

FIRST AMENDMENT TO AGREEMENT OF LEASE

THIS FIRST AMENDMENT TO AGREEMENT OF LEASE (“Amendment”) made as of the 22nd day of August 2016 between BATTERY PARK CITY AUTHORITY (“Landlord”), a body corporate and politic constituting a public benefit corporation of the State of New York having an office at 200 Liberty Street, 24th Floor, New York, New York 10281, and DEMATTEIS BATTERY PARK ASSOCIATES LLC (“Tenant”), a New York limited liability company having an office at 820 Elmont Road, Elmont, New York 11003.

WHEREAS, Landlord and Tenant entered into that certain Agreement of Lease (“Original Lease”) dated as of June 17, 1999, pursuant to which Landlord subleased to Tenant the Premises, together with all easements, appurtenances and other rights and privileges then or thereafter belonging or appertaining to the Premises, subject to the Title Matters. Capitalized terms used but not defined herein shall have the meanings set forth in the Original Lease; and

WHEREAS, Landlord and Tenant desire to amend the Original Lease; and

WHEREAS, upon submission of the Premises to a condominium form of ownership Base Rent shall, subject to the terms of Section 3.01(d) below, be calculated under the terms of the Original Lease; and

WHEREAS, within ten (10) business days of the date hereof Tenant shall pay Landlord a restructuring fee in the amount of Four Million and 00/100 dollars (\$4,000,000) as consideration for Landlord’s agreement to enter into this Amendment.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Article 1 of the Original Lease is hereby amended as follows:
 - a. The following Definitions are hereby deleted in their entirety from Article 1 of the Original Lease:
 - “Fifth Period”;
 - “First Appraisal Date”;
 - “First Period”;
 - “Fourth Period”;
 - “Reappraisal Date”;
 - “Second Period”;
 - “Third Period”.

b. The following Definitions are hereby added to the Original Lease and made a part thereof:

“Adjusted Sale Price” shall mean the Gross Purchase Price payable to Tenant in consideration for a Sale, less (a) any New York City Real Property Transfer Tax imposed pursuant to Title 11, Chapter 21 of the New York City Administrative Code (or successor law) and New York State Real Estate Transfer Tax imposed pursuant to Article 31 and section 1402 of the New York Tax Law (or successor law) in connection with such Sale, and (b) any third-party broker commissions payable by Tenant in connection with such Sale and Tenant’s legal expenses incurred in connection with such Sale, such broker expenses and legal expenses not to exceed in the aggregate three percent (3%) of the Gross Purchase Price.

“Amendment Date” shall mean August 22, 2016, the date of execution of that certain First Amendment to Agreement of Lease between Landlord and Tenant.

“Effective Gross Income” shall mean all gross income payable to Tenant from the Premises on a cash accounting basis, including but not limited to, all residential rental income and all commercial rental income, including garage revenue and laundry revenue.

“Fee Credit” shall have the meaning provided in Section 10.13(c).

“Final Base Rent Period” shall have the meaning provided in Section 3.01(a).

“Gross Purchase Price” shall mean all value or consideration paid or granted to Tenant in connection with a Sale, including without limitation, the assumption of indebtedness of Tenant by the purchaser.

“Initial Base Rent Period” shall have the meaning provided in Section 3.01(a).

“Middle Base Rent Period” shall have the meaning provided in Section 3.01(a).

“Minimum Ground Rent” shall mean (a) \$900,000 for the Lease Year commencing on the Amendment Date through December 31, 2016, increased by 2% for each Lease Year thereafter through December 31, 2019; (b) \$1,100,000 for the Lease Year commencing January 1, 2020, increased by 2% for each Lease Year thereafter through December 31, 2030; (c) \$1,500,000 for the Lease Year commencing January 1, 2031, increased by 2% for each Lease Year thereafter through December 31, 2040; and (d) \$2,000,000 for the Lease Year commencing January 1, 2041, increased by 2% for each Lease Year thereafter through June 30, 2054.

