility as if the Agency were not in title to the Facility and subject to full taxation; (ii) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income or revenues of the Agency from the Facility, (iii) all utility

and other charges, including "service charges" and "special district charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; *provided*, that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) Pursuant to the terms and conditions set forth within the PILOT Agreement, the Company, at its own expense and in its own name and on behalf or in the name and on behalf of the Agency but with notice to the Agency, may in good faith contest any such taxes, assessments and other charges.

Section 3.4. Insurance Required. At all times throughout the Lease Term, including, without limitation, during any period of rehabilitation and construction of the Facility, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company; or as an alternative to the foregoing the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Agency.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$5,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

Section 3.5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 3.4 shall name the Agency as an

additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company, the County and the Agency as their respective interests may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the term of this Lease Agreement. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement.

(c) Within one hundred twenty (120) days after the end of each of its fiscal years, the Company shall file with the Agency a certificate of the Company to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Article III and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect.

Section 3.6. Application of Net Proceeds of Insurance. The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

(i) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof, and

(ii) the net proceeds of the insurance required by Section 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 3.7. Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the Agency may pay such tax, assessment or other governmental charge or the premium for such insurance. The Company shall reimburse the Agency for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum.

ARTICLE IV **DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 4.1. Damage or Destruction.

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Lease Agreement:

- (i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility;
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement; and
- (iii) except as otherwise provided in subsection (b) of this Section 4.1, the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and may use insurance proceeds for all such purposes.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein. The Agency shall have the exclusive right to any and all insurance proceeds, subject only to the rights of any Agency-approved Mortgagee and rights of the Company with respect to insurance proceeds paid in connection with damage or destruction to the Company's personal property, equipment, inventory and/or business interruption insurance awards.

(b) The Company shall not be obligated to replace, repair, rebuild or restore the Facility, and the net proceeds of the insurance shall not be applied as provided in subsection (a) of this Section 4.1, if the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 8.1 hereof. In such an event, the Agency shall be entitled to and shall have a claim against all insurance proceeds available to repair or replace the Facility subject only to the rights of any the Company with respect to insurance proceeds paid in connection with damage or destruction to the Company's personal property, equipment, inventory and/or the unamortized cost of tenant improvements paid for by the Company.

(c) The Agency and the Company may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

Section 4.2. Condemnation.

(a) If at any time during the term of this Lease Agreement the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement through the date of such taking.

Except as otherwise provided in subsection (b) of this Section 4.2, the Company may:

- (i) in the case of a partial taking by condemnation, and using Company funds and funds as may be provided by the Agency from the proceeds of condemnation award, restore the Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation, or

(ii) in the case of a partial taking by condemnation, and using Company funds and funds as may be provided by the Agency from the proceeds of condemnation award, acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Facility subject to Agency consent.

The Facility, as so restored, or the substitute facility, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

(b) In the case of a total taking by condemnation, the Company shall not be obligated to restore the Facility or acquire a substitute facility, and the net proceeds of any condemnation award shall not be applied as provided in Section 4.2(a) above. This Agreement shall automatically terminate upon the occurrence of any such total taking.

(c) The Agency and Company shall cooperate fully in the handling and conduct of any condemnation proceeding with respect to the Facility.

Section 4.3. Condemnation of Company-Owned Property. The Company shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any non-fixture personal property which, at the time of such damage or taking, is not part of the Facility. In addition, and solely to the extent that such claims or payments do not reduce the sums payable by any condemning authority to the Agency, the Company shall have right to claim, prove and receive in any condemnation proceedings such amount as may be allowed for Company's personal property, equipment, inventory and/or the unamortized cost of tenant improvements paid for by the Company, moving expenses and re-installment of equipment expenses, all as may be provided by applicable law. The Company hereby waives any and all other claims against the Agency and all other claims against the condemning authority, and the Company hereby assigns to the Agency all claims against the condemning authority including, without limitation, all claims for leasehold damages and diminution in value of the Company's leasehold.

