

## ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT

**THIS ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT** (the "Assignment"), dated as of May 31, 2019 (the "Effective Date") is by, between and among **GOLD DOME II LLC**, a New York limited liability company with an address of 8400 Glen Eagle Drive, P.O. Box 207, Manlius, New York 13104 (the "Assignor"), **231 GENESEE UTICA LLC**, a limited liability company with an address of 207 Rockaway Turnpike, Lawrence, New York 11559 (the "Assignee"), and **CITY OF UTICA INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation with offices at One Kennedy Plaza, Utica, New York 13502 (the "Agency").

### WITNESSETH:

**WHEREAS**, Assignor is the owner in fee simple of certain land (the "Land"), being a 1.0± acre parcel of land situated at 231 Genesee Street, City of Utica, Oneida County, New York, which Land is more particularly described in **Exhibit A** annexed hereto and made a part hereof; and

**WHEREAS**, the Land is improved by a five-story, 50,000± square foot office building (the "Improvements") and the Assignee has installed therein or affixed thereto certain Equipment (as that term is defined in the Leaseback Agreement referenced below) (the Land, the Improvements, and the Equipment are hereinafter collectively referred to as the "Facility"); and

**WHEREAS**, Assignor, as lessor, leases the Facility to the Agency, as lessee, pursuant to a Lease Agreement dated as of November 25, 2014 (the "Lease Agreement"), a memorandum of which Lease Agreement was recorded in the Oneida County Clerk's Office on December 3, 2014 at Instrument No. R2014-001485; and

**WHEREAS**, the Lease Agreement including all amendments, modifications, supplements, extensions, renewals or other changes thereto is hereinafter referred to as the "Existing Lease Agreement", and a true copy of said Existing Lease Agreement is annexed hereto and made a part hereof as **Exhibit B**; and

**WHEREAS**, the Agency, as lessor, leases the Facility back to Assignor, as lessee, pursuant to a Leaseback Agreement dated as of November 25, 2014 (the "Leaseback Agreement"), a memorandum of which Leaseback Agreement was recorded in the Oneida County Clerk's Office on December 3, 2014 at Instrument No. R2014-001486; and

**WHEREAS**, the Leaseback Agreement including all amendments, modifications, supplements, extensions, renewals or other changes thereto is hereinafter referred to as the "Existing Leaseback Agreement", and a true copy of said Existing Leaseback Agreement is annexed hereto and made a part hereof as **Exhibit C**; and

**WHEREAS**, the Facility is the subject of a Payment-in-Lieu-of-Tax Agreement by and between the Agency and Assignor, dated as of November 25, 2014 (the "PILOT Agreement"); and

**WHEREAS**, the PILOT Agreement including all amendments, modifications, supplements, extensions, renewals or other changes thereto is hereinafter referred to as the "Existing PILOT Agreement", and a true copy of the Existing PILOT Agreement is annexed hereto and made a part hereof as **Exhibit D**; and

**WHEREAS**, the Facility is also the subject of an Environmental Compliance and Indemnification Agreement by and among the Agency, Assignor and Manufacturers and Traders Trust Company, dated as of November 25, 2014 (the “Environmental Compliance Agreement”); and

**WHEREAS**, the Environmental Compliance Agreement including all amendments, modifications, supplements, extensions, renewals or other changes thereto is hereinafter referred to as the “Existing Environmental Compliance Agreement”, and a true copy of the Existing Environmental Compliance Agreement is annexed hereto and made a part hereof as **Exhibit E**; and

**WHEREAS**, Assignor desires to assign to Assignee all of Assignor’s right, title, and interest in, to and under the Existing Lease Agreement, the Existing Leaseback Agreement, the Existing PILOT Agreement and the Existing Environmental Compliance Agreement (the Existing Lease Agreement, the Existing Leaseback Agreement, the Existing PILOT Agreement and the Existing Environmental Compliance Agreement are hereinafter collectively referred to as the “Assigned Instruments”), provided, however, that (a) the Agency releases Assignor from any and all duties, liabilities or obligations arising under or relating to said Assigned Instruments which are attributable to the period from and after the Effective Date (collectively, the “Effective Date and Post-Effective Date Liabilities”), (b) the Agency does not release Assignor from any duties, liabilities or obligations arising under or relating to said Assigned Instruments which are attributable to the period before the Effective Date (the “Pre-Effective Date Liabilities”), and (c) Assignee assumes, undertakes and agrees to perform all of Assignor’s duties, liabilities and obligations arising under or relating to said Assigned Instruments which are attributable to the period from and after the Effective Date; and

**WHEREAS**, subject to the terms and conditions hereinafter set forth, Assignee desires to accept the assignment of the Assigned Instruments and assume, undertake and agree to be bound by and perform all of Assignor’s duties, liabilities and obligations arising under or relating to said Assigned Instruments which are attributable to the period from and after the Effective Date.