“Net New Proceeds” shall mean, with respect to any Refinancing Loan, the principal amount of such Refinancing Loan less (a) the original principal amount of any existing loans, prepayment premiums, penalties or fees, any defeasance premiums, and any other fees paid to the existing lender in connection with the payoff of the existing indebtedness or assignment of the existing indebtedness to the Refinancing Loan lender, (b) any legal fees incurred in connection with the Refinancing Loan and (c) any New York mortgage recording taxes paid with respect to the Refinancing Loan and the documents recorded in connection therewith.

“Original Lease” shall mean the Ground Lease, dated June 17, 1999 between Landlord and Tenant prior to the Amendment Date.

“Percentage Ground Rent” shall mean, with respect to any Lease Year in the Middle Base Rent Period, the amount calculated by multiplying the Effective Gross Income for the immediately preceding calendar year (as evidenced by a cash accounting basis computation as converted from the audited financial statements prepared on an accrual basis and supported by the appropriate documentation) by the percentage shown on the following chart for the period in which such Lease Year occurs:

<u>Lease Year Period</u>	<u>Percentage</u>
August 22, 2016 – December 31, 2019	12.5%
January 1, 2020 – December 31, 2030	14%
January 1, 2031 – June 30, 2054	15%

“Proceeds Offset” shall have the meaning provided in Section 10.13(c).

“Refinancing Fee” shall have the meaning provided in Section 10.13(a).

“Refinancing Loan” shall have the meaning provided in Section 10.13(a).

“Sale” shall have the meaning provided in Section 10.13(b).

“Sale Fee” shall have the meaning provided in Section 10.13(b).

“2054 Appraisal Date” shall have the meaning provided in Section 3.01(c).

c. The definition of “Applicable Percentage” is hereby amended to read as follows:

““Applicable Percentage” shall mean (A) with respect to the first Lease Year (hereinafter defined) in the Final Base Rent Period (as hereinafter defined), one hundred and three percent (103%), (B) with respect to the second Lease Year in the Final Base Rent Period, one hundred and six percent (106%), (C) with respect to the third Lease Year in the Final Base Rent Period, one hundred and nine percent

(109%), (D) with respect to the fourth Lease Year in the Final Base Rent Period, one hundred and twelve percent (112%), (E) with respect to the fifth Lease Year in the Final Base Rent Period, one hundred and fifteen percent (115%), (F) with respect to the sixth Lease Year in the Final Base Rent Period, one hundred and eighteen percent (118%), (G) with respect to the seventh Lease Year in the Final Base Rent Period, one hundred and twenty-one percent (121%), (H) with respect to the eighth Lease Year in the Final Base Rent Period, one hundred and twenty-four percent (124%), (I) with respect to the ninth Lease Year in the Final Base Rent Period, one hundred and twenty-seven percent (127%) and (J) with respect to the tenth through fifteenth Lease Years in the Final Base Rent Period, one hundred and thirty percent (130%).”

d. The definition of “Lease Year” is hereby amended to read as follows:

““Lease Year” shall mean (a) for the period between the Commencement Date and June 16, 2015, the twelve-month period beginning on the Commencement Date and each succeeding twelve-month period thereafter; (b) for the period between June 17, 2015 and the date immediately preceding the Amendment Date, such period; and (c) for the period between the Amendment Date and December 31, 2068, the period between the Amendment Date and December 31, 2016 and each succeeding twelve-month period thereafter through December 31, 2068; and (d) for the period between January 1, 2069 and the Expiration Date, such period.”

2. Section 3.01 of the Original Lease is amended in its entirety to read as follows:

“Section 3.01

(a) For the period beginning on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to Landlord, without notice or demand, the annual sums referred to below (collectively, the “Base Rent”):

(i) For each Lease Year (or portion thereof) commencing June 17, 1999 and continuing through the date immediately preceding the Amendment Date (the “Initial Base Rent Period”), the annual rate set forth on Schedule 1 for such Lease Year (or portion thereof).

(ii) For the Lease Year commencing on the Amendment Date and continuing for a period of thirty-eight (38) Lease Years through June 30, 2054 (the “Middle Base Rent Period”), an amount per annum equal to the greater of (A) the Percentage Ground Rent and (b) the Minimum Ground Rent.

