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**COMPANY LEASE AGREEMENT**

Between

**THE O'NEILL GROUP-DUTTON, LLC**

and

**CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY**

Dated as of January *26* 2017

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City of Poughkeepsie Industrial Development Agency

One Dutchess Apartments Project, Phase I and Phase II  
One Dutchess Avenue  
Poughkeepsie, New York

Affecting that real property in the County of Dutchess, State of New York and which is also known as **Tax Map ID No. 6062-59-766443, 6062-59-738405, and 6062-59-744432** on the Official Tax Map of the City of Poughkeepsie, all as more particularly described in Exhibit A to this instrument

## COMPANY LEASE AGREEMENT

THIS COMPANY LEASE AGREEMENT, dated as of January 26, 2017 (the "Company Lease"), by and between THE O'NEILL GROUP-DUTTON, LLC, a limited liability company duly formed and validly existing pursuant to the laws of the State of New York and having a principal place of business at 241 Hudson Street, Hackensack, New Jersey, 07601 (the "Company"), and the CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at City Hall, 62 Civic Center Plaza, Poughkeepsie, NY 12601 (the "Agency") (capitalized terms used in the recitals to and within this Company Lease and not otherwise defined herein shall have the respective meanings assigned to such terms in the Lease Agreement referred to below):

### WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") has been heretofore enacted by the Legislature of the State of New York for the purposes, among others, of providing for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York, to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, the Agency has been heretofore established under said Enabling Act pursuant to Chapter 958 of the Laws of 1977 of New York, as amended, constituting Section 917 of said General Municipal Law (as amended, the Enabling Act and such chapter are herein collectively called the "Act") and is authorized to acquire the real property and interests therein, buildings and other improvements thereon in connection therewith for the purposes set forth above, and to lease the same as herein more particularly described; and

WHEREAS, the Company has proposed that the Agency undertake a project (the "Project") located on a parcel of land of approximately 8.871 acres located at One Dutchess Avenue in the City of Poughkeepsie, New York, more particularly described at Exhibit A attached hereto (the "Land"); and

WHEREAS, to accomplish its corporate purposes, the Agency has entered into negotiations with the Company for the Agency for a proposed Project described as follows: (A) the acquisition by the Agency of a leasehold or other interest in the Land; (B) the lease (with the obligation to sell) the Land to the Company, and (C) financial assistance in the form of certain tax exemptions with respect to the construction in two or more phases of three hundred (300) residential units consisting of 1, 2 and 3 bedroom luxury apartments and townhouses which units will incorporate Green technologies and amenities; and the construction in two or more phases of 13,800 square feet of commercial/retail space (collectively, the "Improvements"); and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other

tangible personal property (collectively the "Equipment")(the Land, the Improvements and the Equipment being collectively referred to as the "Facility"); and

WHEREAS, in order to comply with the Act in connection with the financing of the Project, the Company and the Agency are entering into this Company Lease, pursuant to which the Company will transfer to the Agency leasehold title to the Facility and will lease the Facility to the Agency, on the terms and conditions set forth in this Company Lease; and

WHEREAS, pursuant to a Lease Agreement, dated as of even date herewith, between the Agency and the Company (the "Lease Agreement"), the Agency will sublease its interest in the Facility to the Company; and

WHEREAS, the Company will finance the improvements to be undertaken in accordance with the Lease by entering into one or more notes which are to be secured by a mortgage dated as of the date hereof from the Agency and Company to the Lender as defined in the Lease Agreement (the "Mortgage");

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and representations hereinafter contained, the Company and the Agency hereby agree as follows:

#### **ARTICLE 1.**

The Company hereby leases to the Agency, and the Agency hereby leases from the Company, the Land described in Exhibit A hereto, including all improvements thereto and equipment now or hereafter located therein, for the term herein provided and for use as provided in the Lease Agreement. The interest in the Land is intended to include (1) all of the Company's right, title and interest in and to the Land and the Facility, (2) any rights of the Company in any strips or gores of land adjoining the Land, (3) any rights of the Company in any land lying in the bed of any street or avenue abutting the Land, to the centerline thereof, and (4) a non-exclusive right to use any easements or other rights in adjoining property inuring to the Company by reason of the Company's interest in the Land. It is the intention of the Company and the Agency that leasehold title to all improvements and additions hereafter constructed by the Company in the Land shall vest in the Agency, its successors and assigns as and when the same are constructed thereon. Accordingly, the Company and the Agency agree that the Agency shall hold leasehold title to all improvements and additions hereafter constructed by the Company in the Land.