**NOW, THEREFORE**, in consideration of the premises, the sum of One Dollar (\$1.00), and other good and valuable consideration, the payment, receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignor’s Warranties and Representations.

(a) Assignor warrants and represents to Assignee that, as of the Effective Date:

(i) True and complete copies of each of the Assigned Instruments are attached hereto as **Exhibits B-E**, respectively, are in full force and effect, have not been amended or modified and represent the entire agreement between the parties with respect to the subject matter thereof, are valid, legal, binding and enforceable against Assignor and, to the best of Assignor’s knowledge, are valid, legal, binding and enforceable against the Agency; and

(ii) Assignor has not (a) assigned or encumbered the Assigned Instruments, (b) other than the lease with The Mary Imogene Bassett Hospital d/b/a Bassett Medical Center dated October 17, 2014, as amended, entered into

any sublease, license, concession or other agreement for the use or occupancy of the Facility or any part thereof, nor (c) permitted any person or entity other than Assignee to use or occupy the Facility; and

(iii) There is no outstanding notice of default claiming that Assignor is in default under the Assigned Instruments and, to the best of Assignor's knowledge, no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute an event of default on the part of either Assignor or the Agency under the Assigned Instruments; and

(iv) There are no actions or proceedings, whether voluntary or involuntary, pending against Assignor under any federal or state bankruptcy or insolvency laws.

(b) Except as expressly set forth in this Assignment, Assignor makes no other warranty or representation to Assignee, except as set forth in the Purchase and Sale Agreement between Assignor and Assignee dated February 11, 2019, as amended (the "PSA").

2. Agency Estoppel. In order to induce Assignee to enter into this Agreement, the Agency hereby certifies to the Assignee as follows:

(a) True and complete copies of each of the Assigned Instruments are attached hereto as **Exhibits B-E**, respectively, are in full force and effect, have not been amended or modified and represent the entire agreement between the parties with respect to the subject matter thereof, are valid, legal, binding and enforceable against the Agency; and

(b) Except as provided in the PSA, the Agency has not been notified that Assignor has (a) assigned or encumbered the Assigned Instruments, (b) entered into any sublease, license, concession or other agreement for the use or occupancy of the Facility or any part thereof, nor (c) permitted any person or entity other than Assignee to use or occupy the Facility; and

(c) There is no outstanding notice of default claiming that Assignor is in default under the Assigned Instruments and, to the best of the Agency's knowledge, no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute an event of default on the part of either Assignor or the Agency under the Assigned Instruments.

(d) The administration fee payable under the Leaseback Agreement is in the amount of Three Thousand and 00/100 Dollars (\$3,000.00) per year and has been paid through October 31, 2019.

2. Assignment. Assignor hereby sells, assigns, conveys, transfers and sets over to Assignee, all of Assignor's right, title and interest in, to and under the Assigned Instruments.

3. Acceptance and Assumption. Assignee hereby accepts the foregoing sale, conveyance, transfer and assignment of the Assigned Instruments from Assignor, and hereby assumes, undertakes and agrees to be bound by and perform all of Assignor's covenants,

conditions, stipulations, agreements, duties, obligations and liabilities arising from or relating to the Assigned Instruments and attributable to the period from and after the Effective Date (collectively, the "Assumed Obligations").

4. Indemnification.

(a) Assignor hereby agrees to defend and indemnify Assignee against, and hold Assignee harmless with respect to, any and all liabilities, damages, claims, costs, expenses (including reasonable attorneys' fees) incurred, suffered and/or sustained by Assignee and arising from or relating to the Assigned Instruments prior to the Effective Date.

(b) Assignee hereby agrees to defend and indemnify Assignor against, and hold Assignor harmless with respect to, any and all liabilities, damages, claims, costs, expenses (including reasonable attorneys' fees) incurred, suffered and/or sustained by Assignor and arising from or relating to the Assigned Instruments from and after the Effective Date.

5. Consent, Acknowledgement and Release. The Agency consents to this Assignment and acknowledges the assignment made by Assignor to Assignee herein. Except for those provisions in the Transaction Documents which expressly provide for the survival of Assignor's covenants, stipulations, agreements, duties, obligations and liabilities, the Agency and Assignee hereby releases Assignor of and from any and all of Assignor's covenants, stipulations, agreements, duties, obligations and liabilities arising under or relating to the Assigned Instruments which are attributable to the period from and after the Effective Date. The Agency acknowledges that simultaneously herewith, the Assignor has satisfied any and all claims, liabilities, damages, claims, costs and expenses (including attorneys' fees) under Section 10.6 of the Leaseback Agreement, and the Agency hereby waives and releases Assignor from any claim, liability, damages, claims, costs and expenses (including attorneys' fees) in connection with Section 10.6 of the Leaseback Agreement relating to recapture of economic benefits, except where such recapture is required by law.