ARTICLE V SPECIAL COVENANTS

Section 5.1. No Warranty of Condition or Suitability by the Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 5.2. Hold Harmless Provisions. 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, directors, agents (other than the Company) and employees, and their respective successors, assigns 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 Facility or

arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency's leasing of the Facility, including, without limiting the generality of the foregoing, all causes of action and 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 (other than the Company) 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.

Section 5.3. Right to Inspect the Facility. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to inspect the Facility.

Section 5.4. Agreement to Provide Information. The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without delay, such information concerning the Company, the Company's employment history and statistics related thereto, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation or as otherwise reasonably requested by the Agency. The Company shall comply with all reporting requirements contained within the Agent Agreement.

Section 5.5. Books of Record and Account; Financial Statements. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company relating to the Facility.

Section 5.6. Compliance With Orders, Ordinances, Etc.

(a) The Company agrees that it will, throughout the term of this Lease Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.6, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Company shall give notice of the foregoing to the Agency and failure to timely do so shall be a breach of this Lease Agreement.

Section 5.7. Discharge of Liens and Encumbrances.

(a) The Company shall not permit or create or suffer to be permitted or created any lien upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof except any liens existing on the date hereof. This provision shall not prohibit the Approved Liens as they are defined in Section 6.1(a) hereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.7, the Company may in good faith contest any such lien. In such event, the Company, with prior written notice to the Agency, may permit the items so contested to remain undischarged and unsatisfied for a period of no longer than sixty (60), during such period the Company may appeal therefrom, unless the Agency shall notify the Company to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency, thereby causing said lien to be removed.

ARTICLE VI

RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

Section 6.1. Restriction on Sale of Facility Release of Certain Land.

(a) Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to one or more lenders designated by the Company (collectively, the "Lender") under a leasehold mortgage, security agreement and/or assignment of leases and rents in a form acceptable to the Agency, Lender and the Company, for purposes of financing the construction and improvement of the Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns (the "Approved Liens") the Agency shall not sell, convey, transfer, or otherwise dispose of the leasehold premises or any part thereof without the prior written notice to the Company. 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 its rights to be indemnified under Sections 1.2(d), 1.2(g), 2.1, 3.1(a) and 5.2 herein or (i) the right of the Agency on its own behalf to receive all opinions of counsel, reports, financial information, certificates, insurance policies or binders or certificates, or other notices or communications required to be delivered to the Agency hereunder or otherwise reasonably requested by the Agency; (ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency hereunder; (iii) the right of the Agency in its own behalf to enforce the obligation of the Company to confirm the qualification of the Project as a "project" under the Act or to perform any covenant or obligation hereunder; (iv) the right of the Agency to amend with the Company this Lease Agreement, the right of the Agency to review, approve or reject any request for assignment hereof pursuant to Section 6.3 hereof, and the right of the Agency to exercise its rights and remedies hereunder relating to compliance with Environmental Laws; (v) the right of the Agency in its own behalf to declare an Event of Default under Section 7.1 hereof or to pursue remedies or performance under any guaranty executed in connection herewith; and (vi) the right of the Agency as to any of the

foregoing, exercisable with respect to any sublessees or subtenants (collectively, the "Unassigned Rights").

Section 6.2. Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment purchased in the name of the Agency pursuant to the Agent Agreement. The Company shall pay any costs (including reasonable attorneys' fees) incurred in transferring title to and releasing any item of Equipment removed pursuant to this Section 6.2.

(c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle the Company to any abatement of or diminution of the rents payable under Section 2.6 hereof.

Section 6.3. Assignment and Subleasing.

This Lease Agreement may not be assigned in whole or in part except to a Related Person of the Company (as that term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person"), and except as outlined above, the Facility may not be subleased, in whole, by the Company except to a Related Person of the Company without the prior written consent of the Agency. A transfer in excess of 50% of the equity voting interests of the Company, other than to a Related Person of the Company, shall be deemed an assignment and require the prior written consent of the Agency. Any assignment of this Lease Agreement and related PILOT Agreement shall require the prior written consent of the Agency upon application 45 days prior to a regularly scheduled meeting of the Agency.

