

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
AND  
BILL OF SALE**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT AND BILL OF SALE (the "**Assignment**") is made and entered into as of the 17<sup>th</sup> day of October, 2018, by and among **J & K DUFFY HOLDINGS, LLC** with an address of 4616 Crossroads Park Drive, Liverpool, New York 13088 ("**Assignor**"), **B & N REAL ESTATE HOLDINGS OF CNY, LLC**, having an address of 6303 Mustang Road, Baldwinsville, NY 13027 ("**Assignee**"), and **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation having its office at 333 West Washington Street, Syracuse, new York 13202 ("**Agency**").

**RECITALS:**

**WHEREAS**, Assignor is the record owner of real property situate in the Town of Clay, County of Onondaga and State of New York known as 4616 Crossroads Park Drive, Liverpool, New York (the "**Land**") which is improved by a 105,000 square foot building (the "**Facility**") (the Land, together with the Facility, being the "**Project Facility**"); and

**WHEREAS**, in connection with certain financial assistance provided by the Agency, the Assignor entered into a certain Lease and Leaseback Agreement with the Agency dated as of June 15, 2015, a memorandum of which was recorded in the Onondaga County Clerk's office on June 29, 2015 in Book 5329 of Deeds at Page 491 (the "**Lease Agreement**") whereby the Assignor, as agent for the Agency, agreed to make certain improvements to the Facility and install certain "Equipment" as that term is defined in the Lease Agreement (the "**Equipment**"), and to otherwise acquire, construct and complete the Project Facility ; and

**WHEREAS**, pursuant to the Lease Agreement, (i) the Assignor leased the Project Facility to the Agency; (ii) the Assignor conveyed to the Agency all of the Assignor's right, title and interest in and to all Equipment acquired pursuant to the Lease Agreement; (iii) the Agency subleased the Project Facility to Assignor; and (iv) the Agency appointed Assignor as agent to undertake and complete the improvements, install the Equipment and otherwise complete the Project Facility; and

**WHEREAS**, in connection with the financial assistance provided by the Agency to the Assignor, the Agency and Assignor also entered into a certain Payment in Lieu of Tax Agreement dated as of February 25, 2016 (the "**PILOT Agreement**"); and

**WHEREAS**, Assignor has completed the improvements to the Facility, has acquired and installed all Equipment, and has otherwise completed the Project Facility; and

**WHEREAS**, Assignor is now selling the Project Facility and all Equipment to Assignee pursuant to the terms of a certain Purchase and Sale Agreement dated July 11, 2018; and

**WHEREAS**, Assignee desires to retain the benefits of the PILOT Agreement in connection with the sale, and as such has requested that (i) the Lease Agreement remain in place upon the transfer of the Project Facility from Assignor to Assignee; (ii) Assignor assign all of its right title and interest in the Lease Agreement and PILOT Agreement to Assignee; and (iii) that Agency consent to the assignment; and

**WHEREAS**, in order for Assignor to convey good and marketable title to the Equipment, Agency must join in the conveyance of the Equipment from Assignor to Assignee; and

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

1. **Recitals.** The foregoing recitals (including all defined terms) are hereby incorporated in the body of this Assignment as if fully rewritten and restated herein.

2. **Additional Defined Terms.** Any capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Lease Agreement.

3. **Assignment of Lease Agreement.**

A. Assignment of Rights. Assignor hereby assigns to Assignee all of its right, title, interest, duties and obligations as owner and subtenant under the Lease Agreement, subject, however, to the terms, covenants and conditions of the Lease Agreement and this Assignment.

B. Assumption of Obligations. Assignee hereby accepts the assignment of the Assignor's right, title, interest, duties and obligations under the Lease Agreement, subject to the terms and conditions hereof, and from and after the date hereof, Assignee hereby assumes and shall be responsible for and shall perform all of those obligations imposed on the Assignor under the Lease Agreement, which obligations first arise or accrue after the date hereof (the "**Closing**").

C. Agency Consent. Agency hereby consents to Assignor's assignment of the Lease Agreement and recognizes and accepts Assignee as owner and subtenant under the provisions of the Lease Agreement. Further, Agency hereby agrees to recognize Assignee's lender(s) as "Bank" under the terms of the Lease Agreement, and agrees that such lender(s) shall have the rights of "Bank" under the Lease Agreement.

D. Assignor's Indemnification. Assignor hereby indemnifies, protects, defends and holds Assignee, Assignee's officers, managers and members, and their respective successors and assigns, harmless from any and all claims, damages, losses, suits, proceedings, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "**Losses**"), both known and unknown, present and future, at law or in



equity and arising out of, by virtue of, or related in any way to, the breach by Assignor of any of the obligations imposed the owner and subtenant under the Lease Agreement, which obligations accrued on or prior to Closing.

E. Assignee's Indemnification. Assignee hereby indemnifies, protects, defends and holds Assignor, Assignor's officers, managers and members, and their respective successors, and assigns, harmless from any and all Losses, both known or unknown, present and future, at law or in equity, arising out of, by virtue of or in any way related to the breach by Assignee of any of the obligations imposed the owner and subtenant under the Lease Agreement, which obligations accrue after Closing.

#### **4. Assignment of PILOT Agreement**

A. Assignment of PILOT Agreement by Assignor to Assignee. Assignor hereby assigns to Assignee all of its right, title, interest, duties and obligations under the PILOT Agreement, subject, however, to the terms, covenants and conditions of the PILOT Agreement and this Assignment.

B. Assumption of Obligations. Assignee hereby accepts the assignment of the Assignor's right, title, interest, duties and obligations under the PILOT Agreement, subject to the terms and conditions hereof, and from and after the date hereof, Assignee hereby assumes and shall be responsible for and shall perform all of those obligations imposed on the Assignor under the PILOT Agreement, which obligations first arise or accrue after the Closing.

C. Agency Consent. Agency hereby consents to Assignor's assignment of the PILOT Agreement to Assignee.

D. Assignor's Indemnification. Assignor hereby indemnifies, protects, defends and holds Assignee, Assignee's officers, managers and members, and their respective successors and assigns, harmless from any and all Losses, both known and unknown, present and future, at law or in equity and arising out of, by virtue of, or related in any way to, the breach by Assignor of any of the obligations imposed on Assignor under the PILOT Agreement, which obligations accrued on or prior to Closing.

E. Assignee's Indemnification. Assignee hereby indemnifies, protects, defends and holds Assignor, Assignor's officers, managers and members, and their respective successors, and assigns, harmless from any and all Losses, both known or unknown, present and future, at law or in equity, arising out of, by virtue of or in any way related to the breach by Assignee of any of the obligations imposed on Assignor under the PILOT, which obligations accrue after Closing.

5. **Bill of Sale**. Assignor and Agency hereby sell and transfer to Assignee all of their right, title, and interest in and to the Equipment, and any replacement, additions, accessions or substitutions thereof, located at the Facility, to have and to hold the same

unto Assignee, the heirs, executors, administrators, successors and assigns thereof forever.

6. **Term of Lease Agreement and PILOT Agreement.** The parties hereby agree that notwithstanding any different date set forth in the Lease Agreement (or the Memorandum thereof) or the PILOT Agreement to the contrary, the term of the Lease Agreement and the PILOT Agreement will expire on March 1, 2027, or such earlier date as may be permitted by the terms of the Lease Agreement and/or PILOT Agreement.

7. **Address for Notices.** The address to which any notices, certificates or other communications under the Lease Agreement or the PILOT shall be delivered by Agency or Assignee are as follows:

IF TO THE AGENCY:

Onondaga County Industrial Development Agency  
333 West Washington Street, Room 130  
Syracuse, New York 13202  
Attention: Julie Cerio, Executive Director

WITH A COPY TO:

Barclay Damon, LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: Anthony P. Rivizzigno

IF TO THE ASSIGNEE:

B & N Real Estate Holdings of CNY, LLC  
6303 Mustang Road  
Baldwinsville, NY 13027  
Attention: Brian M. Aiello, Manager

WITH A COPY TO:

Wittenburg Law Firm, LLC  
120 East Washington Street, Suite 920  
Syracuse, New York 13202  
Attention: Tracy Wittenburg Franchini

8. **Counterparts.** This Assignment may be executed in one or more identical counterparts, all of which, when taken together shall constitute one and the same instrument.

9. **Partial Invalidity.** The provisions hereof shall be deemed independent and severable, and the invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

10. **Successors and Assigns.** This Assignment shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors and assigns.

[signatures on subsequent pages]

IN WITNESS WHEREOF, this Assignment has been executed by Assignor on the date first above written.

ASSIGNOR:

**J & K DUFFY HOLDINGS, LLC**

By: 

Name: James W. Duffy

Title: Manager/Member

State of New York )  
County of Onondaga )ss.:

On the 26<sup>th</sup> day of September in the year 2018 before me, the undersigned, a Notary Public, in and for said State, personally appeared **James W. Duffy**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

**ZACHARY D. FORWARD**  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 02FO6249279  
Commission Expires on OCTOBER 3, 20 19



IN WITNESS WHEREOF, this Assignment has been executed by Assignee on the date first above written.

ASSIGNEE:

**B & N REAL ESTATE HOLDINGS OF CNY, LLC**

By: 


Name: Brian M. Aiello

Title: Manager

State of New York )  
County of Onondaga )ss.:

On the 17<sup>th</sup> day of October in the year 2018 before me, the undersigned, a Notary Public, in and for said State, personally appeared **Brian M. Aiello**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

Tracy W. Franchini  
Notary Public, State of New York  
Qualified in Onondaga County  
Registration # 02FR4991483  
My Commission Expires 02/03/22 

IN WITNESS WHEREOF, this Assignment has been executed by Agency on the date first above written.

AGENCY:

**ONONDAGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: 

Name: Julie Cerio

Title: Executive Director

State of New York )  
County of Onondaga )ss.:

On the 18 day of SEPT in the year 2018 before me, the undersigned, a Notary Public, in and for said State, personally appeared **Julie Cerio**, 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 signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

ANTHONY P. RIVIZZIGNO  
Notary Public, State of New York  
No. 02RI6060653  
Qualified in Onondaga County  
Commission Expires June 25, 2019