6. Agency Indemnification.

(a) Except as otherwise may be provided in the Assigned Instruments, Assignee agrees that the Agency, its directors, members, officers, agents (except Assignee) and employees shall not be liable for, and Assignee agrees to defend, indemnify, release and hold harmless the Agency, its directors, members, officers, agents (except Assignor) and employees, from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the presence of any property or person on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency granting its consent to this Assignment, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrong doing of the Agency or any of its directors, members officers, agents (except Assignee) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence of the Agency or any of its directors, members, officers, agents (except Assignee) and employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. In the event of any claim

against the Agency or its respective directors, members, officers, agents and employees by any employee or contractor of Assignee or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of Assignee hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or any other employee benefit acts.

(b) Assignee hereby agrees the obligations of the Agency under the Assigned Instruments constitute a special obligation of the Agency, and all charges payable pursuant to or expenses or liabilities incurred thereunder shall be payable solely out of the revenues and other moneys of the Agency derived and to be derived from the leasing of the Facility and as otherwise provided in the Assigned Instruments. Neither the members, officers, agents (except the Company) or employees of the Agency, nor any person executing this Assignment or the Assigned Instruments, shall be liable personally or be subject to any personal liability or accountability by reason of the assignment, leasing, construction, renovation, equipping or operation of the Facility. The obligations of the Agency under the Assigned Instruments are not and shall not be an obligation of the State or any municipality of the State and neither the State nor any such municipality (including, without limitation, the City of Utica) shall be liable thereon.

7. Notice. Any notice which any party hereto shall be required or permitted to give to the others shall be in writing and sent to the other by nationally recognized overnight courier or registered or certified mail, return receipt requested, at the other's address written below or such other address as the other shall designate from time to time by notice given in accordance with this paragraph, and any notice shall be deemed given one (1) day following the deposit of such notice with the nationally recognized overnight courier, or when deposited in a United States Mail Depository, postage prepaid, addressed in accordance with this paragraph, except that a notice of change of address shall be deemed given when delivered.

To the Assignor:

Gold Dome II LLC  
8400 Glen Eagle Drive  
P.O. Box 207  
Manlius, New York 13104  
Attn.: Kurt Wendler

With a copy to:

Harris Beach PLLC  
99 Garnsey Road  
Pittsford, NY 14534  
Attn.: Francis L. Gorman III Esq.

To the Assignee:

231 Genesee Utica LLC  
207 Rockaway Tpke  
Lawrence, New York 11559  
Attn.: Uri Dreifus, Managing Member

With a copy to:  
Law Office of B. David Schreiber Esq.  
366 Pearsall Avenue, Suite One  
Cedarhurst, New York 11516  
Attn.: B. David Schreiber, Esq.

To the Agency:  
City of Utica Industrial Development Agency  
One Kennedy Plaza  
Utica, New York 13502  
Attn: Executive Director

With a copy to:  
Bond, Schoeneck & King, PLLC  
501 Main Street  
Utica, New York 13501  
Attn.: Linda E. Romano, Esq.

8. Amendment of Assigned Instruments. The Agency and Assignee may not modify or amend any of the Assigned Instruments on or after the Effective Date in a manner which could adversely affect Assignor.

9. Counterparts. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. Recording. The parties agree that a memorandum or memoranda of this Assignment shall be recorded in the Office of the Clerk of Oneida County.

[signature pages follow]

IN WITNESS WHEREOF, the parties have caused this Assignment, Assumption and Release Agreement to be executed and delivered by their respective authorized officers as of the day and year first above written.

ASSIGNOR:

GOLD DOME II LLC

By: Sphere Holdings LLC, its Sole Member

By: 

Name: Kurt Wendler

Title: Authorized Agent

ASSIGNEE:

231 GENESEE UTICA LLC

By: \_\_\_\_\_

Name: Uri Dreifus

Title: Managing Member

AGENCY:

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_

Vincent J. Gilroy, Jr.  
Chairman

IN WITNESS WHEREOF, the parties have caused this Assignment, Assumption and Release Agreement to be executed and delivered by their respective authorized officers as of the day and year first above written.

ASSIGNOR:

GOLD DOME II LLC

By: Sphere Holdings LLC, its Sole Member

By: \_\_\_\_\_

Name: Kurt Wendler

Title: Authorized Agent

ASSIGNEE:

231 GENESEE UTICA LLC

By: \_\_\_\_\_

Name: Uri Dreifus

Title: Managing Member

AGENCY:

CITY OF UTICA INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_

Vincent J. Gilfooy, Jr.  
Chairman



STATE OF NEW YORK )  
 )ss:  
COUNTY OF ONONDAGA )

On the 30 day of May 2019, before me, the undersigned a notary public in and for said state, personally appeared **KURT WENDLER**, 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

MOLLY A. McELROY  
Notary Public, State of New York  
Qualified in Onon. Co. No. 01MC4762574  
Commission Expires July 31, 2022

STATE OF NEW YORK )  
 )ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_ day of May 2019, before me, the undersigned a notary public in and for said state, personally appeared **URI DREIFUS**, 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

STATE OF NEW YORK )  
 )ss:  
COUNTY OF ONEIDA )

On the \_\_\_ day of May 2019, before me, the undersigned a notary public in and for said state, personally appeared **VINCENT J. GILROY, JR.**, 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

STATE OF NEW YORK )

)ss:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of May 2019, before me, the undersigned a notary public in and for said state, personally appeared **KURT WENDLER**, 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

STATE OF NEW YORK )

)ss:

COUNTY OF NASSAU )

On the 29<sup>th</sup> day of May 2019, before me, the undersigned a notary public in and for said state, personally appeared **URI DREIFUS**, 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.

**B. DAVID SCHREIBER**  
Notary Public, State of New York  
No. 025C4870133  
Qualified in Nassau County  
Commission Expires 11/18/21

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

STATE OF NEW YORK )

)ss:

COUNTY OF ONEIDA )

On the 29<sup>th</sup> day of May 2019, before me, the undersigned a notary public in and for said state, personally appeared **VINCENT J. GILROY, JR.**, 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



**EXHIBIT A**

**THE LAND**

**Property Address:** 231 Genesee Street, Utica, New York 13501

**Tax Account No.:** 318.50-2-15

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE CITY OF UTICA, COUNTY OF ONEIDA AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

**Beginning** at a point on the southwesterly highway boundary of Blandina Street, said point standing at the intersection of the southwesterly highway boundary of Blandina Street with the southeasterly highway boundary of Genesee Street; thence **S34°01'00"E 274.87 feet** along the southwesterly highway boundary of Blandina Street to a point standing on the northwesterly highway boundary of Union Street; thence **S38°06'06"W 125.63 feet** along the northwesterly highway boundary of Union Street to a point standing on the northeasterly boundary of Gold Dome LLC (Now or Formerly) and the southwesterly line of a concrete sidewalk; thence **N34°16'08"W 136.80 feet** along the northeasterly boundary of Gold Dome LLC and the southwesterly line of a concrete sidewalk to a point standing on the northwesterly boundary of Gold Dome LLC and the southeasterly line of a concrete curb; thence **S56°24'46"W 30.30 feet** along the northwesterly boundary of Gold Dome LLC and the southeasterly line of a concrete curb to a point standing on the northeasterly boundary of Gold Dome LLC; thence **N34°46'47"W 26.61 feet** along the northeasterly boundary of Gold Dome LLC to a point standing on the southeasterly extension of the common building line of the "Gold-Dome" Bank building on the south and the five story concrete building on the north; thence **N34°18'00"W 150.00 feet** continuing along the northeasterly boundary of Gold Dome LLC, the aforementioned southeasterly extension thereof and a northwesterly extension thereof to a point standing on the southeasterly highway boundary of Genesee Street; thence **N56°03'00"E 151.56 feet** along the southeasterly highway boundary of Genesee Street to the **point and place of beginning**.

The above described parcel containing **0.937± acre (40,794.1± sq.ft.)** of land, more or less.

**Together with** a utility easement 0.020 acre in size and being 6 feet wide as described in a Reciprocal Easement Agreement - dated August 1, 2017 between Gold Dome and Gold Dome II LLC and filed in the Oneida County Clerk's Office as Instrument No. R2017-001128 to which deed reference is made for certainty of terms and conditions.

**Subject to** a utility easement 0.005 acre in size and being 6 feet wide as described in a Reciprocal Easement Agreement - dated August 1, 2017 between Gold Dome and Gold Dome II LLC and filed in the Oneida County Clerk's Office as Instrument No. R2017-001128 to which deed reference is made for certainty of terms and conditions

**EXHIBIT B**

**LEASE AGREEMENT**

**EXHIBIT C**

**LEASEBACK AGREEMENT**

**EXHIBIT D**

**PILOT AGREEMENT**