The Company may from time to time sublease portions of the Facility to commercial and retail subtenants to occupy and operate portions of the Facility. Any and all subleases of one or more portions of the Facility by the Company, and any amendments thereto, to a non-related person in the normal course of business and operation of the Facility shall be delivered to the Agency within 10 days of execution and delivery along with evidence of subtenant insurance naming the Agency as an additional insured. Any such subleases shall also incorporate the provisions set forth within **Schedule C**, hereto. All subleases, including any and all amendments, supplements, extensions and restatements thereto, shall be filed with the Agency

Any assignment or sublease, if and once approved, shall be on the following conditions, as of the time of each assignment or sublease:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder;

(ii) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption; and

(iv) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act.

(v) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 6.3, the Company at its cost shall furnish to the Agency with an opinion, in form and substance satisfactory to the Agency as to items (i), (ii) and (iv) above.

(b) Any such assignment or sublease is subject to the review and approval by the Agency and its counsel (at no cost to the Agency; any such cost to be paid by the Company, including attorneys' fees), and shall contain such terms and conditions as reasonably required by the Agency and its counsel.

ARTICLE VII DEFAULT

Section 7.1. Events of Default Defined.

(a) Each of the following shall be an "Event of Default" under this Lease Agreement:

(1) If the Company fails to pay the amounts required to be paid pursuant to Section 2.6 of this Lease Agreement and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice of such failure to the Company; or

(2) If there is any purposeful, willful and knowing breach by the Company of any of its other material agreements or covenants set forth in this Lease Agreement; or

(3) If there is any failure by the Company to observe or perform any other covenant, condition or agreement required by this Lease Agreement to be observed or performed and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence; or

(4) If any representation or warranty of the Company contained in this Lease Agreement is incorrect in any material respect; or

(5) If an Event of Default shall occur under the PILOT Agreement, Agent Agreement or any mortgage or security interest in the Premises (whether an Approved Lien or not); or

(6) Failure by the Company to operate the Facility for a period exceeding 120 days.

(b) Notwithstanding the provisions of 7.1(a) above, if by reason of force majeure either party hereto shall be unable in whole or in part to carry out its obligations under this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 2.6 and 3.3 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections 5.2, 5.3, 5.6, 5.7, and 7.1(a)(1) hereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lock-outs and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 7.2. Remedies on Default. Whenever any Event of Default shall have occurred and be continuing without cure by the Company, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(1) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 2.6(a) hereof and (ii) all other payments due under this Lease Agreement.

(2) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.

(3) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement.

(4) Terminate this Lease Agreement.

Section 7.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency, the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VIII EARLY TERMINATION OF AGREEMENT; OBLIGATIONS OF COMPANY

Section 8.1. Early Termination of Agreement.

(a) The Company shall have the option at any time to terminate this Lease Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 8.1 and upon compliance with the surrender requirements set forth herein, along with payment of all accrued rentals due hereunder, PILOT Payments payable pursuant to the PILOT Agreement, satisfaction of all liens and encumbrances, and payment of all other charges and fees payable hereunder. Any such termination by the Company shall require a minimum of 30-days written notice and confirmation by the Agency of all sums payable in accordance with the above.

(b) The Agency shall have the option at any time to terminate this Lease Agreement and to demand immediate payment in full of the rental reserved and unpaid as

described in Section 2.6 hereof upon written notice to the Company of the occurrence of an uncured Event of Default hereunder after all applicable cure periods.

ARTICLE IX MISCELLANEOUS

Section 9.1. 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
Peekskill, New York 10566
Attn: Executive Director

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

To the Company: DP 49, LLC
333 North Bedford Road
Mount Kisco, New York 10549
Attn: James Diamond

To Company Counsel: Dorf & Nelson
The International Corporate Center
555 Theodore Fremd Avenue
Rye, New York 10580
Attn: Laura Alcott, Esq.

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.

Section 9.2. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and their respective successors and assigns.

Section 9.3. Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.4. 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.

Section 9.5. Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 9.6. Applicable Law. This Lease Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein.

Section 9.7. Recording and Filing. This Lease Agreement (or a memorandum thereof) shall be recorded or filed, as the case may be, in the Office of the Westchester County Clerk, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

Section 9.8. Survival of Obligations. This Lease Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 and all indemnities shall survive any termination or expiration of this Lease Agreement.