(iii) For the Lease Year commencing July 1, 2054 and for each subsequent Lease Year until the Expiration Date (the “Final Base Rent Period”), an amount per annum equal to the greater of (x) six percent (6%) of the fair market value of the Land, determined as hereinafter provided, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord’s Civic Facilities and other site improvements made by Landlord or (y) the product derived

by multiplying the Base Rent payable in the last Lease Year of the Middle Base Rent Period by the Applicable Percentage for such Lease Year.

(b) The Base Rent shall be payable in equal monthly installments in advance commencing on the Commencement Date and on the first day of each month thereafter during the Term. The Base Rent shall be payable in currency which at the time of payment is legal tender for public and private debts in the United States of America, and shall be payable to the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant. The Base Rent (including but not limited to Minimum Ground Rent and Percentage Ground Rent) due for any Lease Year containing more or less than twelve (12) months, and any installment of the Base Rent due for any period of less than a full month, shall be appropriately prorated and apportioned.

(c) For the purposes of calculating Base Rent for the Final Base Rent Period, the fair market value of the Land shall be determined as of April 1, 2054 (the "2054 Appraisal Date"). Such determination of fair market value shall be by appraisal in the manner provided in Section 3.06 hereof, unless at least twelve months prior to the 2054 Appraisal Date, Landlord and Tenant shall have agreed upon such fair market value.

(d) In the event Tenant assigns, in whole or in part, its interest in this Lease pursuant to a Condominium Plan, within ninety (90) days of such assignment the fair market value of the Land shall be determined as of the date of the assignment in accordance with this Lease. The Land shall be considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord; and the Base Rent payable as of ninety (90) days following the date of such assignment and for the duration of the Lease Year in which such assignment occurs, and for each Lease Year thereafter until the Expiration Date shall be calculated in accordance with Section 3.01 of the Original Lease, except that (a) the Base Rent payable from the date of the assignment until the ninetieth (90th) day following such date shall be the Base Rent immediately preceding the date of the assignment, and (b) with respect to the rent payable during the remaining term of the Lease, the fair market value of the Land, considered as unencumbered by this Lease and the Master Lease and as unimproved except for Landlord's Civic Facilities and other site improvements made by Landlord, shall be based upon appraisals conducted at fifteen-year intervals from the date of the appraisal conducted pursuant to this paragraph, rather than in accordance with the schedule of appraisals contemplated under the Original Lease.

3. Section 3.06(a) of the Original Lease is hereby amended to change the reference therein from "Section 3.01(a)(ii)-(v)" in the second line of the paragraph to "Section 3.01".

4. Section 3.06(b) of the Original Lease is hereby amended to change the reference therein from "Section 3.07(a)" in the last line of the paragraph to "Section 3.06(a)".

5. Section 10.01(g) of the Original Lease is hereby amended as follows:

a. Subsection (g) is hereby amended by inserting (i) immediately preceding the text thereof.

b. Subsection (g) is hereby amended by replacing the existing references to “(i)” and “(ii)” with “(A)” and “(B)”, respectively.

c. The following is hereby added at the end of Subsection (g) as paragraph (ii):

“(ii) In the event Tenant assigns, in whole or in part, its interest in the Lease pursuant to a Condominium Plan, Tenant shall pay the following amounts to Landlord within fifteen (15) business days following the closing of the sale of any Unit, based on the square footage as listed in the Condominium Declaration: (A) 1% on the portion of the gross sale price up to \$1,000/square foot; (B) 2% on the portion of the gross sales price exceeding \$1,000/square foot but not more than \$1,800/square foot; and (C) 2.5% on the portion of the gross sales price exceeding \$1,800/square foot. For any Units that the Tenant retains as a sponsor for more than three (3) years, Tenant shall pay to Landlord an amount calculated on the percentages as listed in (A) – (C) on the gross sales price of comparable Units in the Premises.”

6. Article 10 of the Original Lease is hereby amended by adding the following Section 10.13:

“Section 10.13.

(a) In the event that at any time between August 22, 2018 and the Expiration Date, Tenant refinances all or any part of its existing indebtedness through a loan secured in whole or in part by its leasehold interest in the Premises (each such loan, a “Refinancing Loan”), Tenant shall pay to Landlord on the date of the closing of such Refinancing Loan a fee (“Refinancing Fee”) in an amount equal to three percent (3%) of Net New Proceeds.

(b) In the event that at any time between August 22, 2016 and the Expiration Date, Tenant or any direct or indirect owner thereof sells, assigns or transfers all or any portion of its leasehold interest in the Premises (other than (i) encumbering Tenant’s leasehold interest in the Premises in connection with a Refinancing Loan, (ii) pursuant to a Condominium Plan, (iii) transfers of direct or indirect ownership interests in Tenant among existing direct or indirect owners of Tenant, (iv) transfers without consideration to family members, trusts or other entities on behalf of family members; and (v) transfers implementing internal corporate reorganizations or restructurings) (each such event a “Sale”), Tenant shall pay to Landlord on the date of the closing of such Sale a fee (“Sale Fee”) in amount equal to two percent (2%) of the Adjusted Sale Price.

(c) The Refinancing Fees and Sale Fees payable under Section 10.13(a) and (b) hereof shall be adjusted as follows:

(i) Net New Proceeds or Adjusted Sale Price, as the case may be, shall be reduced by an aggregate amount of up to \$3,000,000 (the “Proceeds Offset”). No Proceeds Offset will be available after a Sale or submission of the Premises to a condominium form of ownership has occurred, or with respect to Refinancing Loans or Sales that close after June 30, 2054. Subject to the foregoing, any unused portion of the Proceeds Offset remaining after payment of a Refinancing Fee shall be carried forward and will be available to reduce Net New Proceeds or the Adjusted Sale Price, as the case may be, in calculating subsequent Refinancing Fees or a Sale Fee, as applicable, but only through June 30, 2054.

(ii) If the Proceeds Offset has been or is concurrently applied in full to reduce Net New Proceeds and/or Adjusted Sale Price, Refinancing Fees and/or Sale Fees shall be reduced by an aggregate amount of up to \$1,000,000 (the “Fee Credit”). No Fee Credit will be available after a Sale or submission of the Premises to a condominium form of ownership has occurred, or with respect to Refinancing Loans or Sales that close after June 30, 2054. Subject to the foregoing, any unused portion of the Fee Credit remaining after payment of a Refinancing Fee shall be carried forward and will be available to reduce subsequent Refinancing Fees or a Sale Fee, as applicable, but only through June 30, 2054.”

7. Article 13 of the Original Lease is hereby amended by adding the following new section 13.05:

“Section 13.05. Tenant shall budget a minimum of \$500 per unit per annum, as increased by 2% each Lease Year, for Capital Improvements and non-capital improvements, including upgrades or renovations to residential units, and shall expend at least \$500 per unit per annum on an aggregate, building-wide basis, as measured during any running five-year period on such Capital Improvements and non-capital improvements.”

8. Except as otherwise specifically provided herein, the Lease continues in full force and effect and without change.

9. This Amendment shall be construed and enforced in accordance with the laws of the State of New York.

10. This Amendment may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

11. Each provision of this Amendment shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Amendment is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Amendment which are valid.

12. This Amendment sets forth all (and is intended by all parties to be an integration of all) of the representations, promises, agreements and understandings among the parties hereto with


respect to matters herein, and there are no representations, promises, agreements or understandings, oral or written, express or implied, with respect to such matters other than as set forth or incorporated herein.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

LANDLORD:

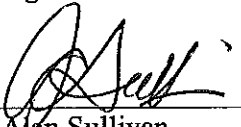
BATTERY PARK CITY AUTHORITY

By:  on behalf of SA
Name: Shari Hyma
Title: President

TENANT:

DEMATTEIS BATTERY PARK ASSOCIATES LLC,

**BY: Dematteis Battery Park Manager Corp., its
managing member**

By: 
Name: Alan Sullivan
Title: Vice President