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**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**DNC 250, INC.**

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**FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT**

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*Regarding the acquisition of leasehold interest in a 1.95+/- acre parcel of land located at 250 Delaware Avenue, City of Buffalo, Erie County, New York (the "Land") consisting of: (i) the appointment of the Company as agent of the Agency to undertake the planning, design, construction, and equipping of and development of a mixed-use facility to include 204,000+/- SF of class "A" office space, and a 152,520+/- SF four-level parking facility to accommodate approximately 380 cars (the "Improvements") and (ii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment," and collectively with the Land, and the Improvements, the "Facility").*

Dated as of: February 1, 2015

First Amendment Dated as of: November 1, 2015

Termination Date: December 31, 2027

SBL No.: 111.37-3-5.11/Z

Affected Tax Jurisdictions: Erie County  
City of Buffalo

Prepared by:  
Harris Beach PLLC  
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**FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT**

THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT (the "First Amendment to PILOT"), dated as of the 1st day of November, 2015, by and between **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **DNC 250, INC.**, a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 100 Corporate Parkway, Suite 500, Amherst, NY 14226 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Agency and the Company previously entered into that certain Payment In Lieu Of Tax Agreement (the "PILOT Agreement"), dated as of February 1, 2015, with respect to the Company's property located at 250 Delaware Avenue, City of Buffalo, Erie County, New York; and

WHEREAS, at the written request of the Company received by the Agency prior to November 1, 2015, and pursuant to Section 4 of Part A, and Section 4 of Part B of the PILOT Agreement, the Agency and the Company have agreed to delay the implementation of the PILOT Agreement by one year, amend the expiration date in the PILOT Agreement by one year, and to revise Schedules A and B of the PILOT Agreement in accordance with this First Amendment to PILOT; and

WHEREAS, the Agency and the Company desire to amend the PILOT Agreement in accordance with the terms of this First Amendment to PILOT Agreement.

NOW, THEREFORE, in consideration of the covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

**1. A. DNC Space Component PILOT (10 Year PILOT benefit period)**

1. Section 1, entitled Agency Tax Exemption of the PILOT Agreement is amended and restated as follows:

Section 1. Agency Tax Exemption. Subject to the completion and filing of a Form RP-412-a, Application for Real Property Tax Exemption (the "RP-412-a"), by the Taxable Status Date of December 1, 2015 (the "Taxable Status Date"), and the approval of the RP-412-a by the Assessor, the Project shall be exempt from real estate taxes commencing with the:

- (a) 2018 tax fiscal year of the County, and

(b) 2017-2018 tax fiscal year of the City.

Prior to the 2018 County and 2017-2018 City tax fiscal years, the Company shall continue to timely pay all Real Estate Taxes due as if the Agency were not in leasehold title to the DNC Building and had no ownership or control thereof such that no exemption from Real Estate Taxes was available to the DNC Building due to the status of the Agency. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the DNC Building by the County and City. This DNC Space Component PILOT benefit period and this Agreement shall expire on December 31, 2027; *provided, however*, the Company shall pay the 2028 County and the 2027-2028 City tax bills, on the dates and in the amounts as if the Agency did not have an interest in the Project on the tax status date with respect to said tax years. The Company shall provide the Agency with all information required to complete the RP-412-a and shall provide such additional information and take such actions as are required by the Assessor in order to process and approve the RP-412-a Application. In the event the exemption from real estate taxes is denied for any reason, the Company agrees to pay all real estate taxes levied upon the Project as they become due. To the extent permitted by law, the Company shall have the right to protest such denial subject, however, to the conditions set forth in Section 8.1 of the Leaseback Agreement. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company arising from the denial of an exemption from real estate taxes except to the extent that such denial results solely from the failure of the Agency to file the RP-412-a with the Assessor by the Taxable Status Date.