Section 9.9. Section Headings Not Controlling. The headings of the several sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Lease Agreement.

Section 9.10. No Broker. Agency and Company represent and warrant to the other that the Agency has not dealt with any broker or finder entitled to any commission, fee, or other compensation by reason of the execution of this Lease Agreement, and the Company agrees to indemnify and hold the Agency harmless from any charge, liability or expense (including attorneys' fees) the other may suffer, sustain, or incur with respect to any claim for a commission, fee or other compensation by a broker or finder.

Section 9.11. 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 hereto or thereto, 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/her 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 or the City of Peekskill, New York and neither the State of New York nor 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 Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(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 place, 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.

Section 9.12. No Joint Venture Created. The Agency and the Company mutually agree that by entering into this Lease Agreement the parties hereto are not entering into a joint venture.

(Remainder of page intentionally left blank)

[Signature Page to Lease Agreement]

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

**CITY OF PEEKSKILL INDUSTRIAL
DEVELOPMENT AGENCY**

By: Anthony Ruggiero
Anthony Ruggiero, Executive Director

DP 49, LLC

**BY: DIAMOND PROPERTIES, LLC,
Sole Member**

By: William E. Diamond
Name: William E. Diamond
Title: Co-Manager

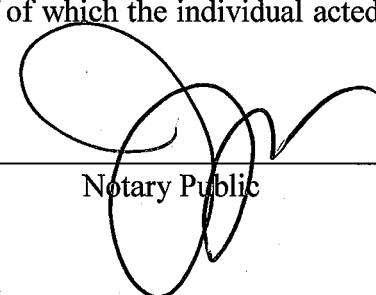
[Acknowledgment Page to Lease Agreement]

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

On the 31st day of October in the year 2014, before me, the undersigned, personally appeared **ANTHONY RUGGIERO**, 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 signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

JUSTIN S. MILLER
Notary Public, State of New York
No. 02MI6020242
Qualified in Albany County
Commission Expires June 8, 2015

Notary Public

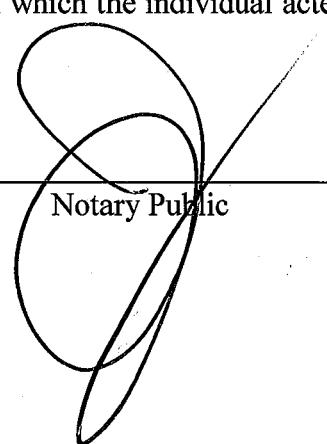


STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

On the 31st day of October in the year 2014, before me, the undersigned, personally appeared **WILLIAM E. DIAMOND** 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 signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument..

JUSTIN S. MILLER
Notary Public, State of New York
No. 02MI6020242
Qualified in Albany County
Commission Expires June 8, 2015

Notary Public



PERFORMANCE GUARANTY

For good and valuable consideration, **DIAMOND PROPERTIES, LLC**, a New York limited liability company having offices at 333 North Bedford Road, Mount Kisco, New York 10549 (the "Guarantor"), hereby irrevocably, absolutely and unconditionally guarantees to the Agency and its assigns the full and prompt payment of all indebtedness, liabilities and obligations of the Company hereunder including, without limitation, the payment of the principal amount of the respective obligations and all interest, fees, costs and expenses. The within guarantees are independent of and in addition to any other guaranty, endorsement, collateral, remedy, statutory right or other agreement held by the City of Peekskill Industrial Development Agency or its assigns and are a guaranty of payment and performance, not of collection.

Dated: As of October 31, 2014

DIAMOND PROPERTIES, LLC

By: William E. Diamond
Name: William E. Diamond
Title: Co-Manager

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

On the 31st day of October in the year 2014, before me, the undersigned, personally appeared **WILLIAM E. DIAMOND** 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 signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument..

