
THE
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
AND
DNC 250, INC.

AMENDMENT OF LEASE/LEASEBACK & PILOT TRANSACTION

Dated as of: November 1, 2015

Property Located at: 250 Delaware Avenue, City of Buffalo, Erie
County, New York

SBL No.: 111.37-3-5.11/Z

Prepared by:

Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210
(716) 200-5050

2015 DNC 250, INC. Project
Closing Date: November 1, 2015

Erie County Industrial Development Agency	“Agency”
DNC 250, Inc.	“Company”

TRANSCRIPT INDEX

<u>Document Number</u>	<u>Document Title</u>
1.	First Amendment to Lease Agreement and Lease Agreement together with Form TP-584
2.	First Amendment to Payment in Lieu of Tax Agreement together with RP-412-a
3.	Affected Taxing Jurisdiction Letter to the respective municipalities and proof of mailing with regard to the Amendment of the PILOT Agreement
4.	Recording Receipt

TAB 1

Record and Return to (Box 16):
Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210
Attn: Debra Mantelli, Paralegal

FIRST AMENDMENT TO LEASE AGREEMENT AND LEASEBACK AGREEMENT

Pursuant to § 291-c of the Real Property Law

THIS FIRST AMENDMENT TO LEASE AGREEMENT AND LEASEBACK AGREEMENT, dated as of November 1, 2015 (the "First Amendment to Lease Agreement and Leaseback Agreement"), is by and between **DNC 250, INC.**, 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, New York 14226 (the "Company") and the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency").

WHEREAS, by lease agreement dated as of February 1, 2015 (the "Lease Agreement"), the Company leased to the Agency certain real property and improvements located at 250 Delaware Avenue, City of Buffalo, Erie County, New York, a memorandum of which was recorded in the Office of the Erie County Clerk on February 6, 2015 in Liber 11275 of Deeds at Page 4902; and

WHEREAS, by leaseback agreement dated as of February 1, 2015 (the "Leaseback Agreement"), the Agency leased to the Company certain real property and improvements located at 250 Delaware Avenue, City of Buffalo, Erie County, New York, a memorandum of which was recorded in the Office of the Erie County Clerk on February 6, 2015 in Liber 11275 of Deeds at Page 4907; and

WHEREAS, the Agency and the Company desire to amend the Lease Agreement and the Leaseback Agreement for the purpose of extending the termination date.

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

The Lease Agreement and the Leaseback Agreement are amended as follows:

1. Lease Term. All references to the termination in the Lease Agreement and to the termination in the Leaseback Agreement shall mean December 31, 2027.

Unless otherwise amended and modified by this First Amendment to Lease Agreement and Leaseback Agreement, the terms of the Lease Agreement and the Leaseback Agreement shall remain unchanged and in full force and effect.

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FILED

NOV 24 2015

**ERIE COUNTY
CLERK'S OFFICE**

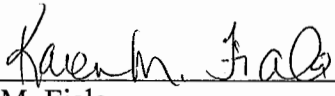
[Signature and Acknowledgement page to First Amendment to Lease Agreement
and Leaseback Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this First Amendment to Lease Agreement and to Leaseback Agreement to be executed as of the date first written above.

DNC 250, INC.

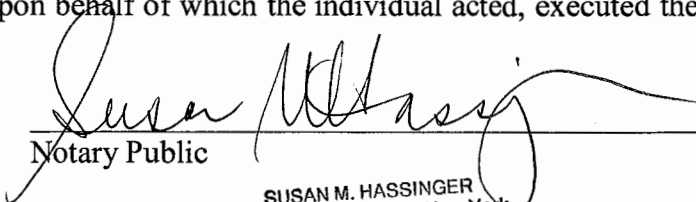
By: 
Name: Michael J. Montante
Title: President

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

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

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

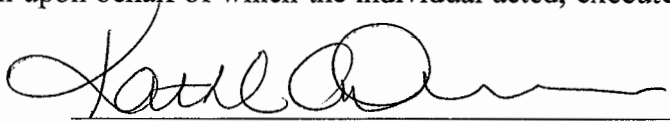
On the 23rd day of November, 2015, before me, the undersigned, personally appeared **MICHAEL J. MONTANTE** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same 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.


Notary Public

SUSAN M. HASSINGER
Notary Public State of New York
Qualified in Erie County
My commission expires October 27, 20 18

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

On the 24th 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.