2. Subsection (2) of Section 3, entitled Taxing Authorities and Amounts, of the PILOT Agreement is hereby amended to revise the respective tax fiscal years within paragraphs (a) and (b):

(a) County PILOT Payments. Payments in lieu of general levy real estate taxes to the County for each of the tax fiscal years 2018 through 2027, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the County Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The County Variable PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate in effect for such tax fiscal year, applied to the product of (i) the then current assessed valuation of the depreciable portion of the DNC Space Project, as determined by the Assessor from time to time (assessed as buildings or other improvements), and (ii) the Payment Factor applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to County of Erie, Room 100, 95 Franklin Street, Buffalo, NY 14202, or such other place as may be designated from time to time by the County. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(b) City PILOT Payments. Payments in lieu of general levy real estate taxes for the City for each of the tax fiscal years 2017-2018 through 2026-2027, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the City Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year. The City Variable PILOT Payment for each tax fiscal year shall be an amount equal to the City tax rate in effect for such tax fiscal year applied to the product of (i) the then current assessed valuation of the depreciable portion of the DNC Space Project, as determined by the Assessor from time to time (assessed as buildings or other improvements), and (ii) the Payment Factor

applicable to such tax fiscal year as shown on Schedule A attached hereto and made a part hereof. Each such payment shall be delivered to the City of Buffalo, Attn: City Assessor or such other place as may be designated from time to time by the City. Fifty-percent (50%) of each required annual payment for each City tax fiscal year must be made by July 31 of that year, with the balance to be made by December 31 of such year (unless otherwise required by the City), or such payment shall be considered delinquent.

**2. B. Retail Space Component (7 Year PILOT benefit period)**

1. Section 1, entitled Agency Tax Exemption of the PILOT Agreement is amended and restated as follows:

Section 1. Agency Tax Exemption. Subject to the completion and filing of a Form RP 412-a, Application for Real Property Tax Exemption (the "RP-412-a"), by the Taxable Status Date of December 1, 2015 (the "Taxable Status Date"), and the approval of the RP-412-a by the Assessor, the Project shall be exempt from real estate taxes commencing with the:

- (a) 2018 tax fiscal year of the County, and
- (b) 2017-2018 tax fiscal year of the City.

Prior to the 2018 County and 2017-2018 City tax fiscal years, the Company shall continue to timely pay all Real Estate Taxes due as if the Agency were not in leasehold title to the DNC Building and had no ownership or control thereof such that no exemption from Real Estate Taxes was available to the DNC Building due to the status of the Agency. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the DNC Building by the County and City. The Retail Space Component benefit period of the PILOT Agreement shall expire on December 31, 2024; provided, however, the Company shall pay the 2025 - 2028 County and the 2024-2025 through the 2027-2028 City tax bills, on the dates and in the amounts as if the Agency did not have an interest in the Retail Space Component on the tax status date with respect to said tax years. The Company shall provide the Agency with all information required to complete the RP-412-a and shall provide such additional information and take such actions as are required by the Assessor in order to process and approve the RP-412-a Application. In the event the exemption from real estate taxes is denied for any reason, the Company agrees to pay all real estate taxes levied upon the Project as they become due. To the extent permitted by law, the Company shall have the right to protest such denial subject, however, to the conditions set forth in Section 8.1 of the Leaseback Agreement. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company arising from the denial of an exemption from real estate taxes except to the extent that such denial results solely from the failure of the Agency to file the RP-412-a with the Assessor by the Taxable Status Date.

2. Subsection (2) of Section 3, entitled Taxing Authorities and Amounts, of the PILOT Agreement is hereby amended to revise the respective tax fiscal years within paragraphs (a), (b) and (c):

(a) County PILOT Payments. Payments in lieu of general levy real estate taxes to the County for each of the tax fiscal years 2018 through 2024, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the County Land PILOT Payment plus the County Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year.