JUSTIN S. MILLER
Notary Public, State of New York
No. 02MI6020242
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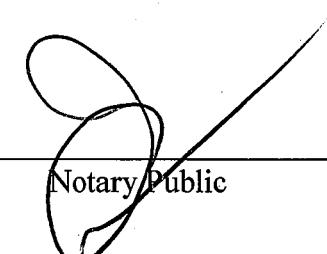
Notary Public

EXHIBIT A
DESCRIPTION OF PREMISES

PARCEL I (WATER PARCEL)

ALL that land partially under water, situate, lying and being in the City of Peekskill, County of Westchester and State of New York, designated as portion of Lots 1 and 2 on a certain map, which map was filed in the Westchester County Clerk's Office on October 23, 1980 as Map No. 20407, which land is more particularly bounded and described as follows:

BEGINNING at a point on the approximate high water mark of Lents Cove as shown on a survey made by Badey and Watson, Land Surveyors, dated July 22, 1985 which point is on the division line between the lands hereinafter described and land of the City of Peekskill Industrial Development Agency described in a lease to Point Associates dated February 13, 1987, a Memorandum of which lease is recorded in the Office of the Clerk of the County of Westchester on July 15, 1987 in Liber 8888 cp 109, the coordinates of which point are North 464418.83 (y) and East 607401.00 (x) according to the New York State Coordinate System, East Zone;

RUNNING THENCE from said point along the approximate high water mark of Lents Cove as shown aforesaid and along the abovementioned dividing line, the following 9 courses and distances:

Due North 16.17 feet;
North 53 degrees 58 minutes 22 seconds West 13.60 feet;
North 73 degrees 04 minutes 21 seconds West 24.04 feet;
North 63 degrees 26 minutes 06 seconds West 22.36 feet;
North 82 degrees 18 minutes 14 seconds West 37.34 feet;
North 64 degrees 47 minutes 56 seconds West 37.58 feet;
South 82 degrees 52 minutes 30 seconds West 16.12 feet;
North 61 degrees 41 minutes 57 seconds West 14.76 feet; and
South 21 degrees 48 minutes 05 seconds West 9.71 feet to a point;

THENCE still along said division line, North 65 degrees 32 minutes 43 seconds West 30.18 feet to a point on the approximate high water mark of the Hudson River as shown aforesaid;

THENCE along said approximate high water mark and along the division line aforesaid, the following 17 courses and distances:

North 03 degrees 00 minutes 46 seconds West 17.54 feet;
North 13 degrees 45 minutes 39 seconds West 50.45 feet;
North 10 degrees 49 minutes 23 seconds West 69.23 feet;
North 00 degrees 47 minutes 22 seconds West 52.48 feet;
North 10 degrees 18 minutes 17 seconds West 23.91 feet;
North 39 degrees 04 minutes 58 seconds West 21.39 feet;
North 20 degrees 13 minutes 30 seconds West 21.74 feet;
North 39 degrees 02 minutes 08 seconds West 95.27 feet;
North 13 degrees 08 minutes 02 seconds West 30.81 feet;

North 18 degrees 26 minutes 06 seconds West 53.76 feet;
North 28 degrees 10 minutes 43 seconds West 63.53 feet;
North 18 degrees 26 minutes 06 seconds West 50.60 feet;
North 37 degrees 14 minutes 05 seconds West 31.40 feet;
North 21 degrees 15 minutes 02 seconds West 96.57 feet;
North 32 degrees 00 minutes 19 seconds West 47.17 feet;
North 01 degrees 18 minutes 07 seconds West 44.01 feet and
North 17 degrees 14 minutes 29 seconds East 29.32 feet to a point, the coordinates of which are
North 465223.00 (y) and East 606962.69 (x);

THENCE Due West 342.50 feet;

THENCE South 20 degrees 15 minutes 07 seconds West 127.38 feet;

THENCE South 41 degrees 17 minutes 53 seconds East 1079.01 feet to a point, the coordinates
of which are North 464292.85 (y) and East 607288.22 (x);

THENCE North 41 degrees 50 minutes 16 seconds East 169.08 feet to the point or place of
BEGINNING.

TOGETHER WITH a non-exclusive easement for utilities and ingress and egress over that
certain right of way leading from Charles Point Avenue, now known as John E. Walsh
Boulevard, in a westerly and northwesterly direction to the above described premises and as
more fully described in the Declaration of Easement recorded in Liber 8888 cp 35.