Notary Public

KATHLEEN A. DRUMM
Notary Public State of New York
Qualified in Erie County
My Commission Expires: June 30, 20 18



**Combined Real Estate
Transfer Tax Return,
Credit Line Mortgage Certificate, and
Certification of Exemption from the
Payment of Estimated Personal Income Tax**

Recording office time stamp

1st Amdmt to L/LB Agmts

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

Schedule A — Information relating to conveyance

Grantor/Transferor ☐ Individual ☒ Corporation ☐ Partnership ☐ Estate/Trust ☐ Single member LLC ☐ Other	Name (if individual, last, first, middle initial) (☐ check if more than one grantor) DNC 250, Inc.	Social security number
	Mailing address 100 Corporate Parkway, Suite 500	Social security number
	City State ZIP code Buffalo NY 14226	Federal EIN 16 1217978
	Single member's name if grantor is a single member LLC (see instructions)	Single member EIN or SSN
Grantee/Transferee ☐ Individual ☒ Corporation ☐ Partnership ☐ Estate/Trust ☐ Single member LLC ☐ Other	Name (if individual, last, first, middle initial) (☐ check if more than one grantee) Erie County Industrial Development Agency	Social security number
	Mailing address 95 Perry Street, Suite 403	Social security number
	City State ZIP code Buffalo NY 14203	Federal EIN 16 1090858
	Single member's name if grantee is a single member LLC (see instructions)	Single member EIN or SSN

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
111.37-3-5.11/Z	140200	250 Delaware Avenue	Buffalo	Erie

Type of property conveyed (check applicable box)

1 ☐ One- to three-family house	5 ☒ Commercial/Industrial	Date of conveyance <table border="1"> <tr> <td>11</td> <td>01</td> <td>2015</td> </tr> <tr> <td align="center">month</td> <td align="center">day</td> <td align="center">year</td> </tr> </table>	11	01	2015	month	day	year	Percentage of real property conveyed which is residential real property <u>0.00</u> % (see instructions)
11	01		2015						
month	day		year						
2 ☐ Residential cooperative	6 ☐ Apartment building								
3 ☐ Residential condominium	7 ☐ Office building								
4 ☐ Vacant land	8 ☐ Other _____								

Condition of conveyance (check all that apply)

- | | | |
|---|--|--|
| a. ☐ Conveyance of fee interest | f. ☐ Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F) | i. ☐ Option assignment or surrender |
| b. ☐ Acquisition of a controlling interest (state percentage acquired _____ %) | g. ☐ Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G) | m. ☐ Leasehold assignment or surrender |
| c. ☐ Transfer of a controlling interest (state percentage transferred _____ %) | h. ☐ Conveyance of cooperative apartment(s) | n. ☐ Leasehold grant |
| d. ☐ Conveyance to cooperative housing corporation | i. ☐ Syndication | o. ☐ Conveyance of an easement |
| e. ☐ Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E) | j. ☐ Conveyance of air rights or development rights | p. ☐ Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III) |
| | k. ☐ Contract assignment | q. ☐ Conveyance of property partly within and partly outside the state |
| | | r. ☐ Conveyance pursuant to divorce or separation |
| | | s. ☒ Other (describe) <u>Lease/Leaseback Extension</u> |

For recording officer's use	Amount received	Date received	Transaction number
	Schedule B., Part I \$ _____ Schedule B., Part II \$ _____		

Schedule B — Real estate transfer tax return (Tax Law, Article 31)**Part I — Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) ☒ **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)
- 3 Taxable consideration (subtract line 2 from line 1)
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3
- 5 Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G)
- 6 Total tax due* (subtract line 5 from line 4)

1.	1	00
2.	0	00
3.	1	00
4.	0	00
5.	0	00
6.	0	00

Part II — Computation of additional tax due on the conveyance of residential real property for \$1 million or more

- 1 Enter amount of consideration for conveyance (from Part I, line 1)
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...
- 3 Total additional transfer tax due* (multiply line 2 by 1% (.01))

1.	0	00
2.	0	00
3.	0	00

Part III — Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) conveyance is to a NYS industrial development agency a ☐
- b. Conveyance is to secure a debt or other obligation..... b ☐
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c ☒
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts d ☐
- e. Conveyance is given in connection with a tax sale..... e ☐
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F..... f ☐
- g. Conveyance consists of deed of partition..... g ☐
- h. Conveyance is given pursuant to the federal Bankruptcy Act h ☐
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property..... i ☐
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j ☐
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) k ☐