(i) The Part A County Land PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate then in effect for such tax fiscal year, applied against 16.50% of the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The Part A County Variable PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate in effect for such tax fiscal year, applied to the product of (i) the then current assessed valuation of the depreciable portion of Part A of the Retail Space Project (assessed as buildings or other improvements), and (ii) the payment factor applicable to such tax fiscal year as shown on Schedule B attached hereto and made a part hereof. Each such payment shall be delivered to County of Erie, Room 100, 95 Franklin Street, Buffalo, NY 14202, or such other place as may be designated from time to time by the County. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(ii) The Part B County Land PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate then in effect for such tax fiscal year, applied against 43.85% of the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The Part B County Variable PILOT Payment for each tax fiscal year shall be an amount equal to the County tax rate in effect for such tax fiscal year, applied to the product of (i) the then current assessed valuation of the depreciable portion of Part B of the Retail Space Project (assessed as buildings or other improvements), and (ii) the payment factor applicable to such tax fiscal year as shown on Schedule B attached hereto and made a part hereof. Each such payment shall be delivered to County of Erie, Room 100, 95 Franklin Street, Buffalo, NY 14202, or such other place as may be designated from time to time by the County. Payments for each tax fiscal year must be made by February 15 of that year, or such payment shall be considered delinquent.

(b) City PILOT Payments. Payments in lieu of general levy real estate taxes for the City for each of the tax fiscal years 2017-2018 through 2023-2024, or until termination of the Leaseback Agreement, whichever date occurs first, shall be in an amount equal to the City Land PILOT Payment plus the City Variable PILOT Payment (as such terms are defined below) for each such tax fiscal year.

(i) The Part A City Land PILOT Payment for each tax fiscal year shall be an amount equal to the City tax rate then in effect for such tax fiscal year, applied against 16.50% the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The Part A City Variable PILOT Payment for each tax fiscal year shall be an amount equal to the City tax rate in effect for such tax fiscal year applied to the product of (i) the then current assessed valuation of the depreciable portion of Part A of the Retail Space Project (assessed as buildings or other improvements), and (ii) the payment factor applicable to such tax fiscal year as shown on Schedule B attached hereto and made a part hereof. Each such payment shall be delivered to the City of Buffalo, Attn: City Assessor or such

other place as may be designated from time to time by the City. Fifty-percent (50%) of each required annual payment for each City tax fiscal year must be made by July 31 of that year, with the balance to be made by December 31 of such year (unless otherwise required by the City), or such payment shall be considered delinquent.

(ii) The Part B City Land PILOT Payment for each tax fiscal year shall be an amount equal to the City tax rate then in effect for such tax fiscal year, applied against 43.83% the then current assessed valuation of the non-depreciable portion of all tax parcels constituting the Project (assessed as land). The Part B City Variable PILOT Payment for each tax fiscal year shall be an amount equal to the City tax rate in effect for such tax fiscal year applied to the product of (i) the then current assessed valuation of the depreciable portion of Part B of the Retail Space Project (assessed as buildings or other improvements), and (ii) the payment factor applicable to such tax fiscal year as shown on Schedule B attached hereto and made a part hereof. Each such payment shall be delivered to the City of Buffalo, Attn: City Assessor or such other place as may be designated from time to time by the City. Fifty-percent (50%) of each required annual payment for each City tax fiscal year must be made by July 31 of that year, with the balance to be made by December 31 of such year (unless otherwise required by the City), or such payment shall be considered delinquent.

(c) In addition to the foregoing, the Company shall pay all special district charges, special assessments and special ad valorem levies (specifically including but not limited to any fire district charges or "curb charges"), and pure water charges and sewer charges that are levied against the Retail Space Project in full in accordance with normal billing practices as if the Agency did not have an interest in the Project.

3. Schedules A and B attached to the PILOT Agreement are hereby replaced with Schedules A and B attached hereto.

4. Unless otherwise amended and modified by this First Amendment to PILOT, the terms of the PILOT Agreement shall remain unchanged and in full force and effect. This First Amendment to PILOT shall in no way be construed as a waiver of any of the rights or remedies of the Agency or a release or waiver by the Agency of any Event of Default under the PILOT Agreement. The Agency hereby reserves all such rights and remedies.

*[Remainder of this page left intentionally blank]*

[Signature Page to First Amendment to PILOT]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to PILOT as of the day and year first written above.

**ERIE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

BY: Karen M. Fiala  
Name: Karen M. Fiala  
Title: Assistant Treasurer

**DNC 250, INC.**

BY: Michael J. Montante  
Name: Michael J. Montante  
Title: President

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

On the 24<sup>th</sup> day of November, 2015, before me, the undersigned, personally appeared **KAREN M. FIALA**, 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 she executed the same in her capacity, and that by her signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Kathleen A. Drumm  
Notary Public

**KATHLEEN A. DRUMM**  
Notary Public State of New York  
Qualified in Erie County  
My Commission Expires: June 30, 2018

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

On the 23<sup>rd</sup> day of November, 2015, before me, the undersigned, personally appeared **MICHAEL J. MONTANTE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Susan M. Hassinger  
Notary Public

**SUSAN M. HASSINGER**  
Notary Public State of New York  
Qualified in Erie County  
My commission expires October 27, 2018

PILOT Agreement dated as of February 1, 2015,  
as amended by the First Amendment to PILOT Agreement dated as of November 1, 2015,  
by and between Erie County Industrial Development Agency  
and DNC 250, INC.

SBL No. 111.37-3-5.11/Z

Expiration of Leaseback: December 31, 2027

**SCHEDULE A - DNC Space Component PILOT**

| Project/PILOT<br>Tax Year | TAX FISCAL YEAR |           | PAYMENT<br>FACTOR |
|---------------------------|-----------------|-----------|-------------------|
|                           | County          | City      |                   |
| Project Year 1            | 2015            | 2014-2015 | N/A-As if Owned   |
| Project Year 2            | 2016            | 2015-2016 | N/A-As if Owned   |
| Project Year 3            | 2017            | 2016-2017 | N/A-As if Owned   |
| PILOT Year 1              | 2018            | 2017-2018 | 10%               |
| PILOT Year 2              | 2019            | 2018-2019 | 10%               |
| PILOT Year 3              | 2020            | 2019-2020 | 10%               |
| PILOT Year 4              | 2021            | 2020-2021 | 20%               |
| PILOT Year 5              | 2022            | 2021-2022 | 20%               |
| PILOT Year 6              | 2023            | 2022-2023 | 20%               |
| PILOT Year 7              | 2024            | 2023-2024 | 30%               |
| PILOT Year 8              | 2025            | 2024-2025 | 30%               |
| PILOT Year 9              | 2026            | 2025-2026 | 30%               |
| PILOT Year 10             | 2027            | 2026-2027 | 30%               |



PILOT Agreement dated as of February 1, 2015,  
as amended by the First Amendment to PILOT Agreement dated as of November 1, 2015,  
by and between Erie County Industrial Development Agency,  
and DNC 250, INC.

SBL No. 111.37-3-5.11/Z

Expiration of Leaseback: December 31, 2027

**SCHEDULE B - Retail Space Component PILOT**

| Project/PILOT<br>Tax Year | FISCAL TAX YEAR |           | PAYMENT<br>FACTOR |
|---------------------------|-----------------|-----------|-------------------|
|                           | County          | City      |                   |
| Project Year 1            | 2015            | 2014-2015 | N/A-As if Owned   |
| Project Year 2            | 2016            | 2015-2016 | N/A-As if Owned   |
| Project Year 3            | 2017            | 2016-2017 | N/A-As if Owned   |
| PILOT Year 1              | 2018            | 2017-2018 | 10%               |
| PILOT Year 2              | 2019            | 2018-2019 | 10%               |
| PILOT Year 3              | 2020            | 2019-2020 | 20%               |
| PILOT Year 4              | 2021            | 2020-2021 | 20%               |
| PILOT Year 5              | 2022            | 2021-2022 | 30%               |
| PILOT Year 6              | 2023            | 2022-2023 | 30%               |
| PILOT Year 7              | 2024            | 2023-2024 | 30%               |
| PILOT Year 8              | 2025            | 2024-2025 | N/A-As if Owned   |
| PILOT Year 9              | 2026            | 2025-2026 | N/A-As if Owned   |
| PILOT Year 10             | 2027            | 2026-2027 | N/A-As if Owned   |