PARCEL II (UPLAND PARCEL)

ALL that certain parcel of land situate in the City of Peekskill, County of Westchester and State
of New York, that is a portion of Parcel I as it is shown on the certain map entitled,
"Survey.....at Charles Point....." which was filed in the Westchester County Clerk's Office on
October 23, 1980 as Map No. 20407 that is bounded and described as follows:

BEGINNING at a point on the easterly shoreline of the Hudson River and within the bounds of
the said Parcel I as it is shown on the said Filed Map No. 20407, which point occupies coordinate
position:

North 464418.83 (y)
East 607401.00 (x)

of the New York State Coordinate System, East Zone and which point is distant, the following
courses from the southerly corner of the Parcel shown on Map No. 20407 that occupies
coordinate position

North 463520.804 (y)

East 608470.681 (x)

of the aforesaid New York State Coordinate System, East Zone;

North 47 degrees 30 minutes 36 seconds West 856.60 feet;
North 77 degrees 10 minutes 53 seconds West 488.18 feet;
North 41 degrees 17 minutes 53 seconds West 113.32 feet and
North 41 degrees 50 minutes 16 seconds East 169.08 feet;

THENCE from the said point of beginning along the said easterly shoreline (high water mark) of the east bank of the Hudson River;

Due North 16.17 feet;
North 53 degrees 58 minutes 22 seconds West 13.60 feet;
North 73 degrees 04 minutes 21 seconds West 24.04 feet;
North 63 degrees 26 minutes 06 seconds West 22.36 feet;
North 82 degrees 18 minutes 14 seconds West 37.34 feet;
North 64 degrees 47 minutes 56 seconds West 37.58 feet;
South 82 degrees 52 minutes 30 seconds West 16.1/2 feet;
North 61 degrees 41 minutes 57 seconds West 14.76 feet; and
South 21 degrees 48 minutes 05 seconds West 9.71 feet;

THENCE leaving the high water mark and running across a peninsula of land and along the division line between Parcel I and II as shown on said Filed Map No. 20407, North 65 degrees 32 minutes 43 seconds West 30.18 feet to another point on the said easterly shoreline (high water mark) of the East Bank of the Hudson River;

THENCE northerly along the said high water mark, the following courses:

North 3 degrees 00 minutes 46 seconds West 17.54 feet;
North 13 degrees 45 minutes 39 seconds West 50.45 feet;
North 10 degrees 49 minutes 23 seconds West 69.23 feet;
North 0 degrees 47 minutes 22 seconds West 52.48 feet to a point which is the point of beginning of the hereinafter described 40 foot easement which point occupies coordinate position

North 464676.48 (y)
East 607189.28 (x)

of the New York State Coordinate System, East Zone;

THENCE continuing along the aforesaid easterly shoreline (high water mark) of the East Bank of the Hudson, the following courses:

North 10 degrees 18 minutes 17 seconds West 23.91 feet;
North 39 degrees 04 minutes 58 seconds West 21.39 feet;
North 20 degrees 13 minutes 30 seconds West 21.74 feet;

North 39 degrees 02 minutes 08 seconds West 95.27 feet;
North 13 degrees 08 minutes 02 seconds West 30.81 feet;
North 18 degrees 26 minutes 06 seconds West 53.76 feet;
North 28 degrees 10 minutes 43 seconds West 63.53 feet;
North 18 degrees 26 minutes 06 seconds West 50.60 feet;
North 37 degrees 14 minutes 05 seconds West 31.40 feet;
North 21 degrees 15 minutes 02 seconds West 96.57 feet;
North 32 degrees 00 minutes 19 seconds West 47.17 feet;
North 1 degree 18 minutes 07 seconds West 44.01 feet; and
North 17 degrees 14 minutes 29 seconds East 29.32 feet to a point on the southerly line of lands
under lease to the County of Westchester (Resco Site);

THENCE along the said County of Westchester (Resco Site) lands:

Due East 432.31 feet to a point on the westerly line of an easement and a right-of-way leading to
Charles Point Avenue;

THENCE along the said westerly and southwesterly line of the said right-of-way leading to
Charles Point Avenue;

Due South 241.16 feet and South 27 degrees 13 minutes 00 seconds East 406.90 feet to a point;

THENCE leaving the said easement and running along other lands now or formerly of The City
of Peekskill Industrial Development Agency, South 41 degrees 50 minutes 16 seconds West
270.01 feet to the aforementioned easterly shoreline (high water mark) of the East Bank of the
Hudson River and the point or place of BEGINNING.