*The total tax (from Part I, line 6 and Part II, line 3 above) is due within 15 days from the date conveyance. Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

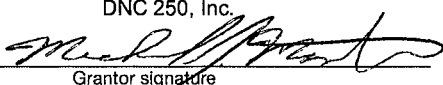
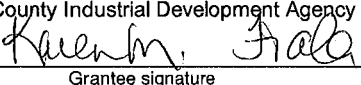
Schedule C — Credit Line Mortgage Certificate (Tax Law, Article 11)**Complete the following only if the interest being transferred is a fee simple interest.**

I (we) certify that: (check the appropriate box)

1. ☐ The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. ☐ The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
- ☐ The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
- ☐ The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
- ☐ The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
- ☐ The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.
- Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.
- ☐ Other (attach detailed explanation).
3. ☐ The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
- ☐ A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
- ☐ A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4. ☐ The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the **NYC Department of Finance**.)

Signature (both the grantor(s) and grantee(s) must sign)

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

DNC 250, Inc.		Erie County Industrial Development Agency	
BY: 	President	BY: 	Assistant Treasurer
Grantor signature	Title	Grantee signature	Title
Michael J. Montante		Karen M. Fiala	

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

Schedule D - Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, section 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part II, and check the second box under *Exemptions for nonresident transferor(s)/seller(s)* and sign at bottom.

Part I - New York State residents

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

Certification of resident transferor(s)/seller(s)

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Note: A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

Part II - Nonresidents of New York State

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

Exemption for nonresident transferor(s)/seller(s)

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

- ☐ The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from _____ Date to _____ Date (see instructions).
- ☐ The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- ☐ The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

TAB 2

COPY

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

DNC 250, INC.

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

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
726 Exchange Street, Suite 1000
Buffalo, New York 14210
(716) 200-5050

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 24th 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 23rd 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 Tax Year	TAX FISCAL YEAR		PAYMENT 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 Tax Year	FISCAL TAX YEAR		PAYMENT 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



NYS BOARD OF REAL PROPERTY SERVICES

RP-412-a (1/95)

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name Erie County Industrial Development Agency
Street 95 Perry Street, Suite 403
City Buffalo, NY 14203
Telephone no. Day (716) 856-6525
Evening ()
Contact Karen M. Fiala
Title Assistant Treasurer

2. OCCUPANT (IF OTHER THAN IDA)
(If more than one occupant attach separate listing)

Name DNC 250, Inc.
Street 100 Corporate Parkway, Suite 500
City Amherst, NY 14226
Telephone no. Day (716) 834-5000
Evening ()
Contact Virginia L. Henderson
Title Real Estate Tax & Insurance Manager

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year)
111.37-3-5.11/z 2015
- b. Street address 250 Delaware Avenue
(DNC Space Component and Retail Space Component)
- c. City, Town or Village Buffalo

d. School District City School District of the City of Buffalo

e. County Erie

f. Current assessment TBD

g. Deed to IDA (date recorded; liber and page)
Lease recorded 2/6/15 Liber 11275 of Deeds, Pg. 4902
Leaseback recorded 2/6/15 Liber 11275 of Deeds, Pg. 4907
1st Amendment to Lease/Leaseback (pending; pending)

4. GENERAL DESCRIPTION OF PROPERTY

(if necessary, attach plans or specifications)

- a. Brief description (include property use) See attached description.
- b. Type of construction new
- c. Square footage Est.
- d. Total cost Est.
- e. Date construction commenced Est.
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)
December 31, 2027

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment Please see attached PILOT Agreement dated February 1, 2015 and First Amendment to PILOT Agreement dated November 1, 2015.

- b. Projected expiration date of agreement December 31, 2027

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Erie</u>	<u>X</u>	
Town/City <u>Buffalo</u>	<u>X</u>	
Village _____		
School District <u>City School District</u>	<u>X</u>	
of the City of Buffalo		

d. Person or entity responsible for payment

Name Virginia L. Henderson
 Title Real Estate Tax & Insurance Manager
DNC 250, Inc.
 Address 100 Corporate Parkway, Suite 500
Amherst, NY 14226

e. Is the IDA the owner of the property? ~~Yes~~ No

If "No" identify owner and explain IDA rights or interest in an attached statement. No. Occupant owns property and leases to IDA.