The term of this Company Lease shall commence on the date of execution and delivery of this Agreement and expire on the earlier of (i) the fifteenth anniversary of the date hereof, or (ii) the termination of the Lease Agreement.

#### **ARTICLE 2.**

The rental hereunder shall be one dollar (\$1), receipt of which is hereby acknowledged by the Company.

### **ARTICLE 3.**

The Company shall promptly equip and improve the Facility as agent for and on behalf of the Agency. The Company hereby delivers possession of the Land to the Agency.

It is recognized that, under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision. Pursuant to the Lease Agreement, the Company has agreed to pay all taxes levied against the Facility as if the property were not exempt, including, if applicable, all payments due under any financial assistance agreement entered into with respect to the Facility.

Pursuant to the Lease Agreement, during the term of this Company Lease, the Company has agreed, at the Company's sole cost and expense, to keep and maintain or cause to be kept and maintained the Facility in good order and condition and make or cause to be made all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. The Agency will have no responsibility with respect to the foregoing.

### **ARTICLE 4.**

The Company represents and warrants that it owns fee title to the Facility and has full right and lawful authority to enter into this Company Lease for the full term hereof, that the execution, delivery and performance by the Company of this Company Lease and the consummation of the transactions herein contemplated have been duly authorized by all requisite corporate action on the part of the Company and will not violate (i) any applicable provision of law, or any order of any court or Agency of government having jurisdiction, (ii) the organizational documents of the Company, or (iii) any indenture, agreement or other instrument to which the Company is a party or which it or any of its property is subject to or bound by, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, which violation, conflict, breach or default would have a material adverse effect upon the affairs, assets, properties, business or financial condition of the Company. The Company covenants and agrees that, so long as the Lease Agreement shall be in full force and effect, the Agency shall have, hold and enjoy a valid leasehold estate in the Facility, and the Company shall from time to time take all necessary action to that end. Notwithstanding anything to the contrary contained in this Company Lease, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder if any asserted default by the Agency hereunder relates to a failure by the Company to perform its corresponding obligations under the Lease Agreement.

### **ARTICLE 5.**

The Agency represents and warrants that it has full right and lawful authority to enter into this Company Lease for the full term hereof.

### **ARTICLE 6.**

Neither the Agency nor the Company shall assign or transfer this Company Lease, nor sublease the whole or any part of the Facility nor subject this Company Lease to any lien, claim,

mortgage, encumbrance or servitude other than Permitted Encumbrances, in any manner, nor sell, assign, convey or otherwise dispose of the Facility or any part thereof, during the term of this Company Lease, in any manner, to any Person, except that the Agency shall sublease the Facility to the Company pursuant to the Lease Agreement for a term not greater than the term herein provided and the Company may sell, sublease or otherwise dispose of all or portions of the Facility in accordance with the Lease Agreement.

**ARTICLE 7.**

Except for the Lease Agreement, this Company Lease contains the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations and agreements are merged in this Company Lease. This Company Lease may not be changed, modified or discharged in whole or in part and no oral or executory agreement shall be effective to change, modify or discharge in whole or in part this Company Lease or any obligations under this Company Lease, unless such agreement is set forth in a written instrument executed by the Company, the Agency, and the Lender, as defined in the Lease Agreement. No consent or approval of the Company shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Company. No consent or approval of the Agency shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Agency. No consent or approval of the Lender shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Lender.

**ARTICLE 8.**

All notices, claims and other communications under this Agreement shall be in writing and shall be deemed to be duly given if hand delivered, sent by overnight delivery by a national courier service, or mailed by registered or certified U.S. Mail, return receipt requested, addressed as follows 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 three (3) business days after mailed, or when delivered in the manner provided in this Section.

<p><u>To the Agency:</u>  City of Poughkeepsie Industrial Development  Agency  Municipal Building  62 Civic Center Plaza  Poughkeepsie, NY 12601  Attn: IDA Chair, c/o City Administrator</p>	<p><u>With a copy to:</u>  Commissioner of Finance  Municipal Building  62 Civic Center Plaza  Poughkeepsie, NY 12601</p>
<p><u>With a copy To Agency Counsel</u>  Paul Ackerman  Municipal Building  62 Civic Center Plaza  Poughkeepsie, NY 12601</p>	

<u>To the Company:</u> The O'Neill Group-Dutton, LLC 241 Hudson Street Hackensack, New Jersey, 07601 Attention: Paula O'Neill, Managing Member	<u>With a copy to the Lender:</u> Investors Bank 101 JFK Parkway Short Hills, NJ 07078 Attention: Commercial Real Estate Administrator
<u>With a copy to Company Counsel:</u> Louis Kaufman, Esq. The O'Neill Group-Dutton, LLC 241 Hudson Street Hackensack, New Jersey, 07601	<u>With a copy to the Lender's Counsel:</u> Sills Cummis & Gross PC One Riverfront Plaza Newark, NJ 07102 Attn: Jerold L. Zaro, Esq.

THIS COMPANY LEASE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF THE CONFLICTS OF LAWS THEREOF.

The terms of this Company Lease are and shall be binding upon and inure to the benefit of the Agency and the Company and their respective successors and assigns.

If any one or more of the provisions of this Company Lease shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provisions(s) shall not affect any of the remaining provisions hereof, but this Company Lease shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Notwithstanding the lease of the Facility by the Agency to the Company pursuant to the Lease Agreement during the term of this Company Lease, there shall be no merger of this Company Lease nor of the leasehold estate created by this Company Lease with the fee estate in the Land or Facility or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Company Lease or the leasehold estate created by this Company Lease or any interest in this Company Lease or in any such leasehold estate and (2) the fee estate in the Land or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (a) this Company Lease or the leasehold estate created by this Company Lease and (b) the fee estate in the Land or any part thereof or any interest in such fee estate, shall join in an written instrument effecting such merger and shall duly record the same.

**ARTICLE 9.**

This Company Lease shall become effective upon the commencement date specified in the Lease Agreement. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

## **ARTICLE 10.**

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

No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or under the other Project Documents shall be sought or enforced against the Agency unless (1) 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, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) 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 (a) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect 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.

## **ARTICLE 11.**

The Agency and the Company agree that this Company Lease or a memorandum hereof shall be recorded by the Agency in the appropriate office of the Dutchess County Clerk.

## **ARTICLE 12.**

The use of the Facility and all other rights, duties, liabilities and obligations of the Company and the Agency with respect thereto and the Project to be constructed, leased and operated and the financing thereof, not fixed in this Company Lease, shall be as set forth in the Lease Agreement.

### **ARTICLE 13.**

The Company, in compliance with Section 13 of the Lien Law, covenants that the Company will receive the consideration for this conveyance and will hold the right to receive such consideration in a manner consistent with Section 13 of the Lien Law.

[The remainder of this page is intentionally left blank.]



IN WITNESS WHEREOF, the Company has caused its corporate name to be subscribed hereto by its Authorized Representative pursuant to a resolution duly adopted by its Members, and the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chair or Vice Chair, all being done as of the year and day first above written.


**THE O'NEILL GROUP-DUTTON, LLC**

By:



Name: Paula O'Neill  
Its: Managing Member

**CITY OF POUGHKEEPSIE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
Name: Paul Calogerakis  
Its: Chair

Execution Page for Company Lease Agreement  
Relating To  
City of Poughkeepsie Industrial Development Agency  
One Dutchess Apartments Project

**EXHIBIT A**  
**Description of the Land**

ALL that certain parcel of land situate in the City of Poughkeepsie, County of Dutchess and State of New York, and being bounded and described as follows:

SA See Attached Schedule A

(Grid Parcel #131300-6062~~42~~<sup>766443</sup>-000 located at 1 Dutchess Avenue, City of Poughkeepsie,  
Grid Parcel #6062~~42~~<sup>766443</sup>-738405 located at Hoffman Street, City of Poughkeepsie,  
Grid Parcel #6062~~42~~<sup>766443</sup>-744432 located at Hoffman Street, City of Poughkeepsie)

# *First American Title Insurance Company*

*Issued by*

***SNEERINGER MONAHAN PROVOST REDGRAVE TITLE AGENCY, INC.***

## **SCHEDULE A DESCRIPTION OF PREMISES**

### **THE PORTION OF THE FOLLOWING DESCRIBED PARCEL SITUATE IN THE CITY OF POUGHKEEPSIE:**

ALL that certain parcel of land with the buildings, and improvements thereon erected. situate, lying and being in the City of Poughkeepsie and Town of Poughkeepsie, County of Dutchess and State of New York, being a portion of what is shown as Parcel A on a certain map entitled, "Subdivision of Property, A. C. Dutton Lumber Corporation" and filed as map number 7345 and being more particularly bounded and described as follows:

BEGINNING at a point on the northerly line of Dutchess Avenue in the City of Poughkeepsie at a point at the southwesterly corner of a grant of lands underwater to Martin Hoffman by Letters Patent dated August 10, 1815 and recorded in the New York State Department of State in Book 26 of Patents at page 505; thence from said point of beginning heading northerly through lands formerly under the waters of the Hudson River the following 7 courses:

- 1) N. 74° 44' 52" W., a distance of 11.29 feet to a point;
- 2) N. 5° 54' 45" E., a distance of 282.76 feet to a point;
- 3) S. 84° 05' 15" E., a distance of 7.39 feet to a point;
- 4) N. 05° 09' 22" E., a distance of 98.67 feet to a point;
- 5) on a curve to the right having a Radius of 142.43 feet, and a length of 49.92 feet to a point;
- 6) on a curve to the left having a Radius of 140.32 feet, and a length of 90.80 feet to a point;
- 7) on a curve to the right having a Radius of 178.64 feet, and a length of 23.23 feet (long chord, N. 08° 06' 43" W., a distance of 23.21 feet) to a point;

said point being at the southwest corner of a grant of lands under water to Fallkill Iron Works by Letters Patent dated December 12, 1862 and recorded in Book 39 of Patents at page 128; thence heading along the same and not tangent to the previous curve. N. 06° 59' 22" E., a distance of 455.33 feet to the southwesterly corner of a grant of lands underwater to Henry D. Myers by Letters Patent dated March 26, 1870, recorded in Book 42 of Patents at page 1; thence along said lands granted to Myers, N. 06° 59' 22" E., a distance of 10.36 feet to the line between the City of Poughkeepsie and the Town of Poughkeepsie, said line formerly defined by the centerline of an underground stream known as "Kidney Creek"; thence continuing northeasterly into the Town of Poughkeepsie and along the Myers Patent, N. 06° 59' 22" E., a distance of 252.64 feet and N. 13° 05' 38" W for 137.75 feet to a point at the southwesterly corner of Parcel B. f.m. 7354. lands now or formerly of Vassar College (L1967 P625), said point also being the northwesterly corner of the herein described parcel; thence heading southeasterly along the lands of Vassar College, S 83° 53' 08" E, a distance of 336.58 feet to a point at the corner of the main portion of Parcel B. and the North Water Street portion of Parcel B, said point also being the northeasterly corner of this described parcel; thence heading southerly along the westerly line of the North Water Street portion of lands of Vassar College, the following 9 courses:

- 1) A curve to the left having a radius of 252.11 feet, a length of 117.24 feet to a point;
- 2) S 20° 31' 42" E, a distance of 23.60 feet to a point;
- 3) A curve to the right having a radius of 71.25 feet, a length of 24.43 to a point;
- 4) S 00° 52' 32" E. crossing the centerline of the previously mentioned "Kidney Creek" at 268.41 feet. said creek being the division line between the Town of Poughkeepsie and the City of Poughkeepsie and continuing in the City of Poughkeepsie for a distance of 156.59 feet for a total distance of 425.00 feet to a point;
- 5) A curve to the left having a radius of 296.26 feet, a length of 56.38 feet to a point;
- 6) S 11° 46' 42" E, a distance of 108.00 feet to a point
- 7) A curve to the right having a radius of 474.30 feet, a length of 138.90 feet to a point;
- 8) S 04° 59' 58" W, a distance of 115.71 feet to a point;
- 9) A curve to the left having a radius of 894.65 feet. a length of 34.52 feet to a concrete monument found

# ***First American Title Insurance Company***

*Issued by*

***SNEERINGER MONAHAN PROVOST REDGRAVE TITLE AGENCY, INC.***

at the northwesterly corner of a City of Poughkeepsie Highway Taking area (L22009 P4466);

thence heading southerly along the Taking Line. the following 3 courses:

- 1) S 18° 10' 56" W, a distance of 26.90 feet to a concrete monument;
- 2) S 06° 54' 44" W, a distance of 50.77 feet to a concrete monument;
- 3) S 02° 09' 16" W, a distance of 52.32 feet to a concrete monument, said point being on the northerly line of the unimproved section of Hoffman Street,

thence heading northwesterly along Hoffman Street, N 74° 44' 52" W, a distance of 192.56 feet to a point at the northwesterly corner of Hoffman Street; thence heading southwestery along Hoffman Street and lands now or formerly of Morrison (L22003 P 10228) and Dubraski (L1590 P210),

S 15° 15' 08" W, a distance of 310.00 feet to a point on the northerly line of the previously mentioned Dutchess Avenue, said point also being the southeasterly corner of the herein described parcel; thence heading northwesterly along the northerly line of Dutchess Avenue, N 74° 44' 52" W, a distance of 227.54 feet to the point and place of beginning.

FOR INFORMATION ONLY-NOT INSURED: (CONTAINING 12.107 acres of land, more or less.)

EXCEPTING AND RESERVING the portion of the above described parcel situate in the Town of Poughkeepsie.