SUBJECT to an easement, 40 feet in width, over that portion of the aforescribed lands that is
bounded and described as follows:

BEGINNING at a point on the easterly shoreline of the Hudson River (high water mark) which
occupies coordinate position:

North 464676.48 (y)
East 607189.28 (x)

of the aforementioned New York State Coordinate System, East Zone;

THENCE from said point of beginning along the said easterly shoreline of the Hudson River, the
following courses:

North 10 degrees 18 minutes 17 seconds West 23.91 feet;
North 39 degrees 04 minutes 58 seconds West 21.39 feet to a point;

THENCE through the hereinafter described premises, North 41 degrees 50 minutes 16 seconds East 342.70 feet to a point on the aforementioned southwesterly line of the easement or right of way leading to Charles Point Avenue;

THENCE along the said easement or right of way leading to Charles Point Avenue, South 27 degrees 13 minutes 00 seconds East 42.83 feet to a point;

THENCE through the lands hereinabove described, South 41 degrees 50 minutes 16 seconds West 345.43 feet to the easterly shoreline of the said Hudson River and the point or place of beginning containing within said easement 0.313 acres more or less.

TOGETHER WITH an easement over all that parcel of land situate in the City of Peekskill, County of Westchester and State of New York that is more particularly bounded and described as follows:

BEGINNING at a point on the westerly line of Charles Point Avenue where the said westerly line is intersected by the line dividing the easement herein described on the south from lands under lease to the County of Westchester (Resco Site) on the north which point occupies coordinate position:

North 464719.99 (y)
East 608004.15 (x)

of the New York State Coordinate System, East Zone;

THENCE from the said point of beginning, southerly along the said westerly line of Charles Point Avenue, South 14 degrees 54 minutes 00 seconds West 103.48 feet to a point;

THENCE westerly along other lands of the City of Peekskill Industrial Development Agency;

Due West 396.44 feet to a point which is the easterly most corner of the lands now or formerly of Point Associates;

THENCE along the northeasterly line of the said land now or formerly of Point Associates, North 27 degrees 13 minutes 00 seconds West 406.90 and Due North 241.16 feet to a point on the southerly line of the aforementioned lands leased to the County of Westchester (Resco Site);

THENCE easterly along the said southerly line Due East 75.00 feet to a point;

THENCE southeasterly and easterly still along the said lands leased to the County of Westchester (Resco Site) the following courses:

Due South 223.00 feet;
South 27 degrees 13 minutes 00 seconds East 314.87 feet; and
Due East 390.14 feet to the aforementioned westerly line of Charles Point Avenue and the point or place of BEGINNING.

TOGETHER WITH a non-exclusive easement for utilities, and ingress and egress over that certain right of way leading from Charles Point Avenue, now known as John E. Walsh Boulevard, in a westerly and northwesterly direction to the above described premises and as more fully described in the Declaration of Easement recorded in Liber 8888 cp 35.

RESERVING Onto the City of Peekskill Industrial Development Agency a 15 foot wide strip of land as same is set forth in Lease and Memorandum of Lease.