Telephone (716) 834-5000

6. Is the property receiving or has the property ever received any other exemption from real property taxation?
 (check one) Y ☐ **X** ☐ N

If yes, list the statutory exemption reference and assessment roll year on which granted:
 exemption _____

7. A copy of this application, including all attachments, has been mailed or delivered on _____ (date)
 to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Karen M. Fiala, Assistant Treasurer of
Erie County Industrial Development Agency hereby certify that the information
 Organization
 on this application and accompanying papers constitutes a true statement of facts.

11-24-15
 Date

Karen M. Fiala
 Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
- 3a. Agreement (or extract) date _____
- 3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption \$ _____
5. Special assessments and special ad valorem levies for which the parcel is liable:

 Date

 Assessor's signature

TAB 3

HARRIS BEACH PLLC
ATTORNEYS AT LAW

726 EXCHANGE STREET, SUITE 1000
BUFFALO, NY 14210
(716) 200-5050

DEBRA MANTELLI
PARALEGAL
DIRECT: (716) 200-5167
FAX: (716) 200-5201
DMANTELLI@HARRISBEACH.COM

November 25, 2015

To All on the Attached Distribution List:

Re: Erie County Industrial Development Agency (the "Agency") and
DNC 250, Inc. (the "Company")
Notification of Amendment of PILOT Agreement

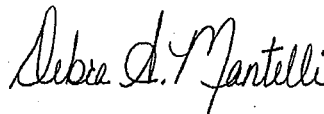
On behalf of the Erie County Industrial Development Agency, as the Assessor and Chief Elected Officials of each taxing jurisdiction within which the following referenced project is located, please accept this correspondence as notification that the February 1, 2015 Payment in Lieu of Tax Agreement (the "PILOT Agreement") on the property and improvements thereon located in the City of Buffalo known as:

Property Address: 250 Delaware Avenue, Buffalo, New York
SBL No.: 111.37-3-5.11/Z

shall be amended as follows:

On November 1, 2015, the original PILOT Agreement dated February 1, 2015 shall be amended to reflect the deferred commencement of the property's exemption for real estate taxes for a period of one (1) year; and to revise Schedules A and B of the original PILOT Agreement in accordance with the attached First Amendment to PILOT Agreement. The aforementioned amendments are made pursuant to Sections 4 of **A. DNC Space Component PILOT (10 Year PILOT benefit period)** and **B. Retail Space Component (7 Year PILOT benefit period)** of the PILOT Agreement.

Very truly yours,



Debra Mantelli
Paralegal

DM:kd

cc: Ms. Karen M. Fiala
Robert G. Murray, Esq.

List of Affected Taxing Jurisdictions

DNC 250, Inc.

Notification of Amendment of PILOT Agreement

Project Address: 250 Delaware Avenue, Buffalo, New York

SBL No.: 111.37-3-5.11/Z

Erie County

Regular Mail

Hon. Mark C. Poloncarz
Erie County Executive
Rath Building, 16th Floor, Room 1600
95 Franklin Street
Buffalo, NY 14202

Hand Delivered

Joseph L. Maciejewski, CCD
Director of Real Property Tax Services
Erie County Division of Real Property
Rath Building, 1st Floor, Room 100
95 Franklin Street
Buffalo, NY 14202

City of Buffalo

Regular Mail

Hon. Byron W. Brown, City Mayor
City Hall
65 Niagara Square, Room 201
Buffalo, NY 14202

Hand Delivered

Mr. Martin Kennedy, Assessor
City Hall
65 Niagara Square, Room 101
Buffalo, NY 14202

Regular Mail

Ms. Latifa Mack-Hedgepeth
Sr. Tax Administrator
City Hall
65 Niagara Square, Room 120
Buffalo, NY 14202

City School District of the City of Buffalo

Hand Delivered

Dr. Kriner Cash, Superintendent
City School District of the City of Buffalo
c/o Corporation Counsel
City Hall
65 Niagara Square-Suite 1100
Buffalo, NY 14202

Regular Mail

Mr. James M. Sampson, Board President
City School District of the City of Buffalo
City Hall, Room 801
65 Niagara Square
Buffalo, NY 14202

Affected Taxing Jurisdictions
Erie County Industrial Development Agency
DNC 250, Inc.
Project Address: 250 Delaware Avenue, Buffalo, New York

Amendment to PILOT Agreement

Joseph L. Maciejewski, CCD
Director of Real Property Tax Services
Erie County Division of Real Property
Rath Building, 1st Floor, Room 100
95 Franklin Street
Buffalo, New York 14202

See attached

MESSENGER FORM

DATE: November 25, 2015

TIME: _____

PICK-UP: ☐

DELIVERY: ☒

FILE: ☐

TO:

NAME: Joseph L. Maciejewski, CCD
Director of Real Property Tax Services

COMPANY: Erie County Division of Real Property

ADDRESS: Rath Building, 1st Floor, Room 100
95 Franklin Street
Buffalo, NY 14202

PHONE: _____

SPECIAL INSTRUCTIONS/
DIRECTIONS:

Please deliver First Amendment to PILOT Agreement to the
above.

TIME TO BE DELIVERED:

☒ **RUSH IMMEDIATELY**

☐ **DELIVERED BY** _____

☐ **PICKED UP BY** _____

☐ **NOT A PRIORITY**

RETURN TO: Kathy Drumm

REGARDING FILE: DNC 250, Inc. Matter #: 269345

SIGNATURE:

SARA HART
Print Name:

DATE:

Jan 14/16

Affected Taxing Jurisdictions
Erie County Industrial Development Agency
DNC 250, Inc.
Project Address: 250 Delaware Avenue, Buffalo, New York

Amendment to PILOT Agreement

Mr. Martin Kennedy, Assessor
City Hall, Room 101
65 Niagara Square
Buffalo, NY 14202

See Attached

MESSENGER FORM

DATE: November 25, 2015

TIME: 11:25 Am

PICK-UP: ☐

DELIVERY: ☒

FILE: ☐

TO:

NAME: Mr. Martin Kennedy, Assessor

COMPANY: City Hall

ADDRESS: 65 Niagara Square, Room 101
Buffalo, NY 14202

PHONE: _____

SPECIAL INSTRUCTIONS/
DIRECTIONS:

Please deliver First Amendment to PILOT Agreement to the
above.

TIME TO BE DELIVERED:

☒ **RUSH IMMEDIATELY**

☐ **DELIVERED BY** _____

☐ **PICKED UP BY** _____

☐ **NOT A PRIORITY**

RETURN TO: Kathy Drumm

REGARDING FILE: DNC 250, Inc. Matter #: 269345

SIGNATURE:

Print Name:

DATE:

Affected Taxing Jurisdictions
Erie County Industrial Development Agency
DNC 250, Inc.
Project Address: 250 Delaware Avenue, Buffalo, New York

Amendment to PILOT Agreement

Dr. Kriner Case, Superintendent
City School District for the City of Buffalo
c/o Corporation Counsel
City Hall
65 Niagara Square-Suite 1100
Buffalo, NY 14202

See Attached

MESSANGER FORM

DATE: November 25, 2015

TIME: _____

PICK-UP: ☐

DELIVERY: ☒

FILE: ☐

TO:

NAME: Dr. Kriner Cash, Superintendent

COMPANY: City School District of the City of Buffalo
c/o Corporation Counsel
City Hall

ADDRESS: 65 Niagara Square-Suite 1100
Buffalo, NY 14202

PHONE: _____

SPECIAL INSTRUCTIONS/
DIRECTIONS:

Please deliver First Amendment to PILOT Agreement to the
above.

TIME TO BE DELIVERED:

☒ **RUSH IMMEDIATELY**

☐ **DELIVERED BY** _____

☐ **PICKED UP BY** _____

☐ **NOT A PRIORITY**

RETURN TO: Kathy Drumm

REGARDING FILE: DNC 250, Inc. Matter #: 269345

SIGNATURE: Larae Hens Bryant
Print Name:

DATE: 11/25/2015 Larae H

TAB 4

CHRISTOPHER L. JACOBS, ERIE COUNTY CLERK
REF:

DATE: 11/24/2015
TIME: 3:10:03 PM
RECEIPT: 15192587

HARRIS BEACH PLLC
ACCOUNT #: 0

ITEM - 01 MTP
RECD: 11/24/2015 3:14:18 PM
FILE: 2015243088 BK/PG D 11288/6123
Deed Sequence: TT2015008951
DNC 250 INC

Recording Fees	56.00
TP584	10.00

Subtotal 66.00

TOTAL DUE	\$66.00
PAID TOTAL	\$66.00
PAID CHECK	\$66.00
Check #934:	66.00

REC BY: Kathy
COUNTY RECORDER