EXHIBIT B
SCHEDULE OF BASIC RENT

Calendar Year	Lease Year	Basic Rent Payment	Calendar Year	Lease Year	Basic Rent Payment
Initial Term					
2014*	1	30,000			
2015	2	30,000			
2016	3	30,000			
2017	4	30,000			
2018	5	30,000			
2019	6	33,000			
2020	7	33,000			
2021	8	33,000			
2022	9	33,000			
2023	10	33,000			
2024	11	36,300			
First Extension Option	Lease Year	Basic Rent Payment	Second Extension Option	Lease Year	Basic Rent Payment
2025	12	36,300	2044	31	53,146.83
2026	13	36,300	2045	32	53,146.83
2027	14	36,300	2046	33	53,146.83
2028	15	36,300	2047	34	53,146.83
2029	16	39,930	2048	35	53,146.83
2030	17	39,930	2049	36	58,461.51
2031	18	39,930	2050	37	58,461.51
2032	19	39,930	2051	38	58,461.51
2033	20	39,930	2052	39	58,461.51
2034	21	43,923	2053	40	58,461.51
2035	22	43,923	2054	41	64,307.66
2036	23	43,923	2055	42	64,307.66
2037	24	43,923	2056	43	64,307.66
2038	25	43,923	2057	44	64,307.66
2039	26	48,315.30	2058	45	64,307.66
2040	27	48,315.30	2059	46	70,738.43
2041	28	48,315.30	2060	47	70,738.43
2042	29	48,315.30	2061	48	70,738.43
2043	30	48,315.30	2062	49	70,738.43

* pro-rated payment to be paid as of the date hereof

EXHIBIT C

FORM OF SUBLICENSE RIDER

DP 49 LLC (the "Landlord") and _____ (the "Tenant") hereby acknowledge that the within lease agreement pertains to a certain facility (the "Facility") which is also leased from the City of Peekskill Industrial Development Agency (the "Agency") pursuant to a certain Lease Agreement, dated as of October 31, 2014 (with related documents, including a PILOT Agreement, collectively, the "Agency Documents").

Landlord and Tenant acknowledge and agree that the obligations and agreements of the Agency contained within the Agency Documents and any other instrument or document executed in connection therewith, and any other instrument or document supplemental thereto, are and shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Landlord) or employee of the Agency in his/her individual capacity, and the members, officers, agents (other than the Landlord) 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. Landlord and Tenant hereby further acknowledge and agree that the obligations and liabilities of the Agency, if any, with respect to the Facility are specifically limited and controlled by the terms and conditions set forth within the Lease Agreement. No recourse may be sought by the Tenant or any permitted guests, agents or invitees from the Agency for any of the operation, condition, or maintenance of the Facility – whether in tort or equity, with any such liability being the express responsibility of Landlord and/or Tenant, as their respective interests shall appear.

The obligations and agreements of the Agency contained within the Agency Documents do and shall not constitute or give rise to an obligation of the State of New York 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 are and 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 Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined within the Lease Agreement).

No order or decree of specific performance with respect to any of the obligations of the Agency under the Agency Documents 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 place, 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 Landlord) 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 Landlord) and employees against all liability expected to be incurred as a result of compliance with such request.

Tenant further represents and acknowledges that by entering into the within Lease Agreement will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Facility from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Tenant located within the State except as may be permitted under the Enabling Act. To the extent that Tenant are relocating from one plant or facility to another, Tenant's shift of operations to the Facility is and was necessary to discourage the Tenant from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Tenant in its respective industry.

The Tenant 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, directors, agents and employees, and their respective successors, assigns 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 Facility or arising by reason of or in connection with the Tenant's occupation or the use thereof or the presence on, in or about the Facility (other than acts or omissions of the Landlord, which are indemnified by the Landlord within the Lease Agreement) or (ii) liability arising from or expense incurred by the Agency's financing, renovating, equipping, owning and leasing of the Facility, including, without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing (other than claims, losses, liabilities or expenses attributable to acts or omissions of the Landlord, which are indemnified by the Landlord within the Lease Agreement or other obligations of Landlord arising under the Lease Agreement). 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.

The Tenant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, within ten (10) business days after receipt of written request therefor, such information concerning the Tenant, the Tenant's employment history and statistics related thereto, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation or as otherwise reasonably requested by the Agency.

The within acknowledgments and representations are made for the benefit of the Agency and the Landlord and may be relied upon by same.

DP 49, LLC
LANDLORD

Form Only - Do Not Sign

By: _____

Name:

Title:

_____, AS
TENANT

Form Only - Do Not Sign

By: _____

Name:

Title: