

---

---

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**900 EAST FAYETTE GROUP, LLC PROJECT**

**TRANSCRIPT OF PROCEEDINGS**

---

---

**CLOSING DATE: NOVEMBER 7, 2017**

---

---

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**900 EAST FAYETTE GROUP**

**INDEX OF CLOSING DOCUMENTS**

<b><u>Tab No.</u></b>	<b><u>Documents</u></b>
1	Project Agreement
2	Company Lease Agreement
3	Memorandum of Company Lease Agreement with TP-584
4	Bill of Sale
5	Agency Lease Agreement
6	Memorandum of Agency Lease Agreement with Form TP-584
7	Company Certification re: Local Labor Policy
8	Certificates of casualty, liability, workers' compensation and other required insurance
9	Environmental Compliance and Indemnification Agreement
10	Closing Receipt
11	Sales Tax Exemption Letter
12	Form ST-60 indicating appointment of the Company to act as the agent of the Agency
13	PILOT Agreement
14	412 a
15	Construction Loan and Permanent Loan Mortgage
16	Assignment of Leases, Rents and Profits
17	UCC-1 Financing Statement(s)

- 18 Survey
- 19 General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits:
- Exhibit “A” - Chapter 641 of the Laws of 1979 of the State of New York, as amended
  - Exhibit “B” - Certificate of Establishment of the Agency and Certificates of appointment of current members
  - Exhibit “C” - By-laws
  - Exhibit “D” - Public Hearing Resolution
  - Exhibit “E” - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions
  - Exhibit “F” - SEQRA Resolution
  - Exhibit “G” - Inducement Resolution
  - Exhibit “H” –PILOT Resolution
  - Exhibit “I” - Final Approving Resolution
  - Exhibit “J” – Second Public Hearing Resolution
  - Exhibit “K” - Notice of Second Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions
  - Exhibit “L” – Amended Financial Assistance Resolution
- 20 Mortgage Recording Tax Affidavit
- 21 General Certificate of the Company relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:
- Exhibit “A” - Articles of Organization
  - Exhibit “B” - Operating Agreement
  - Exhibit “C” - Certificate of Good Standing
  - Exhibit “D” - Company Resolution
  - Exhibit “E” - Local Access Agreement

- 22 Opinion of Barclay Damon, LLP, counsel to the Agency, addressed to the Company and the Agency
- 23 Opinion of Carol Zenzel, counsel to the Company, addressed to the Agency and the Company.
- 24 Closing Memorandum

**1**

## PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (the “*Project Agreement*”), made as of November 1, 2017, by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202 (the “*Agency*”) and **900 EAST FAYETTE GROUP, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 1221 East Genesee Street, Suite 1, Syracuse, New York 13210 (the “*Company*”).

### WITNESSETH:

**WHEREAS**, Title I of Article 18-A of the General Municipal Law of the State of New York (the “*Enabling Act*”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “*State*”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

**WHEREAS**, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 641 of the Laws of 1979 of the State, as amended (collectively, with the Enabling Act, the “*Act*”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

**WHEREAS**, the Company submitted an application, as amended from time to time (the “*Application*”) to the Agency requesting the Agency’s assistance with respect to a certain project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “*Existing Building*”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “*Land*”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including

approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, by resolutions of its members adopted on March 9, 2016 and October 18, 2016 (collectively, the “*Resolutions*”), the Agency authorized certain financial assistance for the benefit of the Project consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, construction or equipping of the Project Facility in an amount not to exceed **\$316,800**; (b) an exemption from mortgage recording tax; and (c) an abatement from real property taxes through a 15-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively referred to as the “*Financial Assistance*”); and

**WHEREAS**, it has been estimated and confirmed by the Company within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project, and subject to New York State and local sales and use taxes will not result in the value of the State and local sales and use tax exemption benefits exceeding **\$316,800**; (ii) the mortgage recording tax exemption amount shall be approximately **\$71,000** (except as limited by Section 874 of the General Municipal Law); and (iii) real property tax abatement benefits to be provided to the Company over the 15-year benefit period of the anticipated payment in lieu of taxes agreement are estimated to be approximately **\$1,438,456**; and

**WHEREAS**, the Company proposes to lease the Land and Facility to the Agency, and the Agency desires to lease the Land and Facility from the Company pursuant to the terms of a certain Company Lease Agreement dated as of November 1, 2017 (the “*Company Lease*”), by and between the Company and the Agency; and

**WHEREAS**, the Agency proposes to acquire an interest in the Equipment pursuant to a bill of sale dated as of November 1, 2017 from the Company (the “*Bill of Sale*”); and

**WHEREAS**, contemporaneously with the execution of this Project Agreement, the Company shall execute and deliver an environmental compliance and indemnification agreement

in favor of the Agency (the “*Environmental Compliance and Indemnification Agreement*”); and

**WHEREAS**, the Agency proposes to sublease the Project Facility to the Company, and the Company desires to lease the Project Facility from the Agency, upon the terms and conditions set forth in a certain Agency Lease Agreement dated as of November 1, 2017 (the “*Agency Lease*”); and

**WHEREAS**, in order to define the obligations of the Company regarding payments in lieu of taxes for the Project Facility, the Agency and the Company will enter into a Payment in Lieu of Tax Agreement, dated as of November 1, 2017 (the “*PILOT Agreement*”), by and between the Agency and the Company; and

**WHEREAS**, by its Resolutions, the Agency authorized the Company to act as its agent for the purposes of undertaking the Project and the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of this Project Agreement and compliance with the terms set forth herein and in the Resolutions; and

**WHEREAS**, in order to define the obligations of the Company regarding its ability to utilize the Agency’s sales and use tax exemption benefit as agent of the Agency to acquire, construct, renovate, equip and complete the Project Facility and to undertake the Project, the Agency and the Company will enter into this Project Agreement; and

**WHEREAS**, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolutions, and as more particularly described in the PILOT Agreement and this Project Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

**WHEREAS**, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

**WHEREAS**, no Financial Assistance shall be provided to the Company prior to the effective date of this Project Agreement.

**NOW THEREFORE**, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

## **ARTICLE I PURPOSE OF PROJECT**

**Section 1.01 Recitals**. The foregoing recitals are incorporated by referenced as if fully set forth herein.



**Section 1.02 Purpose of Project.** It is understood and agreed by the parties that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Company Lease, Agency Lease, payment in lieu of taxes agreement ("**PILOT Agreement**") and this Project Agreement in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping, furnishing and completing of the Project Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Syracuse and to otherwise accomplish the public purpose of the Act.

## ARTICLE II REAL PROPERTY TAX EXEMPTION

**Section 2.01. PILOT Agreement.** Attached hereto and made a part hereof as **Exhibit A** is a copy of the PILOT Agreement by and between the Company and the Agency.

## ARTICLE III SALES AND USE TAX EXEMPTION

**Section 3.01. Scope of Agency.** The Company agrees to limit its activities as agents for the Agency under the authority of the Resolutions and this Project Agreement to acquisition, reconstruction, installation and completion of the Project Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of **December 31, 2018**, or sixty days after the issuance of a certificate of occupancy, unless extended by a resolution adopted by the members of the Agency, or unless terminated early in accordance with the terms of the Agency Lease. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.03(b) unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agent for the Agency shall include the following language:

"This contract is being entered into by \_\_\_\_\_ (the "**Agent**"), as agent for and on behalf of the City of Syracuse Industrial Development Agency (the "**Agency**"), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for use in construction and/or incorporation and installation in certain premises located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "**Premises**"). The machinery, equipment and building materials (collectively, the "**Equipment**") to be used in the construction and/or incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the use and/or acquisition of the Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of November 1, 2017 by and between the Agency and the Company (the "**Project Agreement**"); and the Agent represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-

recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor acknowledges and agrees to the terms and conditions set forth in this paragraph.”

**Section 3.02. Appointment of Sub-Agents.** Subject to the terms and conditions of this Project Agreement and pursuant to the Resolutions, the Agency hereby delegates to the Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and other parties as the Company chooses (each, a “***Sub-Agent***”). The appointment of each such Sub-Agent will be effective only upon: (1) the execution by the Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached as Exhibit F to the Agency Lease (the “***Sub-Agent Agreement***”), the terms and provisions of which are incorporated herein; (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 3.03(c) below; and (3) receipt of any required insurance as set forth in the Sub-Agent Agreement.

**Section 3.03. Representations and Covenants of the Company.**

(a) The Company hereby incorporates and restates its representations, covenants and warranties made in the Agency Lease.

(b) The Company further covenants and agrees that the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$316,800**.

(c) The Company further covenants and agrees to complete “IDA Appointment of Project Operator or Agent For Sales Tax Purposes” (Form ST-60) for itself and each Sub-Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(d) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance an “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Company and its Sub-Agents have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of their filed ST-340 to the Agency, but in no event later than March 29 of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of: (1) the Company’s authority to act as agents for the Agency; and (2) the authority of any Sub-Agent of the Agency appointed by the Company pursuant to Section 3.02 hereof to act as agent for the Agency.

(e) The Company further acknowledges and agrees that all purchases made in

furtherance of the Project by the Company and any Sub-Agent shall be made using “IDA Agent or Project Operator Exempt Purchase Certificate” (Form ST-123, a copy of which is attached to the Sub-Agent Agreement), and it shall be the responsibility of the Company and the Sub-Agent, as the case may be, (and not the Agency) to complete Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill of invoice should state, “I, [NAME OF AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Project Agreement with the City of Syracuse Industrial Development Agency.” The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: 900 East Fayette Group, LLC, 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, City of Syracuse, New York, Project No.: 31021713.

(f) The Company acknowledges and agrees that the Agency shall not be liable, either directly or indirectly or contingently, upon any contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

**Section 3.04. Hold Harmless Provisions.**

(a) The Company releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency’s undertaking the Project, including, but not limited to: (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project Facility; (2) liability arising from or expense incurred by the Agency’s acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency’s obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement; (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Sections 3.01 and 3.02 hereof; and (4) all causes of action and reasonable attorneys’ fees and other expenses incurred in connection with any suits or actions that may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses

of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(c) To effectuate the provisions of this Section 3.04, the Company agrees to provide for and insure, in the liability policies required by Section 3.05 of this Project Agreement, its liabilities assumed pursuant to this Section 3.04.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company pursuant to this Section 3.04 shall remain in full force and effect after the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

**Section 3.05. Insurance Required.**

(a) The Company agrees that it shall maintain all insurance required under the Agency Lease.

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date of its Sub-Agent Agreement until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, all of the same insurance with respect to the Project Facility, as set forth in Article 6 of the Agency Lease as if the general contractor were the Company thereunder. The Company further agrees that it shall cause its general contractor for the Project to comply and abide, effective as of the date of the Sub-Agent Agreement and until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, with all of the terms and conditions set forth in Article 6 of the Agency Lease with respect to the type, nature and proof of insurance required thereunder.

**ARTICLE IV  
COMMITMENTS AND REPORTING**

**Section 4.01. Compliance Commitments.** The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below beginning in the first year after completion of the Project. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in the Application starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs, the Company shall create, in years one (1) through five (5) following completion of the Project the new jobs set forth in the Company's Application. The reporting of, and the commitment to, each of (a), (b) and (c) below continue for the duration of the PILOT Agreement (the "**Term**"); or if the PILOT is terminated early, until the earlier of five (5) years from the termination date of the PILOT or the stated expiration of the PILOT Agreement:

(a) The total investment made with respect to the Project at the Project's completion date shall equal to or exceed \$8,474,815.00, being the total project cost as stated in the Company's Application for Financial Assistance (the "**Investment Commitment**").

(b) No full time equivalent ("**FTE**") employees were retained by the Project Facility as of the date of the Application for Financial Assistance (the "**Baseline FTE**"). The Company's application estimated the creation of one (1) new FTE (the "**New FTE**") at the Project Facility within the first two (2) years following completion of the Project Facility. The Company shall be required to meet and maintain all of the foregoing employment commitments during the Term hereof (the "**Employment Commitment**").

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project for the Term (the "**Reporting Commitment**").

**Section 4.02. Reporting Requirement.** As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. **Exhibit B** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

**ARTICLE V**  
**SUSPENSION, DISCONTINUATION, RECAPTURE AND/OR TERMINATION OF**  
**FINANCIAL ASSISTANCE**

**Section 5.01.** Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties that the Agency is entering into the Company Lease, the Agency Lease, the PILOT Agreement and this Project Agreement in order to provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolutions, the Company covenants and agrees that it is subject to recapture of all State sales and use tax exemption benefits if:

(1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project are not entitled to the State sales and use tax exemption benefits; or

(2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(3) the State sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between the Company and the Agency.

Each of the foregoing four events are hereinafter referred to as a “*State-Mandated Recapture Event*”. The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State-Mandated Recapture Event has occurred.

(b) In addition to Section 5.01(a), in accordance with the policies of the Agency and the Resolutions, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance to the extent any of the following occur (each a “*Deficit*”):

a) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);

- b) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- c) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- d) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or
- e) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “*Material Violation*”).

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Project Document in accordance with the terms of the Project Document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance in accordance with its Recapture Policy; and shall consider the following criteria in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- i. Whether the Company has proceeded in good faith.
- ii. Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company.
- iii. Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company, such as the Company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- iv. Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of the City of Syracuse.

- v. The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- vi. Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the "***Determination***"). The Determination shall provide terms, if any, by which the Company may remedy any Noncompliance Event upon which the Determination was based. The Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company (which will be at the Agency's sole discretion).

(c) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company agrees and covenants that it will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company; and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

## ARTICLE VI MISCELLANEOUS PROVISIONS

**Section 6.01. Survival.** All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency.

**Section 6.02. Notices.** All notices, certificates and other communications under this Project Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:



If to the Agency: City of Syracuse Industrial Development Agency  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chairman

With a copy to: Corporation Counsel  
City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202

If to the Company: 900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210  
Attn: Christopher Geiger, Managing Member

With a copy to: Zenzel Law Offices  
6320 Fly Road, Suite 207  
East Syracuse, NY 13057  
Carol A. Zenzel, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

**Section 6.03. Amendments.** No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company and the Agency.

**Section 6.04. Severability.** The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

**Section 6.05. Counterparts.** This Project Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

**Section 6.06. Governing Law.** This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Onondaga County, New York.

**Section 6.07. Term.** Except as specifically provided otherwise, the term of this Project Agreement shall be the longer of: (1) the term of the Agency Lease : or (2) five years following the Project’s substantial completion date as evidenced by a certificate of occupancy. The Project will remain “active” for purposes of Section 874(12) of General Municipal Law and the Agency’s Annual Assessment Policy during the term of this Project Agreement.

**Section 6.08. Section Headings.** The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

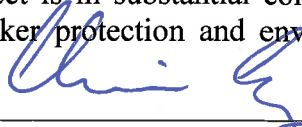
**900 EAST FAYETTE GROUP, LLC**

By:   
Christopher Geiger, Managing Member


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

**Christopher Geiger**, being first duly sworn, deposes and says:

1. That I am the Managing Member of 900 East Fayette Group, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

  
\_\_\_\_\_  
(Signature of Officer)

Subscribed and affirmed to me  
under penalties of perjury  
this 2<sup>nd</sup> day of November, 2017.

  
\_\_\_\_\_  
(Notary Public)  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2018

**EXHIBIT A**

Executed Copy of Agreement  
(see Tab #13)

2

**900 EAST FAYETTE GROUP, LLC**

**AND**

**CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY**

---

**COMPANY LEASE AGREEMENT**

---

**DATED AS OF NOVEMBER 1, 2017**

## COMPANY LEASE AGREEMENT

**THIS COMPANY LEASE AGREEMENT** (the “*Company Lease*”), made and entered into as of November 1, 2017, by and between **900 EAST FAYETTE GROUP, LLC** (the “*Company*”), a limited liability company organized under the laws of the State of New York with an office at 1221 East Genesee Street, Suite 1, Syracuse, New York 13210 and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the “*Agency*”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202.

### WITNESSETH:

**WHEREAS**, Title 1 of Article 18-A of the New York General Municipal Law (the “*Enabling Act*”) was duly enacted into law as Chapter 1030 of the New York Laws of 1969; and

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages, and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip, and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State of New York and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

**WHEREAS**, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 641 of the Laws of 1979 of the State of New York (collectively with the Enabling Act, the “*Act*”) and is empowered under the Act to undertake the Project (as hereinafter defined); and

**WHEREAS**, the Agency, by resolutions adopted on March 9, 2016 and October 18, 2016, agreed, at the request of the Company to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “*Existing Building*”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “*Land*”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing

approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Company is the current owner of the Project Facility; and

**WHEREAS**, the Agency proposes to assist the Company’s acquisition, construction and equipping of the Project Facility, and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company, or its designee, as its agent with respect to the Project Facility; (2) accepting a leasehold interest in the Land and Facility from the Company pursuant to this Company Lease and acquiring an interest in the Equipment pursuant to a bill of sale from the Company; and (3) subleasing the Project Facility to the Company pursuant to the Agency Lease; and

**WHEREAS**, the Agency now proposes to lease the Land and Facility from the Company pursuant to the terms and conditions set forth herein; and

**WHEREAS**, all things necessary to constitute this Company Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Company Lease have, in all respects, been duly authorized.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

## **ARTICLE I RECITALS AND DEFINITIONS**

### **1.0 RECITALS.**

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

### **1.1 DEFINITIONS.**

For all purposes of this Company Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions which is attached to the Agency Lease as Exhibit “C” thereto except as otherwise expressly defined herein or the context hereof otherwise requires.



## **1.2 INTERPRETATION.**

In this Company Lease, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “herein,” “hereunder,” and any similar terms as used in this Company Lease refer to this Company Lease; the term “heretofore” shall mean before and the term “hereafter” shall mean after the date of this Company Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Company Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Company Lease.

## **ARTICLE II DEMISE; PREMISES; TERM**

### **2.1 DEMISE.**

The Company hereby leases to the Agency, and the Agency hereby leases from the Company, the Land and the Facility for the stated term for the rents, covenants and conditions set forth herein subject only to the Permitted Encumbrances.

### **2.2 DESCRIPTION OF PREMISES LEASED.**

The leased premises is the Land and the Facility described in the recitals of this Company Lease and as more fully described on **Exhibit “A”** attached hereto.

### **2.3 TERM.**

The Project is leased for a term which shall commence as of November 1, 2017, and shall end on the expiration or earlier termination of the Agency Lease.

### **2.4 MANDATORY CONVEYANCE.**

At the expiration of the term hereof or any extension thereof by mutual agreement, or as otherwise provided in the Agency Lease, this Company Lease shall automatically expire without any further action by the parties hereto. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of leases and bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency’s interest in the Project, all at the Company’s sole cost and expense.

## **2.5 CONSIDERATION.**

The Agency is paying to the Company concurrently with the execution hereof consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Company.

## **2.6 REPRESENTATIONS AND COVENANTS OF THE COMPANY.**

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Company Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Company Lease and the other Company Documents.

(b) This Company Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(c) The Company has a valid and enforceable fee interest in the Land and the Facility and shall remain and retain such interests for the term of this Company Lease unless otherwise consented to in writing by the Agency.

(d) Neither the execution and delivery of this Company Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Company's Articles of Organization and Operating Agreement;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust indenture, commitment, guaranty or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(g) So long as the Agency holds an interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing

should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a “project” (as such quoted term is defined in the Act).

(h) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction, equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(i) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to the Agency Lease, this Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.6.

(j) The Company acknowledges, restates and affirms the obligations, representations, warranties and covenants set forth in Sections 2.2 and 11.12 of the Agency Lease as if fully set forth herein.

### **ARTICLE III DISPUTE RESOLUTION**

#### **3.1 GOVERNING LAW.**

This Company Lease shall be governed in all respects by the laws of the State of New York.

#### **3.2 WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS COMPANY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS COMPANY LEASE.

### **ARTICLE IV MISCELLANEOUS CLAUSES**

#### **4.1 NOTICES.**

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) To the Agency:

City of Syracuse Industrial Development Agency  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chairman

With copies to:

Corporation Counsel  
City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202

(b) To the Company:

900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210  
Attn: Christopher Geiger, Managing Member

With a copy to:

Zenzel Law Offices  
6320 Fly Road, Suite 207  
East Syracuse, NY 13057  
Attn: Carol A. Zenzel, Esq.

(c) If to the Lender, to:

Five Star Bank  
55 North Main Street  
Warsaw, New York 14569  
Attn: Commercial Loan Servicing

With a copy to:

Phillips Lytle LLP  
1400 First Federal Plaza  
Rochester, New York 14614  
Attn: Raymond Ruff, Esq.

The Agency, the Company and the Lender, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent. Notwithstanding anything herein to the contrary, the Agency's failure to provide notice hereunder to the Lender shall not constitute an event of default.

#### **4.2 NO RECOURSE UNDER THIS COMPANY LEASE.**

No provision, covenant or agreement contained herein, in any other agreement entered into in connection herewith, or any obligations herein imposed, upon the Agency, or any breach thereof, shall constitute or give rise to or impose upon the Agency, a debt or other pecuniary liability or a charge upon its general credit, and all covenants, stipulations, promises, agreements and obligations of the Agency contained in this Company Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity.

#### **4.3 ENTIRE AGREEMENT.**

This Company Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Company Lease. This Company Lease may not be changed, modified or discharged, in whole or in part, except by a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought.

#### **4.4 AGENCY REPRESENTATIONS.**

The Company expressly acknowledges that neither the Agency nor the Agency's directors, members, employees or agents has made or is making, and the Company, in executing and delivering this Company Lease, is not relying upon warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Company Lease, and no rights, easements or licenses are or shall be acquired by the Company by implication or otherwise unless expressly set forth in this Company Lease.

#### **4.5 BINDING EFFECT.**

This Company Lease shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

#### **4.6 PARAGRAPH HEADINGS.**

Paragraph headings are for convenience only and shall not affect the construction or interpretation of this Company Lease.

#### **4.7 CONSENT TO AGENCY LEASE; SUBORDINATION.**

The Company hereby consents to the sublease by the Agency of the Project Facility to the Company pursuant to the Agency Lease. The Company acknowledges and agrees that this Company Lease and the Agency Lease shall be subordinate in all respects to the Mortgages.

#### **4.8 HOLD HARMLESS PROVISIONS.**

(a) The Company hereby releases the Agency and its members, officers, agents, and employees from, agree that the Agency and its members, officers, agents, and employees shall

not be liable for, and agree to indemnify, defend, and hold the Agency and its members, officers, agents, and employees harmless from and against any and all claims arising as a result of the Agency's undertaking of the Project, including, but not limited to:

(1) Liability for loss or damage to Property or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under the Agency Lease, the Company Lease or the Mortgage;

(3) All claims arising from the exercise by the Company of the authority conferred upon it and performance of the obligations assumed under Article II hereof;

(4) All causes of action and attorneys' fees and other expenses incurred in connection with any 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 intentional wrongdoing of the Agency or any of its members, officers, agents, or employees.

The foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants, or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportional liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any contractor of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) Notwithstanding any other provisions of this Company Lease, the obligations of the Company pursuant to this Section 4.8 shall remain in full force and effect after the termination of the Agency Lease and this Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company), or employees, relating thereto.

(d) For purposes of this Section 4.8, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

#### **4.9 NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent, or employee of the Agency in his individual capacity; and the members, officers, agents, and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents, or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents, and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents, and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 4.9 shall not alter the full force and effect of any Event of Default under the Agency Lease.

(d) For purposes of this Section 4.9, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

#### **4.10 MERGER OF AGENCY.**

(a) Nothing contained in this Company Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Company Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

#### **4.11 EXECUTION OF COUNTERPARTS.**

This Company Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

#### **4.12 EVENT OF DEFAULT.**

A default in the performance or the observance of any covenants, conditions, or agreements on the part of the Company in this Company Lease, the Agency Lease or the Project Agreement.

#### **4.13 REMEDIES.**

Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- 1) Terminate the Company Lease; or
- 2) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder.

#### **4.14 AMENDMENTS, CHANGES AND MODIFICATIONS.**

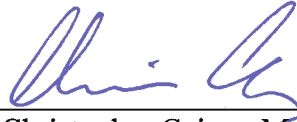
This Company Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto.



IN WITNESS WHEREOF, the Company and the Agency have duly executed this Company Lease, as of the day and year first above written.

**900 EAST FAYETTE GROUP, LLC**

By:



Christopher Geiger, Managing Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:



William M. Ryan, Chairman

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

On the 2<sup>nd</sup> day of November, 2017, before me, the undersigned, personally appeared **Christopher Geiger**, 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.



\_\_\_\_\_  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

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

On the 2<sup>nd</sup> day of November, 2017, before me, the undersigned, personally appeared **William M. Ryan**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



\_\_\_\_\_  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

## EXHIBIT A

### DESCRIPTION OF REAL PROPERTY

#### **(A) 922-24 East Fayette Street**

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, described as follows: Beginning in the north line of Block Number two hundred forty (240) of the City of Syracuse, according to a map of said City made by J.M. Trowbridge, on the south line of East Fayette Street, ninety feet (90) west of the northeast corner of said block; thence west along the north line of said block forty (40) feet; thence south parallel to the east line of said block one hundred (100) feet; thence east parallel to East Fayette Street forty (40) feet, to a point ninety (90) feet from the east line of said block; thence north parallel with the east line of said block to the place of beginning.

#### **(B) 900-16 East Fayette Street**

All that tract or parcel of land situate in the City of Syracuse, New York, known and distinguished on a map made by J.M. Trowbridge as part of Lot No. 17 in Block No. 240 described as follows: Beginning at a point in the south line of E. Fayette Street 77.01 feet east of the northwest corner of said block which is 5 feet east of the east wall of the Sylvester Flats; thence west on the south line of E. Fayette Street to the northwest corner of said block; thence south on the west line of said block 66 feet; thence east on the south line of said Lot No. 17 76.86 feet; thence north 66 feet to the place of beginning.

Also all that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as the north half of Lot No. Twenty (20), Block No. Two Hundred Forty (240), according to a survey and map by Calvin Guiteau for Baldwin, Burt & Teall, subject to all unpaid taxes and monthly tenancies.

#### **(C) 918 E. Fayette Street**

All that tract or parcel of land, located in the City of Syracuse, County of Onondaga and State of New York commonly known as 918 E. Fayette Street, and being further described as being Lot Part 17 and 18, and 19, in Block 240, designated as Tax Map Book 1, Plate 116, Parcel 146, Property No. 1527009300; 48 X 66L2 x 34 feet, vacant lot also being described as:

All of that tract or parcel of land situate in the City of Syracuse, New York, being part of Block NO. 240 according to a map of said city made by J.M. Trowbridge, described as follows: Beginning in the south line of East Fayette Street 130 feet west of the northeast corner of said block; thence west along the north line of said block 48 feet to a point which is 77.01 feet east from the northwest corner of said block and is 5 feet east of the east wall of the Sylvester Flats; thence south 66 feet to a point in the south line of Lot No. 17 in said block which is 76.86 feet east of the west line of said block; thence east about 48.16 feet to a point 130 feet west of the east line of said block; thence north

parallel with the east line of said block 66 feet to the place of beginning; Also a strip of land about 2 feet in width extending southerly from the south line of the above described premises for a distance of 34 feet, the east line of which strip is an extension southerly of the east line of the above described parcel of land.

**(D) 305-07 Irving Avenue**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York. being north one-half of Lot No. 21 in Block 240 in said city, being 33 feet front on the east side of Irving Avenue, and 122.4 feet more or less deep.

Also all that tract or parcel of land situate in the City of Syracuse, in the county of Onondaga and State of New York, known and distinguished as the south half of Lot Number Twenty (20) of Block Number Two Hundred Forty (240) Syracuse, according to a survey and map made by Calvin Guiteau Baldwin, Burt & Teall of a certain larger tract; said lot lying on the east side of Irving Avenue fronting two (2) rods on said Avenue and Eight (8) rods deep, or thereabouts.

**Above Property Having been formally resubdivided into one lot that is now described as follows:**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York being part of Block Number 240 in said City being more particularly bounded and described as follows:

Beginning at the intersection of the southerly line of East Fayette Street with the east line of Irving Avenue;

Thence S 89° 30' 50" E, along the southerly line of East Fayette Street, a distance of 165.01 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 100.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the south line of East Fayette Street, a distance of 42.00 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 65.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the southerly line of East Fayette Street, a distance of 123.01 feet to a point in the easterly line of Irving Avenue;

Thence N 00° 29' 40" E, along the easterly line of Irving Avenue, a distance of 165.00 feet to the point and place of beginning.

3

Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2226

### Onondaga County Clerk Recording Cover Sheet

Received From :  
FITCH-SARAH ACCT: 1931 - Address:

Return To :  
900 EAST FAYETTE GROUP LLC

Method Returned : MAIL

First PARTY 1

900 EAST FAYETTE GROUP LLC

First PARTY 2

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2017-00041003

Book : Page :

Type of Instrument : Deed

Type of Transaction : Deed Misc

Recording Fee: \$75.50

Recording Pages : 6

The Property affected by this instrument is situated in Syracuse, in the County of Onondaga, New York

Real Estate Transfer Tax

RETT # : 4173

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$75.50

State of New York

County of Onondaga

I hereby certify that the within and foregoing was recorded in the Clerk's office for Onondaga County, New York

On (Recorded Date) : 11/09/2017

At (Recorded Time) : 11:44:09 AM



Doc ID - 0256211700006

*Lisa Dell*

Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On : 11/09/2017 At : 11:50:15AM

**MEMORANDUM OF  
COMPANY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** 900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210

***NAME AND ADDRESS OF LESSEE:*** City of Syracuse Industrial Development Agency  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202

***DESCRIPTION OF LEASED PREMISES:***

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in **Exhibit "A"** annexed hereto, together with the improvements thereon.

***DATE OF EXECUTION OF COMPANY LEASE AGREEMENT:***

As of November 1, 2017

***TERM OF COMPANY LEASE AGREEMENT:***


The term of the Company Lease Agreement shall commence as of November 1, 2017 and continue in full force and effect until the earlier of: (1) June 30, 2034; or (2) an earlier termination in accordance with the terms of the Agency Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of November, 2017.

**900 EAST FAYETTE GROUP, LLC**

By:   
Christopher Geiger, Managing Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman



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

On the 2<sup>nd</sup> day of November, 2017, before me, the undersigned, personally appeared **Christopher Geiger**, 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.

*Lori L McRobbie*

Notary Public  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2018

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

On this 2<sup>nd</sup> day of November, 2017, before me, the undersigned, personally appeared **William M. Ryan**, 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.

*Lori L McRobbie*

Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2018

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE LAND

#### **(A) 922-24 East Fayette Street**

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, described as follows: Beginning in the north line of Block Number two hundred forty (240) of the City of Syracuse, according to a map of said City made by J.M. Trowbridge, on the south line of East Fayette Street, ninety feet (90) west of the northeast corner of said block; thence west along the north line of said block forty (40) feet; thence south parallel to the east line of said block one hundred (100) feet; thence east parallel to East Fayette Street forty (40) feet, to a point ninety (90) feet from the east line of said block; thence north parallel with the east line of said block to the place of beginning.

#### **(B) 900-16 East Fayette Street**

All that tract or parcel of land situate in the City of Syracuse, New York, known and distinguished on a map made by J.M. Trowbridge as part of Lot No. 17 in Block No. 240 described as follows: Beginning at a point in the south line of E. Fayette Street 77.01 feet east of the northwest corner of said block which is 5 feet east of the east wall of the Sylvester Flats; thence west on the south line of E. Fayette Street to the northwest corner of said block; thence south on the west line of said block 66 feet; thence east on the south line of said Lot No. 17 76.86 feet; thence north 66 feet to the place of beginning.

Also all that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as the north half of Lot No. Twenty (20), Block No. Two Hundred Forty (240), according to a survey and map by Calvin Guiteau for Baldwin, Burt & Teall, subject to all unpaid taxes and monthly tenancies.

#### **(C) 918 E. Fayette Street**

All that tract or parcel of land, located in the City of Syracuse, County of Onondaga and State of New York commonly known as 918 E. Fayette Street, and being further described as being Lot Part 17 and 18, and 19, in Block 240, designated as Tax Map Book 1, Plate 116, Parcel 146, Property No. 1527009300; 48 X 66L2 x 34 feet, vacant lot also being described as:

All of that tract or parcel of land situate in the City of Syracuse, New York, being part of Block NO. 240 according to a map of said city made by J.M. Trowbridge, described as follows: Beginning in the south line of East Fayette Street 130 feet west of the northeast corner of said block; thence west along the north line of said block 48 feet to a point which is 77.01 feet east from the northwest corner of said block and is 5 feet east of the east wall of the Sylvester Flats; thence south 66 feet to a point in the south line of Lot No. 17 in said block which is 76.86 feet east of the west line of said block; thence east about 48.16 feet to a point 130 feet west of the east line of said block; thence north parallel with the east line of said block 66 feet to the place of beginning;

Also a strip of land about 2 feet in width extending southerly from the south line of the above described premises for a distance of 34 feet, the east line of which strip is an extension southerly of the east line of the above described parcel of land.

**(D) 305-07 Irving Avenue**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York. being north one-half of Lot No. 21 in Block 240 in said city, being 33 feet front on the east side of Irving Avenue, and 122.4 feet more or less deep.

Also all that tract or parcel of land situate in the City of Syracuse, in the county of Onondaga and State of New York, known and distinguished as the south half of Lot Number Twenty (20) of Block Number Two Hundred Forty (240) Syracuse, according to a survey and map made by Calvin Guiteau Baldwin, Burt & Teall of a certain larger tract; said lot lying on the east side of Irving Avenue fronting two (2) rods on said Avenue and Eight (8) rods deep, or thereabouts.

**Above Property Having been formally resubdivided into one lot that is now described as follows:**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York being part of Block Number 240 in said City being more particularly bounded and described as follows:

Beginning at the intersection of the southerly line of East Fayette Street with the east line of Irving Avenue;

Thence S 89° 30' 50" E, along the southerly line of East Fayette Street, a distance of 165.01 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 100.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the south line of East Fayette Street, a distance of 42.00 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 65.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the southerly line of East Fayette Street, a distance of 123.01 feet to a point in the easterly line of Irving Avenue;

Thence N 00° 29' 40" E, along the easterly line of Irving Avenue, a distance of 165.00 feet to the point and place of beginning.



# 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

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

**Schedule A – Information relating to conveyance**

<b>Grantor/Transferor</b>	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor) <b>900 East Fayette Group, LLC</b>	Social security number
<input type="checkbox"/> Individual	Mailing address <b>1221 East Genesee Street, Suite 1</b>	Social security number
<input type="checkbox"/> Corporation	City State ZIP code <b>Syracuse NY 13210</b>	Federal EIN <b>46-4656257</b>
<input type="checkbox"/> Partnership	Single member's name if grantor is a single member LLC (see instructions)	Single member EIN or SSN
<input type="checkbox"/> Estate/Trust		
<input type="checkbox"/> Single member LLC		
<input checked="" type="checkbox"/> Other		
<b>Grantee/Transferee</b>	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee) <b>City of Syracuse Industrial Development Agency</b>	Social security number
<input type="checkbox"/> Individual	Mailing address <b>201 East Washington Street, 7th Floor</b>	Social security number
<input type="checkbox"/> Corporation	City State ZIP code <b>Syracuse NY 13202</b>	Federal EIN <b>52-1380308</b>
<input type="checkbox"/> Partnership	Single member's name if grantee is a single member LLC (see instructions)	Single member EIN or SSN
<input type="checkbox"/> Estate/Trust		
<input type="checkbox"/> Single member LLC		
<input checked="" type="checkbox"/> Other		

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
048.-04-01.0; 048.-04-02.0 048.-04-03.0; 048.-04-14.0	311500	900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-16 East Fayette)	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input checked="" type="checkbox"/> Other <u>mixed-use</u>	Date of conveyance <table style="border: 1px solid black; text-align: center; width: 100%;"> <tr> <td style="width: 33%;">11</td> <td style="width: 33%;">01</td> <td style="width: 33%;">2017</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	11	01	2017	month	day	year	Percentage of real property conveyed which is residential real property <u>0</u> % (see instructions)
11	01	2017							
month	day	year							

Condition of conveyance (check all that apply)

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

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

**Schedule B – Real estate transfer tax return (Tax Law, Article 31)**

**Part I – Computation of tax due**

<b>1</b> 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) ..... <input checked="" type="checkbox"/> <b>Exemption claimed</b>	<b>1.</b>	0 00
<b>2</b> Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....	<b>2.</b>	0 00
<b>3</b> Taxable consideration (subtract line 2 from line 1) .....	<b>3.</b>	0 00
<b>4</b> Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....	<b>4.</b>	0 00
<b>5</b> Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....	<b>5.</b>	0 00
<b>6</b> Total tax due* (subtract line 5 from line 4) .....	<b>6.</b>	0 00

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

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

**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) ..... 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)

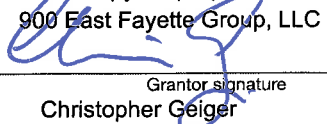
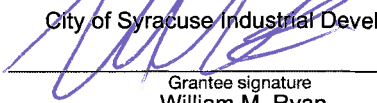
1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property 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.

900 East Fayette Group, LLC  _____ Grantor signature Christopher Geiger	Managing Member _____ Title	City of Syracuse Industrial Development Agency  _____ Grantee signature William M. Ryan	Chairman _____ Title
Grantor signature	Title	Grantee signature	Title

**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 \_\_\_\_\_ to \_\_\_\_\_ (see instructions).  
Date Date
- 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

**4**



**BILL OF SALE TO AGENCY**

**900 EAST FAYETTE GROUP, LLC**, a limited liability company organized under the laws of the State of New York with an office to conduct business at 1221 East Genesee Street, Suite 1, Syracuse, New York 13210 (the "**Company**"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Company from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "**Agency**"), having its office at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of October 1, 2017 (the "**Agency Lease**"), and as listed on "**Exhibit A**" attached hereto.

**TO HAVE AND HOLD** the same unto the Agency, its successors and assigns, forever.

The Company hereby represents and warrants that it is the true and lawful owner of the personal property being conveyed hereby, that all of the foregoing are free and clear of all liens, security interests, and encumbrances, except for Permitted Encumbrances, as defined in the Agency Lease, and that the Company has the right to sell the same as aforesaid; and the Company covenants that it will warrant and defend title to the same for the benefit of the Agency and its successors and assigns against the claims and demands of all persons.

**IN WITNESS WHEREOF**, the Company has caused this instrument to be executed by its duly authorized representative on the date indicated beneath the signature of such representative and dated as of the 1<sup>st</sup> day of November, 2017.

**900 EAST FAYETTE GROUP, LLC**

By:



Christopher Geiger, Managing Member

## EXHIBIT "A"

### DESCRIPTION OF THE EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **900 EAST FAYETTE GROUP, LLC** (the "*Company*") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, refrigerators, rugs, furniture, fixtures, movable partitions, cleaning equipment, maintenance equipment, shelving, racks, flagpoles, signs, waste containers, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

**5**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**900 EAST FAYETTE GROUP, LLC**

---

**AGENCY LEASE AGREEMENT**

---

**DATED AS OF NOVEMBER 1, 2017**

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF CONTENTS .....	i
<b>ARTICLE I</b>	
<b>RECITALS AND DEFINITIONS .....</b>	<b>3</b>
1.0 RECITALS .....	3
1.1 DEFINITIONS.....	3
1.2 INTERPRETATION.....	3
<b>ARTICLE II</b>	
<b>REPRESENTATIONS AND COVENANTS .....</b>	<b>3</b>
2.1 REPRESENTATIONS OF THE AGENCY .....	3
2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.....	4
<b>ARTICLE III</b>	
<b>CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT     FACILITY .....</b>	<b>7</b>
3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.....	7
3.2 USE OF PROJECT FACILITY.....	8
<b>ARTICLE IV CONSTRUCTION AND EQUIPPING OF THE PROJECT .....</b>	<b>8</b>
4.1 CONSTRUCTION, AND EQUIPPING OF THE PROJECT FACILITY .....	8
4.2 COMPLETION OF PROJECT FACILITY.....	9
4.3 COSTS OF COMPLETION PAID BY COMPANY .....	10
4.4 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.....	10
4.5 COOPERATION IN EXECUTION OF ADDITIONAL MORTGAGES AND MODIFICATIONS OF MORTGAGES. ....	11
<b>ARTICLE V</b>	
<b>AGREEMENT TO LEASE PROJECT FACILITY; RENTAL     PAYMENTS.....</b>	<b>11</b>
5.1 AGREEMENT TO LEASE PROJECT FACILITY .....	11
5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL .....	12
5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.....	14
5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.....	15
<b>ARTICLE VI</b>	
<b>MAINTENANCE, MODIFICATIONS, TAXES, AND     INSURANCE.....</b>	<b>15</b>
6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY .....	15
6.2 TAXES, ASSESSMENTS, AND UTILITY CHARGES.....	15
6.3 INSURANCE REQUIRED .....	16

6.4	ADDITIONAL PROVISIONS RESPECTING INSURANCE.....	17
6.5	APPLICATION OF NET PROCEEDS OF INSURANCE.....	18
6.6	PAYMENTS IN LIEU OF REAL ESTATE TAXES .....	18
<b>ARTICLE VII</b>	<b>DAMAGE, DESTRUCTION, AND CONDEMNATION .....</b>	<b>18</b>
7.1	DAMAGE OR DESTRUCTION.....	18
7.2	CONDEMNATION.....	19
7.3	ADDITIONS TO PROJECT FACILITY .....	20
<b>ARTICLE VIII</b>	<b>SPECIAL COVENANTS.....</b>	<b>21</b>
8.1	NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS .....	21
8.2	HOLD HARMLESS PROVISIONS .....	21
8.3	RIGHT OF ACCESS TO PROJECT FACILITY.....	22
8.4	MAINTENANCE OF EXISTENCE .....	22
8.5	AGREEMENT TO PROVIDE INFORMATION .....	23
8.6	BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.....	23
8.7	COMPLIANCE WITH ORDERS, ORDINANCES, ETC.....	23
8.8	DISCHARGE OF LIENS AND ENCUMBRANCES.....	24
8.9	PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.....	24
8.10	DEPRECIATION DEDUCTIONS AND TAX CREDITS .....	24
8.11	EMPLOYMENT OPPORTUNITIES.....	24
8.12	SALES AND USE EXEMPTION .....	24
8.13	IDENTIFICATION OF THE EQUIPMENT.....	26
<b>ARTICLE IX</b>	<b>ASSIGNMENTS; TRANSFERS; MERGER OF AGENCY.....</b>	<b>26</b>
9.1	ASSIGNMENT OF AGENCY LEASE.....	26
9.2	TRANSFERS OF INTERESTS.....	26
9.3	MERGER OF AGENCY .....	27
<b>ARTICLE X</b>	<b>EVENTS OF DEFAULT AND REMEDIES.....</b>	<b>27</b>
10.1	EVENTS OF DEFAULT DEFINED.....	27
10.2	REMEDIES ON DEFAULT.....	28
10.3	REMEDIES CUMULATIVE .....	29
10.4	AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.....	29
10.5	NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.....	29
<b>ARTICLE XI</b>	<b>MISCELLANEOUS .....</b>	<b>30</b>
11.1	NOTICES.....	30
11.2	BINDING EFFECT .....	31
11.3	SEVERABILITY .....	31
11.4	AMENDMENTS, CHANGES AND MODIFICATIONS .....	31
11.5	EXECUTION OF COUNTERPARTS .....	31

11.6	APPLICABLE LAW .....	32
11.7	WAIVER OF TRIAL BY JURY .....	32
11.8	SUBORDINATION.....	32
11.9	SURVIVAL OF OBLIGATIONS .....	32
11.10	TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.....	32
11.11	NO RECOURSE; SPECIAL OBLIGATION.....	32
11.12	OBLIGATION TO SELL AND PURCHASE THE EQUIPMENT .....	33
11.13	ENTIRE AGREEMENT.....	34
11.14	DISCLOSURE .....	34

EXHIBIT “A”	REAL PROPERTY DESCRIPTION
EXHIBIT “B”	DESCRIPTION OF EQUIPMENT
EXHIBIT “C”	TABLE OF DEFINITIONS
EXHIBIT “D”	FORM OF CONTRACT STATUS REPORT
EXHIBIT “E”	FORM OF ANNUAL REPORTING REQUIREMENTS
EXHIBIT “F”	FORM OF SUB-AGENT AGREEMENT
EXHIBIT “G”	RECAPTURE POLICY

## AGENCY LEASE AGREEMENT

**THIS AGENCY LEASE AGREEMENT**, dated as of November 1, 2017 (the "**Agency Lease**"), by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a body corporate and politic and a public instrumentality of the State of New York, having its office at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202 (the "**Agency**"), and **900 EAST FAYETTE GROUP, LLC** a New York limited liability company having its office at 1221 East Genesee Street, Suite 1, Syracuse, New York 13210 (the "**Company**").

### WITNESSETH:

**WHEREAS**, the Agency is authorized and empowered by Title I of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act, among other things, to: (i) make contracts and leases, and to execute such documents as necessary or convenient, with a public or private person, firm, partnership, or corporation; (ii) to acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects (as defined in the Act); and (iii) to sell, lease and otherwise dispose of any such property; and

**WHEREAS**, the Agency, by resolutions adopted on March 9, 2016 and October 18, 2016, agreed, at the request of the Company to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "**Existing Building**") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the "**Land**"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "**New Building**" and together with the Existing Building, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of



furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency proposes to assist the Company’s acquisition, construction, renovation and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to completing the Project; (2) accepting a leasehold interest in the Land and the Facility from the Company and a fee interest in the Equipment pursuant to a bill of sale from the Company; and (2) subleasing the Project Facility to the Company pursuant to this Agency Lease; and

**WHEREAS**, the Company is the current owner of the Land and the Facility and has leased the Land and the Facility to the Agency pursuant to the Company Lease Agreement dated as of November 1, 2017 (the “*Company Lease*”); and

**WHEREAS**, the Company has conveyed title to the Equipment to the Agency pursuant to the Bill of Sale dated as of November 1, 2017 (the “*Bill of Sale*”); and

**WHEREAS**, the Agency now proposes to sublease the Project Facility to the Company pursuant to the terms and conditions herein set forth; and

**WHEREAS**, all things necessary to constitute this Agency Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution, and delivery of this Agency Lease have, in all respects, been duly authorized.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

**ARTICLE I  
RECITALS AND DEFINITIONS**

**1.0 RECITALS.**

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

**1.1 DEFINITIONS.**

For all purposes of this Agency Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions attached hereto as **Exhibit "C"** except as otherwise expressly defined herein or the context hereof otherwise requires.

**1.2 INTERPRETATION.**

In this Agency Lease, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder," and any similar terms as used in this Agency Lease refer to this Agency Lease; the term "heretofore" shall mean before and the term "hereafter" shall mean after the date of this Agency Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Agency Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agency Lease.

**ARTICLE II  
REPRESENTATIONS AND COVENANTS**

**2.1 REPRESENTATIONS OF THE AGENCY.**

The Agency makes the following representations to the Company as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into this Agency Lease and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project Facility will constitute a "project," as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver, and perform this Agency Lease and the other Agency Documents.

(b) Neither the execution and delivery of this Agency Lease, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions of this Agency Lease and the other Agency Documents by the Agency will conflict with or result in a breach by the Agency of any of the terms, conditions, or provisions of the Act, the By-Laws of the Agency, or any order, judgment, restriction, agreement, or instrument to which the Agency is a party or by which it is bound or will constitute a default by the Agency under any of the foregoing.

(c) This Agency Lease and the other Agency Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Agency, enforceable in accordance with their respective terms.

## **2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.**

The Company acknowledges, represents, warrants and covenants to the Agency as follows:

(a) The Company is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New York, has the power to enter into this Agency Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Agency Lease and the other Company Documents.

(b) This Agency Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(c) The Company is the present fee owner of the Project Facility and shall remain the fee owner of the Project Facility for the term of this Agency Lease unless otherwise consented to in writing by the Agency.

(d) This Project is not primarily used for retail as set forth in the Act.

(e) Neither the execution and delivery of this Agency Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Company's Articles of Organization and Operating Agreement;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(f) The providing of Financial Assistance to the Project by the Agency:

(1) Has been an important consideration in the Company's decision to acquire, reconstruct, renovate and equip the Project Facility in the City of Syracuse;

(2) Will not result in the removal of an industrial or manufacturing plant or commercial activity of any Project Facility occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of any user, occupant, or proposed user or occupant of the Project Facility located within the State, except as permitted by the Act; and

(3) Will help eliminate blight and advance job opportunities, prosperity, and standard of living and help prevent economic deterioration.

(g) So long as the Agency holds a leasehold interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a "project" (as such quoted term is defined in the Act).

(h) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction, equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(i) The Project will not have a significant effect on the environment" (within the meaning of such term as used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the SEQR Resolution under SEQRA applicable to the acquisition, construction and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

(j) The Company understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services from: (i)

business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. The Company further understands and acknowledges that consideration will be given by the Agency to the Company's efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by the Company.

(k) The Agency's undertaking of the Project and the provision of Financial Assistance for the Project will not have a significant impact on the environment within the meaning of SEQRA.

(l) The acquisition, construction, renovation and equipping of the Project Facility will promote employment opportunities and help prevent economic deterioration in the City by the creation and/or preservation of both full and part-time jobs.

(m) The Company has, or will have as of the first date of construction and equipping, all then necessary permits, licenses, and governmental approvals and consents (collectively, "**Approvals**") for the construction, renovation and equipping of the Project Facility and has or will have such Approvals timely for each phase of, and throughout the construction, renovation and equipping of the Project Facility.

(n) The Company will not sublease the whole or any portion of the Project Facility for an unlawful purpose.

(o) No part of the Project Facility will be located outside of the City.

(p) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to this Agency Lease, the Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.2.

(q) The Company agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project is located. The Company further agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, it will first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the Department of Labor for such new employment opportunities.

(r) The Company shall provide to the Agency any and all documentation or information requested by the Agency so that the Agency can comply with all of its reporting requirements under the Act.

(s) As a condition precedent to receiving or benefiting from any State sales and use tax exemption benefits, the Company acknowledges and agrees to all terms and conditions of Section 875(3) of the Act. Section 875(3) of the Act is herein incorporated by reference. As part of such conditions precedent:

(1) The Company shall not take any State or local Sales and Use Tax exemptions to which it is not entitled, which are in excess of the amount authorized by the Agency in reliance on the Company's Application or which are for property or services not authorized.

(2) The Company shall comply with all material terms and conditions to use property or services in the manner required by the Agency Documents.

(3) The Company shall cooperate with the Agency in the Agency's efforts to recover, recapture, receive or otherwise obtain from the Company any Recapture Amount (as defined in Section 8.12(g) hereof), and shall, upon the Agency's request, immediately pay to the Agency any Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise, as provided in Section 8.12(g) hereof. The Company acknowledges and agrees that the failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties.

(t) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed **\$316,800**. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount.

(u) The Company hereby acknowledges that the exemption from mortgage recording tax authorized by the Agency as part of the Financial Assistance is limited by Section 874 of the Act.

(v) The Company hereby acknowledges, agrees and covenants to timely pay all costs on construction, equipping and completing the Project.

### **ARTICLE III CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY**

#### **3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.**

The Company has conveyed to the Agency, pursuant to the Company Lease, a leasehold interest in the Land and Facility, as more fully described in **Exhibit "A"** attached hereto, any improvements now or hereafter constructed and installed thereon, subject to

Permitted Encumbrances and all of its right, title and interest in the Equipment via a Bill of Sale, as more fully described in **Exhibit "B"** attached hereto. Under this Agency Lease, the Agency will convey, or will cause to be conveyed, to the Company, a subleasehold interest in the Project Facility subject to Permitted Encumbrances and exclusive of the Agency's Unassigned Rights.

### 3.2 USE OF PROJECT FACILITY.

Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by this Agency Lease, the Company Lease and other Company Documents, provided that such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act.

## ARTICLE IV RECONSTRUCTION, RENOVATION, CONSTRUCTION AND EQUIPPING OF THE PROJECT

### 4.1 RECONSTRUCTION, RENOVATION, CONSTRUCTION AND EQUIPPING OF THE PROJECT FACILITY.

(a) The Company shall promptly construct, equip and complete the Project Facility, all in accordance with the Plans and Specifications. The Company shall timely pay all contractors and vendors who performed or provided services and/or goods for or to the Project. Unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, the Company and its Additional Agents (as defined herein), shall utilize local labor, contractors and suppliers for the construction, renovation and equipping of the Project Facility. For purposes of this Agency Lease, and in particular this Section 4.1, the term "*local*" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. Failure to comply with the local labor requirements of this Section 4.1 (collectively, "*Local Labor Requirements*") may result in the revocation or recapture of all benefits provided/approved to the Project by the Agency. The Company further agrees to complete and supply the Agency, quarterly, starting the first quarter following the date hereof, the "Contract Status Report" the form of which is attached hereto at **Exhibit "D"**. Failure to comply with any portion of Article 4 may result in the loss of all benefits provided to or for the benefit of the Project in the Agency's sole discretion.

(b) The Agency hereby confirms the appointment of the Company as its true and lawful agent to perform the following in compliance with the terms, purposes, and intent of this Agency Lease, the Act and the other Company Documents, and the Company hereby accepts such appointment:

(1) To construct, renovate, equip and complete the Project Facility and to acquire the Equipment in accordance with the terms hereof;

(2) To make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any other Persons and, in general, to do all things which may be requisite or proper, all for the construction, renovation, equipping and completion of the

Project Facility with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the Agency shall have no liability for the payment of any sums due thereunder;

(3) To pay all fees, costs and expenses incurred in the construction, renovation, equipping and completion of the Project Facility from funds made available therefore from the funds of the Company; and

(4) To ask, demand, sue for, levy, recover, and receive all such sums of money, debts, dues, and other demands whatsoever which may be due, owing, and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with the construction, renovation, equipping and completion of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond, or other performance security.

(c) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1, provided, however, that the Agency shall have no liability for the payment of any sums due thereunder.

(d) The Company has given, or will give or cause to be given, all notices and have complied, or will comply or cause compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility), and the Company will defend, indemnify, and save the Agency and its officers, members, agents, servants, and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(e) The Company understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services relative to the Project from: (i) business enterprises located in the City; (ii) certified minority and/or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. Consideration will be given by the Agency to the Company's efforts to comply, and compliance with, this objective at any time an extension of benefits is requested, or further involvement by the Agency with the Project, is requested by the Company.

#### **4.2 COMPLETION OF PROJECT FACILITY.**

(a) The Company will proceed with due diligence to acquire, construct, renovate, equip and complete the Project Facility. Completion of the acquisition, construction, renovation and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company and approved by the Agency, stating:

(1) The date of such completion;



(2) That all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;

(3) That the Company has good and valid title to all Property constituting the Project Facility subject to the interest of the Agency therein and to this Agency Lease, the Company Lease and the Bill of Sale; and

(4) That the Project Facility is ready for occupancy, use and operation for its intended purposes.

(b) Notwithstanding the foregoing, such certificate may state that (1) it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being; (2) it is given only for the purposes of this Section 4.2; and (3) no Person other than the Agency may benefit therefrom.

(c) Such certificate shall be accompanied by (1) copy of a certificate of occupancy, if required, and any and all permissions, licenses, or consents required of Governmental Authorities for the occupancy, operation, and use of the Project Facility for its intended purposes; and (2) Lien releases from the Company's contractor and any subcontractors under a contract with a price in excess of \$100,000.

#### **4.3 COSTS OF COMPLETION PAID BY COMPANY.**

(a) The Company agrees to complete the Project and to timely pay in full all costs of the construction, renovation, equipping and completion of the Project Facility.

(b) No payment by the Company pursuant to this Section 4.3 shall entitle the Company to any diminution or abatement of any amounts payable by the Company under this Agency Lease.

#### **4.4 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.**

In the event of a default by any materialman or Additional Agent (as defined herein) under any contract made by them in connection with construction, renovation, equipping and completion of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company against the materialman or Additional Agent so in default and against each surety for the performance of such contract. The Company may prosecute or defend any action or proceeding or take any other action involving any such materialman or Additional Agent or surety which the Company deems reasonably necessary. The Company shall advise the Agency of any actions or proceedings taken hereunder. No such suit shall relieve the Company of any of its obligations under this Agency Lease and the other Company Documents.

#### **4.5 COOPERATION IN EXECUTION OF ADDITIONAL MORTGAGES AND MODIFICATIONS OF MORTGAGES.**

The Agency agrees, upon written request of an Authorized Representative of the Company and subject to the provisions of the Act, to use its commercially reasonable efforts to execute and deliver one or more Mortgages and such additional instruments and documents may be requested by the Company and approved by counsel to the Agency and as may be required in connection with the Company's financing or refinancing for the costs of construction, renovation and equipping of the Project Facility, provided that:

(a) No Event of Default under this Agency Lease, the Company Lease, the PILOT Agreement, the Project Agreement or the Mortgage shall have occurred and be continuing; and

(b) The execution and delivery of such documents by the Agency (i) is permitted by law in effect at the time; and (ii) will serve the public purposes of the Act; and

(c) The Company will be responsible for and shall pay, from the proceeds thereof or otherwise, the Agency's fee and the costs and expenses of the Agency incidental to such additional financing, refinancing or modification thereof, including without limitation the reasonable attorneys' fees of the Agency; and

(d) The documents to be signed by the Agency shall contain the provisions set forth in Sections 8.2 and 11.11 hereof, and shall not impose any duties or obligations upon the Agency except as may be acceptable to the Agency.

(e) Any and all Mortgages, shall, by its terms, be subordinate to the Agency's right to receive payments under the PILOT Agreement.

### **ARTICLE V AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS**

#### **5.1 AGREEMENT TO LEASE PROJECT FACILITY.**

In consideration of the Company's covenant herein to make rental payments, and the other covenants of the Company contained herein, including the covenant to make additional rent and other payments required hereby, the Agency hereby agrees to lease to the Company, and the Company hereby agrees to lease from the Agency, the Project Facility for and during the term provided herein and upon and subject to the terms and conditions herein set forth and subject to Permitted Encumbrances.

The Agency's acceptance of the leasehold interest in and to the Land and Facility pursuant to the Company Lease, and its acquisition of an interest in the Equipment pursuant to the Bill of Sale, and the holding of said interests were effected and performed solely at the request of the Company pursuant to the requirements of the Act. The Agency hereby transfers and conveys all of its beneficial and equitable interests, if any, in the Project Facility to the

Company, except for its Unassigned Rights. As a result, the parties hereby acknowledge and agree that subject to the terms and conditions of this Agency Lease, the Company has all of the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), and will have all the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), such that the Company, and not the Agency, shall have an:

(i) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Project Facility is destroyed or damaged;

(ii) unconditional obligation to keep the Project Facility in good condition and repair;

(iii) unconditional and exclusive right to the possession of the Project Facility, and shall have sole control of and responsibility for the Project Facility;

(iv) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Project Facility as may be required by the Company, the Agency and the Mortgagee with respect to the Project;

(v) unconditional obligation to pay all taxes levied on, or payments in lieu thereof, and assessments made with respect to, the Project Facility;

(vi) subject to the Unassigned Rights, unconditional and exclusive right to receive rental and any other income and other benefits of the Project Facility and from the operation of the Project;

(vii) unconditional obligation to pay for all of the capital investment in the Project Facility;

(viii) unconditional obligation to bear all expenses and burdens of the Project Facility and to pay for all maintenance and operating costs in connection with the Project Facility; and

(ix) unconditional and exclusive right to include all income earned from the operation of the Project Facility and claim all deductions and credits generated with respect to the Project Facility on its annual federal, state and local tax returns.

## **5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL.**

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until the earlier of: (1) **June 30, 2034**; or (2) the early termination of this Agency Lease as provided herein.

(b) The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations

of the Agency Lease, the Company Lease, preparing a bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project.

(c) The Company shall have the option, at any time during the term of this Agency Lease, to terminate this Agency Lease. In the event that the Company shall exercise its option to terminate this Agency Lease pursuant to this Section 5.2(c), the Company shall file with the Agency a certificate stating the Company's intention to do so pursuant to this Section 5.2(c) and to comply with the requirements set forth in Section 5.2(d) hereof.

(d) As a condition to the effectiveness of the Company's exercise of its right to early termination, the following payments shall be made:

(1) **To the Agency:** an amount certified by the Agency as sufficient to pay all unpaid fees and expenses of the Agency incurred under this Agency Lease, the Company Lease and the PILOT Agreement (including, but not limited to those in connection with the early termination of this Agency Lease); and

(2) **To the Appropriate Person:** an amount sufficient to pay all other fees, expenses or charges, if any, then due and payable under this Agency Lease and the other Agency Documents.

(e) The certificate required to be filed pursuant to Section 5.2(c), setting forth the provision thereof permitting early termination of this Agency Lease shall also specify the date upon which the payments pursuant to subdivision (d) of this Section 5.2 shall be made, which date shall not be less than thirty (30) nor more than sixty (60) days from the date such certificate is filed with the Agency.

(f) Contemporaneously with the termination of this Agency Lease in accordance with Sections 5.1 or 5.2 hereof, the Agency shall transfer, and the Company shall accept, all of the Agency's right, title and interest in the Project Facility, including the Equipment, for a purchase price of One Dollar (\$1.00) plus the payment of all other sums due hereunder and all legal fees and costs associated therewith. Contemporaneously with the termination of this Agency Lease, the Company Lease and the PILOT Agreement shall terminate.

(g) The Agency shall, upon payment by the Company of the amounts pursuant hereto and to Sections 5.2(d) above and Section 5.3, deliver to the Company all documents furnished to the Agency by the Company, or prepared by the Agency at the sole expense of the Company, and reasonably necessary to evidence termination of the Company Lease and the Agency Lease, including, but not limited to, lease terminations and a bill of sale from the Agency with respect to its interest in the Equipment, without representation or warranty, subject to the following: (1) any Liens to which such Project Facility was subject when conveyed to the Agency, (2) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (3) any Permitted

Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agency Lease.

(h) The obligation of the Agency under this Section 5.2 to convey the Project Facility to the Company will be subject to: (i) there being no Event of Default existing hereunder or under any payment in lieu of tax agreement now or hereafter entered into with respect to all or any portion of the Project Facility or under any other Company Documents, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default; and (ii) the Company's payment of all expenses, fees and taxes, if any, applicable to or arising from such transfer.

### **5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.**

(a) The Company shall pay basic rental payments for the Project Facility consisting of: (i) to the Agency in an amount sufficient to pay the sums due under the PILOT Agreement at the times and in the manner provides for therein, and an amount sufficient to pay any and all other amounts due hereunder; and (ii) to the Mortgagee, an amount equal to the debt service and amounts becoming due and payable under the Mortgage and the indebtedness secured thereby on the due date thereof.

(b) The Company shall pay to the Agency, as additional rent, within ten (10) days after the receipt of a demand therefor from the Agency, any annual administrative fees of the Agency, the sum of the reasonable fees, costs and expenses of the Agency and the officers, members, agents, and employees thereof incurred by the reason of the Agency's lease or sublease of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Agency Lease, the Company Lease or any of the other Agency Documents and any other fee or expense of the Agency with respect to the Project Facility, or any of the other Agency Documents, the payment of which is not otherwise provided for under this Agency Lease, including, without limitation, reasonable fees and disbursements of Agency counsel, including fees and expenses incurred in connection with the Agency's enforcement of any rights hereunder or incurred after the occurrence and during the continuance of an Event of Default, in connection with any waiver, consent, modification or amendment to this Agency Lease or any other Agency Document that may be requested by the Company, or, in connection with any action by the Agency at the request of or on behalf of the Company hereunder or under any other Agency Document. Any additional rent not received within ten (10) business days after demand shall accrue interest after the expiration of such ten days at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

(c) The administrative fee payable by the Company to the Agency in conjunction with this Project and the Agency's granting of Financial Assistance and all outstanding counsel fees and costs shall be paid at closing.

(d) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event that the Company shall fail to make or cause to be made any of the payments required under this Agency Lease, the item

or installment not so paid shall continue as an obligation of the Company until such item or installment is paid in full.

#### **5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.**

(a) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein are general obligations of the Company and are absolute and unconditional irrespective of any defense or any rights of set-off, recoupment, or counterclaim it may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue, or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the construction, renovation and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

(b) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Agency Lease or the Company Lease, and in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance (subject to the provisions of Section 11.11).

### **ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE**

#### **6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.**

The Company shall:

(a) Keep the Project Facility in good condition and repair and preserve the same against waste, loss and damage, ordinary wear and tear excepted;

(b) Make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural, or non-structural, foreseen or unforeseen) which is damaged, destroyed, or condemned; and

(c) Operate the Project Facility in a sound and economic manner in general accordance with the Project pro-forma statements Company previously provided to the Agency.

## **6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.**

(a) The Company shall pay as the same respectively become due:

(1) Any and all taxes and governmental charges of any kind, whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility;

(2) All utility and other charges, including “service charges,” incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the Project Facility, the non-payment of which would create, or entitle the obligee to impose, a Lien on the Project Facility;

(3) All assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements; and

(4) Any and all payments of taxes, if applicable, or all payments in lieu of taxes, if any, required to be made to the Agency under the terms of the PILOT agreement or any other agreement with respect thereto.

(b) Subject to the terms of the PILOT Agreement, the Company may in good faith actively contest any such taxes, assessments, and other charges, provided that (1) the Company shall have first notified the Agency of such contest; (2) no Event of Default under this Agency Lease or any of the other Company Documents shall have occurred and be continuing; and (3) the Company shall have set aside adequate reserves for any such taxes, assessments and other charges. If the Company demonstrates to the reasonable satisfaction of the Agency and certifies to the Agency by delivery of a written certificate, that the non-payment of any such items will not endanger any part of the Project Facility or subject the Project Facility, or any part thereof, to loss or forfeiture, the Company may permit the taxes, assessments, and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. Otherwise, such taxes, assessments, or charges shall be paid promptly by the Company or secured by the Company’s posting a bond in form and substance satisfactory to the Agency.

## **6.3 INSURANCE REQUIRED.**

During the term of this Agency Lease, the Company shall maintain or cause to be maintained insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type and as required of the Agency, paying (as the same becomes due and payable) all premiums with respect thereto, including:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the Company is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the Company who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

#### **6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.**

All insurance required by Section 6.3 shall be with insurance companies of recognized financial standing selected by the Company and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the Company are engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the Closing Date, the Company shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the Company covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the Company shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the Closing Date.

The Company shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraph, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the term of this Agency Lease.

All premiums with respect to the insurance required by Section 6.3 shall be paid by the Company, provided, however, that, if the premiums are not timely paid, the Agency may



pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

#### **6.5 APPLICATION OF NET PROCEEDS OF INSURANCE.**

The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 shall be applied as follows:

(a) The Net Proceeds of the insurance required by subsection 6.3(a) shall be paid and applied as provided in Section 7.1 hereof; and

(b) The Net Proceeds of the insurance required by subsections 6.3(b) and 6.3(c) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

#### **6.6 PAYMENTS IN LIEU OF REAL ESTATE TAXES.**

The Company and the Agency have entered into a PILOT Agreement with respect to payments in lieu of real estate taxes for the Project Facility.

### **ARTICLE VII DAMAGE, DESTRUCTION, AND CONDEMNATION**

#### **7.1 DAMAGE OR DESTRUCTION.**

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and the Project Facility shall be damaged or destroyed, in whole or in part, then insurance proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such insurance proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and the Project Facility shall be damaged or destroyed, in whole or in part:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is replaced, repaired, rebuilt, or restored); and

(2) The Company shall promptly give notice thereof to the Agency;  
and

(3) Except as otherwise provided in subsections 7.1(b) and 7.1(c) hereof, upon receipt of the insurance proceeds, the Company shall promptly replace, repair, rebuild, or restore the Project Facility to substantially the same condition as existed prior to such damage or destruction, with such changes, alterations, and modifications as may be desired by

the Company and consented to in writing by the Agency, provided that such changes, alterations, or modifications do not change the nature of the Project Facility, such that it does not constitute a "project" (as such quoted term is defined in the Act); and in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility, then notwithstanding anything to the contrary contained in subsection 7.1(a), the Company shall not be obligated to replace, repair, rebuild, or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection 7.1(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to replace, repair, rebuild, or restore the Project Facility. In such event, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) any other sums payable to the Agency pursuant to this Agency Lease and the other Agency and Company Documents, shall be applied to the repayment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of all such insurance settlements so that any and all amounts payable under this Agency Lease, the Company Lease, the PILOT Agreement and the other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the Mortgage, the PILOT Agreement and the other Agency Documents are paid in full, all such Net Proceeds, or the balance thereof, shall be paid to the Company for its purposes.

(c) The Company and the Mortgagee may adjust all claims under any policies of insurance required by subsections 6.3(a) and 6.3(c) hereof with the prior written consent of the Agency, which consent shall not be unreasonably withheld.

## **7.2 CONDEMNATION.**

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and title to, or the use of, all, substantially all or less than substantially all of the Project Facility shall be taken by Condemnation, then Condemnation proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such Condemnation proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is restored); and

(2) The Company shall promptly give notice thereof to the Agency;  
and

(3) Except as otherwise provided in subsections 7.2(b) and 7.2(c) hereof, upon receipt of the Condemnation proceeds, the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) to substantially the condition and value as an operating entity as existed prior to such Condemnation; and the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation, then notwithstanding anything to the contrary contained in subsection 7.2(a), the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection 7.2(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. In such event, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to pay the Agency pursuant to this Agency Lease, the Company Lease, the PILOT Agreement and the other Agency Documents, shall be applied to payment of all amounts due to the Agency under this Agency Lease, the Company Lease and other Agency Documents. If the Net Proceeds of any Condemnation award are less than the amount necessary to pay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of such Condemnation award so that any and all amounts payable under this Agency Lease, the Company Lease and other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the PILOT Agreement, the Mortgage and the other Agency Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(c) The Company and the Mortgagee with the prior written consent of the Agency (which consent shall not be unreasonably withheld), shall have sole control of any Condemnation proceeding with respect to the Project Facility, or any part thereof, and may negotiate the settlement of any such proceeding.

### **7.3 ADDITIONS TO PROJECT FACILITY.**

All replacements, repairs, rebuilding, or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Project Facility as if the same were specifically described herein.

**ARTICLE VIII  
SPECIAL COVENANTS**

**8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS."**

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY, OR FITNESS OF THE PROJECT FACILITY, OR ANY PART THEREOF, OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

**8.2 HOLD HARMLESS PROVISIONS.**

(a) The Company hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend, and hold the Agency and its members, officers, agents and employees harmless from and against any and all claims arising as a result of the Agency's undertaking the Project, including, but not limited to:

(1) Liability for loss or damage to Project Facility or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under this Agency Lease, the Company Lease, the Mortgage or any other documents executed by the Agency at the direction of the Company in conjunction with the Project Facility;

(3) All claims arising from the exercise by the Company, and or its Additional Agents (as defined herein) of the authority conferred upon it and performance of the obligations assumed under Section 4.1 hereof;

(4) Any and all claims arising from the non-disclosure of information, if any, requested by the Company in accordance with Section 11.14 hereof;

(5) All causes of action and attorneys' fees and other expenses incurred in connection with any 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 intentional wrongdoing of the Agency or any of its members, officers, agents or employees.

To the fullest extent permitted by law, the foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any materialman or Additional Agent of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3, its liabilities assumed pursuant to this Section 8.2.

(d) Notwithstanding any other provisions of this Agency Lease, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Agency Lease and the Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees relating thereto.

(e) For purposes of this Section 8.2 and Section 11.11 hereof, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

### **8.3 RIGHT OF ACCESS TO PROJECT FACILITY.**

During the term of this Agency Lease, the Company agrees that the Agency and its duly authorized agents shall have the right to enter upon and to examine and inspect the Project Facility upon reasonable notice to the Company and with the least disturbance of Project Facility tenants as reasonably possible.

### **8.4 MAINTENANCE OF EXISTENCE.**

During the term of this Agency Lease, the Company will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

## **8.5 AGREEMENT TO PROVIDE INFORMATION.**

During the term of this Agency Lease, and no less frequently than annually, the Company agrees, whenever reasonably requested by the Agency or the Agency's auditor, to provide and certify, or cause to be certified, such information concerning the Project and/or the Company, its finances, and for itself and each of its Additional Agents, information regarding job creation<sup>1</sup>, Local Labor Requirements, exemptions from State and local sales and use tax, real property and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to those reports, in substantially the form as set forth in **Exhibit "E"** attached hereto, and such other information necessary as to enable the Agency to monitor and/or make any reports required by law or governmental regulation, including but not limited to §875 of the Act. Notwithstanding anything in this Section 8.5 to the contrary, the Company shall provide the Contract Status Report in accordance with Section 4.1 hereof.

## **8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.**

During the term of this Agency Lease, the Company agrees to maintain proper accounts, records, and books, in which full and correct entries shall be made in accordance with generally accepted accounting principles, of all business and affairs of the Company.

## **8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC.**

(a) The Company agrees that it will, during any period in which the amounts due under this Agency Lease remain unpaid, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter affect the Company's obligations hereunder or be applicable to the Project Facility, or any part thereof, or to any use, manner of use, or condition of the Project Facility, or any part thereof, the applicability of the same to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility.

(b) Notwithstanding the provisions of subsection 8.7(a), the Company may, in good faith, actively contest the validity or the applicability of any requirement of the nature referred to in said subsection 8.7(a), provided that the Company shall have first notified the Agency of such contest, no Event of Default shall be continuing under this Agency Lease, or any of the other Company Documents; and such contest and failure to comply with such requirement shall not subject the Project Facility to loss or forfeiture. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency or its members, officers, agents, or employees may be

---

<sup>1</sup> To the extent the Project includes commercial space and/or tenants for which the Company calculated job creation as part of its projections in its Application, the Company is obligated, through its lease or other rental agreement with those commercial tenants, to require that such tenants report to the Company, in accordance with the terms of Section 8.5 hereof, the number of full and part time jobs created and maintained by each such tenant for inclusion in the Company's reporting to or at the request of the Agency.

liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

#### **8.8 DISCHARGE OF LIENS AND ENCUMBRANCES.**

During the term of this Agency Lease, the Company hereby covenants that, except for Permitted Encumbrances, the Company agrees not to create, or suffer to be created, any Lien on the Project Facility, or any part thereof without the prior written consent of the Agency. The Company shall promptly notify the Agency of any Permitted Encumbrances created, or suffered to be created, on the Project Facility.

#### **8.9 PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.**

Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, upon ten (10) days' prior written notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company, or the Agency and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Agency under the authority hereof, together with the interest thereon at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is greater.

#### **8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS.**

The parties agree that as between them, the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other State and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

#### **8.11 EMPLOYMENT OPPORTUNITIES.**

The Company shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

#### **8.12 SALES AND USE TAX EXEMPTION.**

(a) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain State and local sales use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of State or local sales or use taxes. Any exemption from the payment of State or local sales or use taxes resulting from the involvement of the Agency with the Project shall be subject to Section 875 of the Act and shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the

Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of State sales or use tax. It is the intention of the parties hereto that the Company will receive a State and local sales and use tax exemption with respect to the Project, said sales tax exemption to be evidenced by a letter to be issued by the Agency on the date of the execution of this Agency Lease. The Company acknowledges that as an agent of the Agency, it must complete and provide to each vendor Form ST-123 for purchases. The failure to furnish a completed Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate) with each purchase will result in loss of the exemption for that purchase.

(b) The Company may use and appoint a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***") in furtherance of the completion of the Project. However, for each Additional Agent, the Company must first: (i) cause the each such appointed Additional Agent to execute and deliver a sub-agent agreement, in the form attached hereto at **Exhibit "F"**, and provide a fully executed copy to the Agency; and (ii) submit a completed Form ST-60 to the Agency for execution and filing with the New York State Department of Taxation and Finance.

(c) The Company acknowledges and agrees that an Additional Agent must be appointed as an agent of the Agency in order to avail itself of the Agency's sales and use tax exemption for purchases or rentals of equipment, tools and supplies with respect to the Project Facility.

(d) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause each Additional Agent or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, and provide the Agency with a copy of same, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "***Annual Sales Tax Report***"), a statement of the value of all sales and use tax exemptions claimed by the Company and all other Additional Agents under the authority granted to the Company pursuant to Section 4.1(b) of this Agency Lease. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Therefore, if the Company shall fail to comply with the requirements of this subsection (d), irrespective of any notice and cure period afforded, the Company and each Additional Agent shall immediately cease to be the agent of the Agency in connection with the Project. The Company is responsible for obtaining from the New York State Department of Taxation and Finance the current version of such Annual Sales Tax Report.

(e) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act for itself and any Additional Agent.

(f) Pursuant to Section 874(9) of the Act, the Agency agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of



Taxation and Finance (the “*Thirty-Day Sales Tax Report*”), a statement identifying the Company, or 30 days from the appointment of any Additional Agent appointed in accordance with the terms herein, as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the estimated value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(g) Pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the “*Recapture Amount*”) consisting of State and local sales and use tax exemption in accordance with the Agency’s Recapture Policy, a copy of which is attached hereto at **Exhibit “G”**, and the Project Agreement.

### **8.13. IDENTIFICATION OF THE EQUIPMENT.**

All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

## **ARTICLE IX ASSIGNMENTS; TRANSFERS; MERGER OF AGENCY**

### **9.1 ASSIGNMENT OF AGENCY LEASE.**

This Agency Lease may not be assigned by the Company, in whole or in part, nor all or any part of the Project Facility subleased, nor any part of the Project Facility sold, leased, transferred, conveyed or otherwise disposed of without the prior written consent of the Agency, which consent shall be in the Agency’s sole and absolute discretion; provided however, that the Company may enter into leases for individual rental units that are part of the Project Facility without the consent of the Agency. Any assignment or sublease of this Agency Lease shall not effect a release of the Company from its obligations hereunder or under the PILOT Agreement.

### **9.2 TRANSFERS OF INTERESTS.**

Company shall not assign or otherwise transfer or allow an assignment or transfer, of a controlling interest in the Company, whether by operation of law or otherwise (including, without limitation, by way of a merger, consolidation or a change of control whereby the current existing equity holders of the Company, as of the date of the application to the Agency, would own, in the aggregate, less than a majority of the total combined voting power of all classes of equity interest of the Company or any surviving entity), without the prior written consent of Agency, which consent shall be in the Agency’s sole and absolute discretion.

### **9.3 MERGER OF AGENCY.**

(a) Nothing contained in this Agency Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agency Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) Promptly following the effective date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

## **ARTICLE X EVENTS OF DEFAULT AND REMEDIES**

### **10.1 EVENTS OF DEFAULT DEFINED.**

The following shall be "Events of Default" under this Agency Lease, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agency Lease, any one or more of the following events:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to subsection 5.3 or 8.12(g); or

(b) Failure by the Company to maintain the insurance required by Section 6.3;  
or

(c) A default in the performance or the observance of any other of the covenants, conditions, or agreements on the part of the Company in this Agency Lease and the continuance thereof for a period of thirty (30) days after written notice is given by the Agency or, if such covenant, condition, or agreement is capable of cure but cannot reasonably be cured within such thirty-day period, the failure of the Company to commence to cure within such thirty-day period and to prosecute the same with due diligence and cure the same within an additional thirty (30) days; or

(d) A transfer in contravention of Article 9 hereof;

(e) The occurrence of an "Event of Default" under the Mortgage, the PILOT Agreement, the Company Lease, the Project Agreement or any of the other Company Documents which is not timely cured as provided therein; or

(f) The Company shall generally not pay its debts as such debts become due or is unable to pay its debts as they become due.

(g) The Company shall conceal, remove, or permit to be concealed or removed any part of its Property with intent to hinder, delay, or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance, or similar law, or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof; or

(h) By order of a court of competent jurisdiction, a trustee, receiver, or liquidator of the Project Facility, or any part thereof, or of the Company shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(i) The filing by the Company of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute; the failure by the Company within sixty (60) days to lift any execution, garnishment, or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; the commencement of a case under Title 11 of the United States Code against the Company as the debtor, or commencement under any other federal or state bankruptcy statute of a case, action, or proceeding against the Company, and continuation of such case, action, or proceeding without dismissal for a period of sixty (60) days; the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or in connection with any insolvency or bankruptcy case, action, or proceeding, appointment by final order, judgment, or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company unless such order, judgment, or decree is vacated, dismissed, or dissolved within sixty (60) days of its issuance.

(j) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance.

## **10.2 REMEDIES ON DEFAULT.**

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- 1) Terminate this Agency Lease;
- 2) Terminate the Company Lease;
- 3) Terminate the PILOT Agreement;

4) Terminate the Company's appointment as agent of the Agency; or

5) Take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder or under the Company Lease, the Project Agreement, or the PILOT Agreement, and/or to enforce the Company's obligations and duties under the Company Documents and the Agency's rights under the Agency Documents, including but not limited to, specific performance; or

6) Seek to recover the recapture amount set forth in Article 8 hereof as well as any and all other components of Financial Assistance provided to the Company in accordance with the Agency's Recapture Policy.

(b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligations to make all payments required by Sections 5.3(b) and 8.2 hereof.

### **10.3 REMEDIES CUMULATIVE.**

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease, the Company Lease and the other Company Documents or the PILOT Agreement now or hereafter existing at law or in equity to collect any amounts then due, or thereafter to become due, hereunder and thereunder and to enforce the Agency's right to terminate this Agency Lease, the PILOT Agreement and the Company Lease. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article 10, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agency Lease.

### **10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.**

In the event the Company should Default under any of the provisions of this Agency Lease, or a dispute arises hereunder, and the Agency should employ attorneys or incur other expenses to preserve or enforce its rights hereunder or for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees and costs of such attorneys and such other expenses so incurred.

### **10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.**

In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE XI  
MISCELLANEOUS**

**11.1 NOTICES.**

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to:

City of Syracuse Industrial Development Agency  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chairman

With a copy to:

Corporation Counsel  
City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202

(b) If to the Company, to:

900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210  
Attn: Christopher Geiger, Managing Member

With a copy to:

Zenzel Law Offices  
6320 Fly Road, Suite 207  
East Syracuse, NY 13057  
Carol A. Zenzel, Esq.

(c) If to the Lender, to:

Five Star Bank  
55 North Main Street  
Warsaw, New York 14569  
Attn: Commercial Loan Servicing

With a copy to:

Phillips Lytle LLP  
1400 First Federal Plaza  
Rochester, New York 14614  
Attn: Raymond Ruff, Esq.

The Agency, the Company and the Lender, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent. Notwithstanding anything herein to the contrary, the Agency's failure to provide notice hereunder to the Lender shall not constitute an event of default.

#### **11.2 BINDING EFFECT.**

This Agency Lease shall inure to the benefit of and shall be binding upon the Agency and the Company and, as permitted by this Agency Lease, upon their respective heirs, successors and assigns.

#### **11.3 SEVERABILITY.**

If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall for any reason be held, or shall in fact be, inoperative, unenforceable, or contrary to law in any particular circumstance; such circumstance shall not render the provision in question inoperative or unenforceable in any other circumstance. Further, if any one or more of the sentences, clauses, paragraphs, or sections herein is contrary to law, then such covenant(s) or agreement(s) shall be deemed severable of remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agency Lease.

#### **11.4 AMENDMENTS, CHANGES AND MODIFICATIONS.**

This Agency Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto.

#### **11.5 EXECUTION OF COUNTERPARTS.**

This Agency Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**11.6 APPLICABLE LAW.**

This Agency Lease shall be governed exclusively by the applicable laws of the State of New York.

**11.7 WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGENCY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGENCY LEASE.

**11.8 SUBORDINATION.**

This Agency Lease shall be subject and subordinate to the Company Lease and the Mortgage and all Permitted Encumbrances in all respects.

**11.9 SURVIVAL OF OBLIGATIONS.**

(a) The obligations of the Company to repay, defend and/or provide the indemnity required by Section 8.2 and 8.12 hereof shall survive the termination of this Agency Lease and all such payments and obligations after such termination shall be made upon demand of the party to whom such payment and/or obligation is due.

(b) The obligations of the Company to repay, defend and/or provide the indemnity required by Sections 8.2 and 8.12 shall survive the termination of this Agency Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto.

(c) The obligations of the Company required by Article 4 and Sections 2.2 8.4 and 11.14 hereof shall similarly survive the termination of this Agency Lease.

**11.10 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.**

The Table of Contents and the Section headings in this Agency Lease have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agency Lease.

**11.11 NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of

the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

(d) For purposes of this Section 11.11, neither the Company nor any Additional Agent shall be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 11.11 shall not alter the full force and effect of any Event of Default under this Agency Lease.

#### **11.12 OBLIGATION TO SELL AND PURCHASE THE EQUIPMENT.**

(a) Contemporaneously with the termination of this Agency Lease in accordance with Section 5.2 hereof, the Agency shall sell and the Company shall purchase all the Agency's right,



title and interest in and to all of the Equipment for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums due and payable to the Agency or any other Person pursuant to this Agency Lease and the other Company Documents. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing and delivering the bill of sale together with any other documents therewith, including lease terminations in accordance with Section 5.2 hereof, and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Equipment.

(b) The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of a bill of sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfer of title.

(c) The Company agrees to prepare the bill of sale to Company and all schedules thereto, together with all necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that title to the Equipment is to be conveyed to the Company.

#### **11.13 ENTIRE AGREEMENT.**

This Agency Lease and the Company Lease contain the entire agreement between the parties and all prior negotiations and agreements are merged therein.

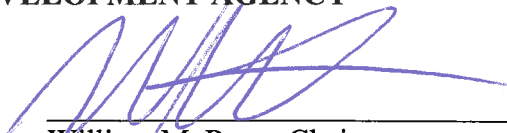
#### **11.14 DISCLOSURE.**

**Section 875(7) of the New York General Municipal Law ("GML") requires that the Agency post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company's competitive position, the Company must identify such elements in writing, supply same to the Agency on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.**


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Agency and the Company have caused this Agency Lease to be executed in their respective names by their duly authorized representatives as of the day and year first written above.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan, Chairman

**900 EAST FAYETTE GROUP, LLC**

By:   
\_\_\_\_\_  
Christopher Geiger, Managing Member

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

On the 2<sup>nd</sup> day of November in the year 2017 before me, the undersigned, personally appeared **William M. Ryan**, 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.

*Lori L. McRobbie*

Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

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

On the 2<sup>nd</sup> day of November in the year 2017 before me, the undersigned, personally appeared **Christopher Geiger**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lori L. McRobbie*

Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

## EXHIBIT "A"

### REAL PROPERTY DESCRIPTION

#### **(A) 922-24 East Fayette Street**

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, described as follows: Beginning in the north line of Block Number two hundred forty (240) of the City of Syracuse, according to a map of said City made by J.M. Trowbridge, on the south line of East Fayette Street, ninety feet (90) west of the northeast corner of said block; thence west along the north line of said block forty (40) feet; thence south parallel to the east line of said block one hundred (100) feet; thence east parallel to East Fayette Street forty (40) feet, to a point ninety (90) feet from the east line of said block; thence north parallel with the east line of said block to the place of beginning.

#### **(B) 900-16 East Fayette Street**

All that tract or parcel of land situate in the City of Syracuse, New York, known and distinguished on a map made by J.M. Trowbridge as part of Lot No. 17 in Block No. 240 described as follows: Beginning at a point in the south line of E. Fayette Street 77.01 feet east of the northwest corner of said block which is 5 feet east of the east wall of the Sylvester Flats; thence west on the south line of E. Fayette Street to the northwest corner of said block; thence south on the west line of said block 66 feet; thence east on the south line of said Lot No. 17 76.86 feet; thence north 66 feet to the place of beginning.

Also all that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as the north half of Lot No. Twenty (20), Block No. Two Hundred Forty (240), according to a survey and map by Calvin Guiteau for Baldwin, Burt & Teall, subject to all unpaid taxes and monthly tenancies.

#### **(C) 918 E. Fayette Street**

All that tract or parcel of land, located in the City of Syracuse, County of Onondaga and State of New York commonly known as 918 E. Fayette Street, and being further described as being Lot Part 17 and 18, and 19, in Block 240, designated as Tax Map Book 1, Plate 116, Parcel 146, Property No. 1527009300; 48 X 66L2 x 34 feet, vacant lot also being described as:

All of that tract or parcel of land situate in the City of Syracuse, New York, being part of Block NO. 240 according to a map of said city made by J.M. Trowbridge, described as follows: Beginning in the south line of East Fayette Street 130 feet west of the northeast corner of said block; thence west along the north line of said block 48 feet to a point which is 77.01 feet east from the northwest corner of said block and is 5 feet east of the east wall of the Sylvester Flats; thence south 66 feet to a point in the south line of Lot No. 17 in said block which is 76.86 feet east of the west line of said block; thence

east about 48.16 feet to a point 130 feet west of the east line of said block; thence north parallel with the east line of said block 66 feet to the place of beginning; Also a strip of land about 2 feet in width extending southerly from the south line of the above described premises for a distance of 34 feet, the east line of which strip is an extension southerly of the east line of the above described parcel of land.

**(D) 305-07 Irving Avenue**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York. being north one-half of Lot No. 21 in Block 240 in said city, being 33 feet front on the east side of Irving Avenue, and 122.4 feet more or less deep.

Also all that tract or parcel of land situate in the City of Syracuse, in the county of Onondaga and State of New York, known and distinguished as the south half of Lot Number Twenty (20) of Block Number Two Hundred Forty (240) Syracuse, according to a survey and map made by Calvin Guiteau Baldwin, Burt & Teall of a certain larger tract; said lot lying on the east side of Irving Avenue fronting two (2) rods on said Avenue and Eight (8) rods deep, or thereabouts.

**Above Property Having been formally resubdivided into one lot that is now described as follows:**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York being part of Block Number 240 in said City being more particularly bounded and described as follows:

Beginning at the intersection of the southerly line of East Fayette Street with the east line of Irving Avenue;

Thence S 89° 30' 50" E, along the southerly line of East Fayette Street, a distance of 165.01 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 100.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the south line of East Fayette Street, a distance of 42.00 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 65.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the southerly line of East Fayette Street, a distance of 123.01 feet to a point in the easterly line of Irving Avenue;

Thence N 00° 29' 40" E, along the easterly line of Irving Avenue, a distance of 165.00 feet to the point and place of beginning.

## EXHIBIT "B"

### DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **900 EAST FAYETTE GROUP, LLC** (the "*Company*") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, refrigerators, rugs, furniture, fixtures, movable partitions, cleaning equipment, maintenance equipment, shelving, racks, flagpoles, signs, waste containers, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

## EXHIBIT “C”

### TABLE OF DEFINITIONS

The following terms shall have the meanings set forth below, unless the context or use clearly indicate another or different meaning and the singular form of such defined words and terms shall include the plural and vice versa:

**Act:** means the New York State Industrial Development Agency Act (N.Y. Gen. Municipal Law §§ 850 et seq.) as amended, together with Section 926 of the N.Y. General Municipal Law, as amended from time to time.

**Additional Agents:** means a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents appointed by the Company in furtherance of the completion of the Project in accordance with the terms of the Agency Lease.

**Agency:** means the City of Syracuse Industrial Development Agency and its successors and assigns.

**Agency Documents:** means the Project Agreement, the Agency Lease, the Company Lease, the Mortgage, the PILOT Agreement and any other documents executed by the Agency in connection with the Project or the Financial Assistance granted in connection therewith.

**Agency Lease:** means the Agency Lease Agreement dated as of November 1, 2017, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**Application:** means the application submitted by the Company to the Agency dated January 19, 2016, requesting the Agency undertake the Project, as same may be amended or supplemented from time to time.

**Authorized Representative:** means for the Agency, the Chairman or Vice Chairman of the Agency; for the Company, its Member or Managing Member or any officer designated in a certificate signed by an Authorized Representative of such Company and, for either the Agency or the Company, any additional persons designated to act on behalf of the Agency or the Company by written certificate furnished by the designating party containing the specimen signature of each designated person.

**Bill of Sale:** means that certain Bill of Sale from the Company to the Agency dated as of November 1, 2017 in connection with the Equipment.



**City:** means the City of Syracuse.

**Closing Date:** means November 7, 2017.

**Closing Memorandum:** means the closing memorandum of the Agency relating to the Project.

**Company:** means 900 East Fayette Group, LLC, a limited liability company organized and existing under the laws of the State of New York having an address at 1221 East Genesee Street, Suite 1, Syracuse, New York 13210, and its permitted successors and assigns.

**Company Documents:** means the Company Lease, the Agency Lease, the Project Agreement, the PILOT Agreement, the Mortgage, the Environmental Compliance and Indemnification Agreement, the Bill of Sale, the Company Certification and any other documents executed by the Company in connection with the Project or the Financial Assistance granted in connection therewith.

**Company Lease:** means the Company Lease Agreement dated as of November 1, 2017 from the Company to the Agency, pursuant to which the Company leased the Project Facility to the Agency, as the same may be amended or supplemented from time to time.

**Condemnation:** means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

**County:** means the County of Onondaga in the State of New York.

**Environmental Compliance and Indemnification Agreement:** means the Environmental Compliance and Indemnification Agreement dated as of November 1, 2017 by the Company to the Agency.

**Equipment:** means all materials, machinery, furnishings, fixtures and equipment installed or used at the Project Facility, as of the Closing Date and thereafter acquired for or installed in, or upon, the Project Facility, as more fully described in Exhibit "B" to the Agency Lease.

**Facility:** means the buildings and other improvements located or to be constructed on the Land.

**Financial Assistance:** has the meaning given to such term in Section 854(14) of the Act.

**Governmental Authority:** means any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

**Land:** means the improved real property located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-16 East Fayette Street), in the City of Syracuse, County of Onondaga, New York, more particularly described on **Exhibit "A"** attached to the Agency Lease.

**Lien:** means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including, but not limited to, a security interest arising from a mortgage, encumbrance, pledge, conditional sale, or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases, and other similar title exceptions and encumbrances, including, but not limited to mechanics, materialmen, warehousemen, and carriers liens and other similar encumbrances effecting real property. For purposes hereof, a Person shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other person for security purposes.

**Mortgage:** means one or more mortgages from the Agency and the Company to the Mortgagee and recorded in the Onondaga County Clerk's office subsequent to the filing and recording of the Memorandum of Agency Lease, securing construction and/or permanent financing for the Project Facility, executed in accordance with Section 4.5 of the Agency Lease, and securing the Note.

**Mortgagee:** means a lender, its successors and assigns, providing financing pursuant to the Note and Mortgage, relative to the costs of construction and/or equipping of the Project Facility.

**Net Proceeds:** means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

**Note:** means one or more notes given by the Company to the Mortgagee in connection with the Mortgage for construction or permanent financing relative to the Project Facility.

**Permitted Encumbrances:** means (A) utility, access and other easements and rights of way, and restrictions, encroachments and exceptions, that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) artisans', mechanics', materialmen's, warehousemen's, carriers', landlords', bankers', workmen's compensation, unemployment compensation and social security, and other similar Liens to the extent permitted by the Agency Lease, including the lien of the Mortgage, (C) Liens for taxes (1) to the extent permitted by the Agency Lease or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Agency Document or Company Document or the Mortgage, (E) Liens of judgments or awards in respect of which an appeal or proceeding for review shall be pending (or is pending within ten days after entry) and a stay of execution shall have been obtained (or is obtained within ten days after entry), or in connection with any

claim or proceeding, (F) Liens on any Property hereafter acquired by the Company or any subsidiary which liens are created contemporaneously with such acquisition to secure or provide for the payment or financing of any part of the purchase price thereof, (G) Liens consisting solely of restrictions under any applicable laws or any negative covenants in any applicable agreements (but only to the extent that such restrictions and covenants do not prohibit the execution, delivery and performance by the Company of the Agency Lease and the Mortgage, and (H) existing mortgages or encumbrances on the Project Facility as of the Closing Date or thereafter incurred with the consent of the Mortgagee and the Agency.

**Person:** means an individual, partnership, corporation, limited liability company, trust, or unincorporated organization, and any government or agency or political subdivision or branch thereof.

**PILOT Agreement :** means the Payment in Lieu of Taxes Agreement dated as of November 1, 2017 among the City, the Agency and the Company, as amended or supplemented from time to time.

**Plans and Specifications:** means the representations, plans and specifications, if any, and presented by the Company to the Agency in its application and any presentation relating to the construction, renovation and equipping of the Project Facility; and any plans and specifications approved by the Mortgagee.

**Project:** shall have the meaning ascribed thereto in the third *WHEREAS* clause of this Agency Lease.

**Project Agreement:** means the Project Agreement dated as of November 1, 2017 between the Company and the Agency setting forth rights and obligations of the parties with respect to the Financial Assistance.

**Project Facility:** means the Land, the Facility and the Equipment.

**Property:** means any interest in any kind of property or asset, whether real, personal, or mixed, or tangible or intangible.

**Resolution or Resolutions:** means the Agency's resolutions adopted on March 9, 2016 and October 18, 2016 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

**Sales and Use Tax or State Sales and Use Taxes:** means, when used with respect to State sales and use taxes, sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**SEQRA:** means the State Environmental Quality Review Act constituting Article 8 of the State Environmental Conservation Law and the regulations promulgated thereunder, as amended.

**State:** means the State of New York.

**Unassigned Rights:** means:

(i) the right of the Agency in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications, if any, required to be delivered to the Agency under the Agency Lease;

(ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under the Agency Lease;

(iii) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Project Facility shall always constitute a qualified “project” as defined in and as contemplated by the Act;

(iv) the right of the Agency to require and enforce any right of defense and any indemnity from any Person;

(v) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2(f), 2.2(h), 2.2(m), 2.2(q), 4.1, 4.5, 5.3, 5.4, 6.2, 6.3, 6.4, 8.2, 8.3, 8.5, 8.7, 8.9, 8.12, 10.2, 10.4, 11.9, 11.11 and 11.12 of the Agency Lease and Sections 2.6(g), 4.8 and 4.9 of the Company Lease; and

(vi) the right of the Agency in its own behalf to declare an Event of Default and enforce its remedies under Article X of the Agency Lease or with respect to any of the Agency’s Unassigned Rights.

# EXHIBIT "D"

## FORM OF CONTRACT STATUS REPORT

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

### Appendix II – Contract Status Report

To be submitted with a request for an extension of the Tax Exempt Certificate

It is a goal of SIDA to promote the use of local labor, contractors and suppliers for projects that receive agency support in the form of tax exemptions and/or bond financing. As part of its request to extend the valid date of the Agency's tax-exempt certificate for the \_\_\_\_\_ project, \_\_\_\_\_ (the Company) certifies that the following information regarding the construction and purchase activities undertaken for the project as of \_\_\_\_\_ (date) is true and correct.

Item	Bid Awarded to: (Name and Address)	Date and Value of Contract	Number of Jobs	
			Total	Local*
1. Site work/Demolition				
2. Foundation and footings				
3. Building				
4. Masonry				
5. Metals				
6. Wood/casework				
7. Thermal and moisture proof				
8. Doors, windows, glazing				
9. Finishes				
10. Electrical				
11. HVAC				
12. Plumbing				
13. Specialties				
14. Machinery and Equipment				
15. Furniture and Fixtures				
16. Utilities				
17. Paving				
18. Landscaping				
19. Other (identify)				

\*The number of local jobs means those jobs held by people who live in the five counties in Central New York. This number is subject to verification.

Signature: \_\_\_\_\_ Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

A - II

D-1

**EXHIBIT "E"**

**FORM OF ANNUAL REPORTING REQUIREMENTS**

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202

Date

COMPANY  
COMPANY ADDRESS

Dear \_\_\_\_\_:

Our auditors, \_\_\_\_\_, CPAs are conducting an audit of our financial statements for the year ended December 31, \_\_\_\_\_. In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project: \_\_\_\_\_

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ \_\_\_\_\_

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: \_\_\_\_\_, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:

Full Time Equivalent (FTE) Jobs Created and Retained – [year]

- # of Current FTE Employees as of [closing date]
- # of FTE Jobs Created during [year]
- # of FTE Jobs Retained during [year]
- # of FTE Construction Jobs Created during [year]

Comments:

---

---

---

---

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**EXHIBIT "F"**

**FORM OF SUB-AGENT AGREEMENT**

**THIS SUB-AGENT APPOINTMENT AGREEMENT** (the "**Agreement**"), dated as of \_\_\_\_\_, 20\_\_, is by and between **900 EAST FAYETTE GROUP, LLC** (the "**Company**"), with a mailing address of 1221 East Genesee Street, Suite 1, Syracuse, New York 13210 (the "**Company**"), and [NAME OF SUB-AGENT], a \_\_\_\_\_ of the State of New York, having an office for the transaction of business at \_\_\_\_\_ (the "**Sub-Agent**").

**WITNESSETH:**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") was created by Chapter 641 of the Laws of 1979 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 (the "**State**"); and

**WHEREAS**, by resolutions of its members adopted on March 9, 2016 and October 18, 2016 (the "**Resolutions**"), the Agency agreed to undertake a project for the benefit of the Company (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "**Existing Building**") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the "**Land**"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "**New Building**" and together with the Existing Building, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, under the Resolutions and in the Agency Lease Agreement by and between the Company and the Agency dated as of November 1, 2017 (the "**Agency Lease**") the Agency

appointed the Company as its agent for purposes of completing the Project and delegated to the Company the authority to appoint as agents of the Agency a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (the “*Additional Agents*” or “*Sub-Agents*”), for the purpose of completing the Project and benefitting from the State and local sales and use tax exemption that forms a portion of the Financial Assistance all in accordance with the terms of the Resolutions and the Agency Lease; and

**WHEREAS**, the Company and the Agency entered into a Project Agreement dated as of November 1, 2017 (the “*Project Agreement*”).

**NOW, THEREFORE**, the parties hereto hereby agree as follows:

1. The Company hereby appoints the Sub-Agent as an Additional Agent of the Agency for the purpose of assisting the Company and the Agency in the completion of the Project and benefitting from the State and local sales and use tax exemption relative to expenditures made in furtherance thereof. The Sub-Agent is only an agent of the Agency for the aforementioned purposes. The Sub-Agent hereby agrees to limit its activities as agent for the Agency under the authority of this Agreement to acts reasonably related to the completion of the Project Facility.

2. The Sub-Agent covenants, agrees and acknowledges:

a. to make all records and information regarding State and local sales and use tax exemption benefits claimed by it in connection with the Project available to the Company and the Agency upon request. The Sub-Agent agrees to comply with all procedures and policies established by the State Department of Taxation and Finance, or any similar entity, regarding the documenting or reporting of any State and local sales and use tax exemption benefits, including providing to the Company all information of the Sub-Agent necessary for the Company to complete the State Department of Taxation and Finance’s “Annual Report of Sales and Use Tax Exemptions” (Form ST-340).

b. to be bound by and comply with the terms and conditions of the Agency’s policies, the Resolutions and Section 875(3) of the Act (as if such section were fully set forth herein). Without limiting the scope of the foregoing, the Sub-Agent acknowledges and agrees to be bound by the Agency’s Suspension, Discontinuation and Recapture of Benefits Policy (the “*Recapture Policy*”), a copy of which is attached hereto as **Schedule “A”**.

c. that the failure of the Sub-Agent to promptly pay such Recapture Amount to the Agency will be grounds for the Agency, the State Commissioner of Taxation and Finance or such other entity, to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, or other applicable law, policy or contract, together with interest and penalties. In addition to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from State sales and use taxation, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

d. that all purchases made by the Sub-Agent in connection with the Project shall be made using Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate), a copy of which is attached hereto as **Exhibit "A"**). It shall be the responsibility of the Sub-Agent (and not the Company or the Agency) to complete Form ST-123. The failure to furnish a completed Form ST-123 with each purchase will result in loss of the exemption for that purchase.

e. that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following Agency project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: 900 East Fayette Group, LLC, 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, City of Syracuse, New York, Project No.: 31021713.

f. that for purposes of any exemption from the State sales and use taxation as part of any Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

g. that the Sub-Agent shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), for such claims or liabilities that arise as a result of the Sub-Agent acting as agent for the Agency pursuant to this Agreement or otherwise.

The Sub-Agent shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation only to Sub-Agent's work on or for the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control

of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

h. that as agent for the Agency or otherwise, the Sub-Agent will comply at the Sub-Agent's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Sub-Agent with respect to the Project Facility.

i. that Section 875(7) of the Act requires the Agency to post on its website all resolutions and agreements relating to the Sub-Agent's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement, and that Public Officers Law Article 6 declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Sub-Agent feels that there is information about the Sub-Agent in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Sub-Agent's competitive position, the Sub-Agent must identify such elements in writing, supply same to the Agency prior to or contemporaneously with the execution hereof and request that such elements be kept confidential in accordance with Public Officers Law Article 6. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the Act.

j. The Sub-Agent agrees Local contractors and suppliers will be used for the construction and equipping of the Project unless a waiver is first received from the Agency in writing. Such waiver shall be in the Agency's sole discretion. The Sub-Agent agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project. Local shall mean, for the purposes of this Agreement, Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties. Failure to comply with the local labor requirements of this Section (j) (collectively, the "**Local Labor Requirements**") may result in the revocation or recapture of benefits provided/approved to the Project by the Agency.

k. that the Sub-Agent must timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project on an annual basis.

l. that the failure to comply with the foregoing will result in the loss of the exemption.

m. that if the Sub-Agent is the general contractor for the Project, then at all times following the execution of this Agreement, and during the term thereof, the Sub-Agent shall maintain or cause to be maintained the following insurance policies with an insurance company licensed in the State that has an A.M. Best rating of not less than A-:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the general contractor.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the general contractor is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the general contractor who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

In addition, all insurance required by this section shall be with insurance companies of recognized financial standing selected by the general contractor and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the general contractor is engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the general contractor as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the effective date of this Agreement, the general contractor shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) Certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the general contractor covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the general contractor shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the execution of this Agreement.

The general contractor shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraphs, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required hereby for so long as the general contractor is performing, supervising or causing work to be done on or at the Project

Facility. The general contractor shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement in each such year.

n. that every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflicts-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Sub-Agent irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

3. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Company's State and local sales and use tax exemption with respect to the Project at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

4. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Agency Lease or of any other agreement entered into by the Company in connection with the Project.

5. The Company and the Sub-Agent agree that the Agency is a third-party beneficiary of this Agreement.

6. This Agreement shall be in effect until the earlier of: (i) the completion of the work on the Project by the Sub-Agent; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c), 2(f), 2(g), 2(j), and 2(l) shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Company and the Sub-Agent have caused this Agreement to be executed in their respective names by their respective duty authorized officers, all as of the day and year first above written.

**900 EAST FAYETTE GROUP, LLC**

By: \_\_\_\_\_  
Name:  
Title:

[NAME OF SUB-AGENT]

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "A"**  
**to Sub-Agent Agreement**

**FORM ST-123**





New York State Department of Taxation and Finance  
**New York State Sales and Use Tax**  
**IDA Agent or Project Operator**  
**Exempt Purchase Certificate**  
**Effective for projects beginning on or after June 1, 2014**

**ST-123**  
 (7/14)

This certificate is not valid unless all entries have been completed.  
**Note:** To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
Agent or project operator sales tax ID number (see instructions)					

Mark an **X** in one:  Single-purchase certificate  Blanket-purchase certificate (valid only for the project listed below)

**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (see CSO number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yyyy) _____ / ____ / ____	Enter the date that agent or project operator status ends (mm/dd/yyyy) _____ / ____ / ____	

**Exempt purchases**

(Mark an **X** in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and statement):	Date:
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1116(a)(15) and 1116(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- A. Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- B. Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- C. Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your Certificate of Authority if you are required to be registered as a vendor. See TSB-01-09(17)8, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith,
- in your possession within 90 days of the transaction, and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 64, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-8431



Text Telephone (TTY) Hotline:  
(for persons with hearing and  
speech disabilities using a TTY): (518) 485-6082

**SCHEDULE "A"**  
**to Sub-Agent Agreement**

**RECAPTURE POLICY**

---

**City of Syracuse**  
**Industrial Development Agency**  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

---

**RECAPTURE POLICY**

**I. STATEMENT OF PURPOSE**

The City of Syracuse Industrial Development Agency (the “Agency”) has adopted this Recapture Policy (the “*Recapture Policy*”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Recapture Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “*Enabling Act*”) and Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (said Chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”), and any other applicable law.

**II. MANDATORY RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX**

The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- a) To which the project was not entitled;
- b) In excess of the amounts authorized by the Agency;
- c) For property or services not authorized by the Agency; and/or
- d) For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include interest, at the legal rate, imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and

determine State sales and use taxes due from the company under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to determine if one of the foregoing events have occurred (a “*State Mandated Recapture Event*”) and to effectuate this recapture of New York State sales and use tax benefits the Agency shall:

- a) Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- b) Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- c) The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

### **III. SUSPENSION, DISCONTINUATION, RECAPTURE AND TERMINATION OF OTHER FORMS OF FINANCIAL ASSISTANCE**

With respect to all other financial assistance provided to a project (other than the State portion of sales and use tax exemptions) the Agency shall have the right to suspend, discontinue, recapture or terminate financial assistance to any company for a project to the extent that:

- a) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);
- b) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- c) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- d) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or

- e) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “*Material Violation*”).

#### IV. ANNUAL ASSESSMENT

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State Mandated Recapture Event, a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event (other than a State Mandated Recapture Event), the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the financial assistance provided to a project, and shall consider the following in making its determination:

- a) Whether the company has proceeded in good faith.
- b) Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the company.
- c) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- d) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create an adverse situation for the residents of the City of Syracuse.
- e) The assessment prepared in accordance with the Agency’s Annual Assessment Policy.
- f) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the “*Determination*”). The Determination shall provide terms, if any, by which a company may remedy any Noncompliance Event (other than a State Mandated Recapture Event) upon which the Determination was based. The

company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "*Project Agreement*") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture or terminate the financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting local tax exemptions shall be redistributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

#### **IV. RECAPTURE PERIOD**

Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) five years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

Adopted: June 21, 2016

**EXHIBIT "G"**  
**RECAPTURE POLICY**



---

**City of Syracuse**  
**Industrial Development Agency**  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

---

**RECAPTURE POLICY**

**I. STATEMENT OF PURPOSE**

The City of Syracuse Industrial Development Agency (the “Agency”) has adopted this Recapture Policy (the “*Recapture Policy*”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Recapture Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “*Enabling Act*”) and Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (said Chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”), and any other applicable law.

**II. MANDATORY RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX**

The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- e) To which the project was not entitled;
- f) In excess of the amounts authorized by the Agency;
- g) For property or services not authorized by the Agency; and/or
- h) For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include interest, at the legal rate, imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and

determine State sales and use taxes due from the company under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to determine if one of the foregoing events have occurred (a “*State Mandated Recapture Event*”) and to effectuate this recapture of New York State sales and use tax benefits the Agency shall:

- d) Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- e) Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- f) The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

### **III. SUSPENSION, DISCONTINUATION, RECAPTURE AND TERMINATION OF OTHER FORMS OF FINANCIAL ASSISTANCE**

With respect to all other financial assistance provided to a project (other than the State portion of sales and use tax exemptions) the Agency shall have the right to suspend, discontinue, recapture or terminate financial assistance to any company for a project to the extent that:

- f) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);
- g) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- h) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- i) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or

- j) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “*Material Violation*”).

#### IV. ANNUAL ASSESSMENT

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State Mandated Recapture Event, a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event (other than a State Mandated Recapture Event), the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the financial assistance provided to a project, and shall consider the following in making its determination:

- g) Whether the company has proceeded in good faith.
- h) Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the company.
- i) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- j) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create an adverse situation for the residents of the City of Syracuse.
- k) The assessment prepared in accordance with the Agency’s Annual Assessment Policy.
- l) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the “*Determination*”). The Determination shall provide terms, if any, by which a company may remedy any Noncompliance Event (other than a State Mandated Recapture Event) upon which the Determination was based. The

company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "*Project Agreement*") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture or terminate the financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting local tax exemptions shall be redistributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

#### **IV. RECAPTURE PERIOD**

Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) five years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

Adopted: June 21, 2016

6

Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2226

### Onondaga County Clerk Recording Cover Sheet

Received From :  
FITCH-SARAH ACCT: 1931 - Address:

Return To :  
900 EAST FAYETTE GROUP LLC

Method Returned : MAIL

First PARTY 1

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

First PARTY 2

900 EAST FAYETTE GROUP LLC

Index Type : Land Records

Instr Number : 2017-00041004

Book : Page :

Type of Instrument : Deed

Type of Transaction : Deed Misc

Recording Fee: \$75.50

Recording Pages : 6

The Property affected by this instrument is situated in Syracuse, in the County of Onondaga, New York

Real Estate Transfer Tax

RETT # : 4174

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$75.50

State of New York

County of Onondaga

I hereby certify that the within and foregoing was recorded in the Clerk's office for Onondaga County, New York

On (Recorded Date) : 11/09/2017

At (Recorded Time) : 11:45:02 AM



Doc ID - 0256211800006

*Lisa Dell*  
Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On : 11/09/2017 At : 11:50:16AM

**MEMORANDUM OF  
AGENCY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** City of Syracuse Industrial Development Agency  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202

***NAME AND ADDRESS OF LESSEE:*** 900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210

***DESCRIPTION OF LEASED PREMISES:***

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in **Exhibit "A"** annexed hereto, together with the improvements thereon.

***DATE OF EXECUTION OF AGENCY LEASE AGREEMENT:***

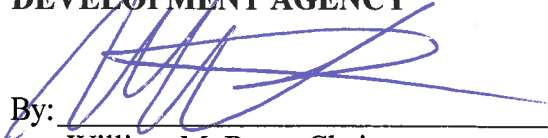
As of November 1, 2017

***TERM OF AGENCY LEASE AGREEMENT:***

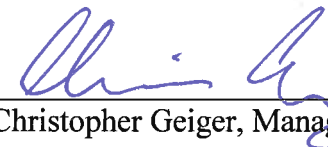
The term of the Agency Lease Agreement shall commence as of November 1, 2017 and continue in full force and effect until the earlier of: (1) June 30, 2034; or (2) an earlier termination in accordance with the terms of the Agency Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of November, 2017.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan, Chairman

**900 EAST FAYETTE GROUP, LLC**

By:   
\_\_\_\_\_  
Christopher Geiger, Managing Member



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

On this 2<sup>nd</sup> day of November, 2017, before me, the undersigned, personally appeared, **William M. Ryan**, 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.

Lori L. McRobbie

Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

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

On this 2<sup>nd</sup> day of November 4, 2017, before me, the undersigned, personally appeared, **Christopher Geiger**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Lori L. McRobbie

Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

## EXHIBIT "A"

### LEGAL DESCRIPTION OF THE LAND

#### **(A) 922-24 East Fayette Street**

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, described as follows: Beginning in the north line of Block Number two hundred forty (240) of the City of Syracuse, according to a map of said City made by J.M. Trowbridge, on the south line of East Fayette Street, ninety feet (90) west of the northeast corner of said block; thence west along the north line of said block forty (40) feet; thence south parallel to the east line of said block one hundred (100) feet; thence east parallel to East Fayette Street forty (40) feet, to a point ninety (90) feet from the east line of said block; thence north parallel with the east line of said block to the place of beginning.

#### **(B) 900-16 East Fayette Street**

All that tract or parcel of land situate in the City of Syracuse, New York, known and distinguished on a map made by J.M. Trowbridge as part of Lot No. 17 in Block No. 240 described as follows: Beginning at a point in the south line of E. Fayette Street 77.01 feet east of the northwest corner of said block which is 5 feet east of the east wall of the Sylvester Flats; thence west on the south line of E. Fayette Street to the northwest corner of said block; thence south on the west line of said block 66 feet; thence east on the south line of said Lot No. 17 76.86 feet; thence north 66 feet to the place of beginning.

Also all that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as the north half of Lot No. Twenty (20), Block No. Two Hundred Forty (240), according to a survey and map by Calvin Guiteau for Baldwin, Burt & Teall, subject to all unpaid taxes and monthly tenancies.

#### **(C) 918 E. Fayette Street**

All that tract or parcel of land, located in the City of Syracuse, County of Onondaga and State of New York commonly known as 918 E. Fayette Street, and being further described as being Lot Part 17 and 18, and 19, in Block 240, designated as Tax Map Book 1, Plate 116, Parcel 146, Property No. 1527009300; 48 X 66L2 x 34 feet, vacant lot also being described as:

All of that tract or parcel of land situate in the City of Syracuse, New York, being part of Block NO. 240 according to a map of said city made by J.M. Trowbridge, described as follows: Beginning in the south line of East Fayette Street 130 feet west of the northeast corner of said block; thence west along the north line of said block 48 feet to a point which is 77.01 feet east from the northwest corner of said block and is 5 feet east of the east wall of the Sylvester Flats; thence south 66 feet to a point in the south line of Lot No. 17 in said block which is 76.86 feet east of the west line of said block; thence east about 48.16 feet to a point 130 feet west of the east line of said block; thence north parallel with the east line of said block 66 feet to the place of beginning; Also a strip of land about 2 feet in width extending southerly from the south line of the

above described premises for a distance of 34 feet, the east line of which strip is an extension southerly of the east line of the above described parcel of land.

**(D) 305-07 Irving Avenue**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York. being north one-half of Lot No. 21 in Block 240 in said city, being 33 feet front on the east side of Irving Avenue, and 122.4 feet more or less deep.

Also all that tract or parcel of land situate in the City of Syracuse, in the county of Onondaga and State of New York, known and distinguished as the south half of Lot Number Twenty (20) of Block Number Two Hundred Forty (240) Syracuse, according to a survey and map made by Calvin Guiteau Baldwin, Burt & Teall of a certain larger tract; said lot lying on the east side of Irving Avenue fronting two (2) rods on said Avenue and Eight (8) rods deep, or thereabouts.

**Above Property Having been formally resubdivided into one lot that is now described as follows:**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York being part of Block Number 240 in said City being more particularly bounded and described as follows:

Beginning at the intersection of the southerly line of East Fayette Street with the east line of Irving Avenue;

Thence S 89° 30' 50" E, along the southerly line of East Fayette Street, a distance of 165.01 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 100.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the south line of East Fayette Street, a distance of 42.00 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 65.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the southerly line of East Fayette Street, a distance of 123.01 feet to a point in the easterly line of Irving Avenue;

Thence N 00° 29' 40" E, along the easterly line of Irving Avenue, a distance of 165.00 feet to the point and place of beginning.



# 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

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

**Schedule A — Information relating to conveyance**

<b>Grantor/Transferor</b>	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor) <b>City of Syracuse Industrial Development Agency</b>	Social security number
<input type="checkbox"/> Individual	Mailing address	Social security number
<input type="checkbox"/> Corporation	<b>201 East Washington Street, 7th Floor</b>	
<input type="checkbox"/> Partnership	City State ZIP code	Federal EIN
<input type="checkbox"/> Estate/Trust	<b>Syracuse NY 13202</b>	<b>52-1380308</b>
<input type="checkbox"/> Single member LLC	Single member's name if grantor is a single member LLC (see instructions)	Single member EIN or SSN
<input checked="" type="checkbox"/> Other		
<b>Grantee/Transferee</b>	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee) <b>900 East Fayette Group, LLC</b>	Social security number
<input type="checkbox"/> Individual	Mailing address	Social security number
<input type="checkbox"/> Corporation	<b>1221 East Genesee Street, Suite 1</b>	
<input type="checkbox"/> Partnership	City State ZIP code	Federal EIN
<input type="checkbox"/> Estate/Trust	<b>Syracuse NY 13202</b>	<b>46-4656257</b>
<input type="checkbox"/> Single member LLC	Single member's name if grantee is a single member LLC (see instructions)	Single member EIN or SSN
<input checked="" type="checkbox"/> Other		

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
048.-04-01.0; 048.-04-02.0 048.-04-03.0; 048.-04-14.0	311500	900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-16 East Fayette)	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input checked="" type="checkbox"/> Other <u>mixed-use</u>	Date of conveyance <table style="border: 1px solid black; text-align: center; width: 100%;"> <tr> <td style="width: 33%;">11</td> <td style="width: 33%;">01</td> <td style="width: 33%;">2017</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	11	01	2017	month	day	year	Percentage of real property conveyed which is residential real property _____ 0% (see instructions)
11	01	2017							
month	day	year							

Condition of conveyance (check all that apply)

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

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

**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.		0 00
2.		0 00
3.		0 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.		
2.		
3.		

**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)..... 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) ...See Schedule "A"..... 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 **NYS 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).

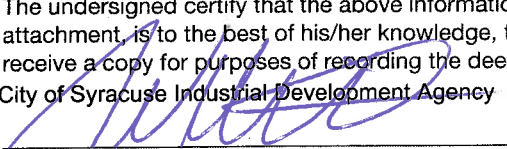
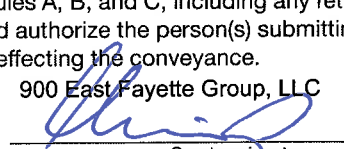
- 3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - A check has been drawn payable for 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.

City of Syracuse Industrial Development Agency

900 East Fayette Group, LLC

 _____ Grantor signature William M. Ryan	Chairman _____ Title	 _____ Grantee signature Christopher Geiger	Managing Member _____ Title
Grantor signature	Title	Grantee signature	Title

**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

## **SCHEDULE "A"**

The document being recorded for which this NYS Form TP-584 is being provided is a Memorandum of Lease between the Grantor and the Grantee. The sum of the term of the lease and any options for renewal do not exceed forty-nine (49) years, and therefore said lease is not a Conveyance within the meaning of Article 31 of the Tax Law.



**7**

**CERTIFICATION**

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement by and between the parties dated as of November 1, 2017.

The undersigned, Christopher Geiger, Managing Member and authorized signatory of 900 East Fayette Group, LLC (the "**Company**"), does hereby certify and confirm:

(1) that the Company has reviewed and understands the Agency's Local Labor Policy (the "**Policy**") which states as follows:

The Company understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation and equipping of the Project unless a written waiver is first received in accordance with the terms of the Policy. Failure to comply may result in the revocation or recapture of benefits awarded to the Project by the Agency.

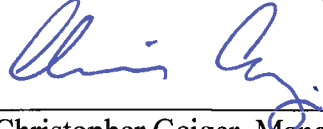
For purposes of this Policy, the term "local" shall mean: Cayuga, Cortland, Madison, Onondaga, Oneida and Oswego Counties.

(2) that the Company has complied, and will, for so long as the Agency has an interest in the Project, continue to comply with, the Agency's Local Labor Policy.

Dated: November 3, 2017

**900 EAST FAYETTE GROUP, LLC**

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

  
Christopher Geiger, Managing Member

8

**McRobbie, Lori L.**

---

**From:** Carol Zenzel <carol@zenzellaw.com>  
**Sent:** Monday, November 06, 2017 4:20 PM  
**To:** Whitford, Jr., Mark T.; Katzoff, Susan R.  
**Subject:** FW: 900 East Fayette Group, LLC, GL/UMB Bind Request

I hope this works for you. Read chain below.

Carol A. Zenzel, Esq.  
Direct Dial: 315-701-1115  
Fax: 315-431-9771

---

**From:** JJ Filiault [mailto:[jjfiliault@berkshirefairfield.com](mailto:jjfiliault@berkshirefairfield.com)]  
**Sent:** Monday, November 6, 2017 4:15 PM  
**To:** Carol Zenzel <carol@zenzellaw.com>  
**Cc:** MWhitford@barclaydamon.com  
**Subject:** FW: 900 East Fayette Group, LLC, GL/UMB Bind Request

Carol,

See email confirmation below about AI with PNC for SIDA.

Kristen also re-sent the binder for the builders risk with SIDA listed as requested.

Please confirm if there are any other items needed.

Thank you.

**J.J. Filiault, CIC, LIA**  
President  
Berkshire Fairfield Insurance Agency, LLC  
Commercial Insurance & Risk Management Specialty  
128 South Street  
Pittsfield, MA 01201  
Office - 413-443-0077  
Fax - 413-443-2691  
Cell - 413-822-3284  
Business Email - [jjfiliault@berkshirefairfield.com](mailto:jjfiliault@berkshirefairfield.com)  
Personal Email - [jj.filiault@gmail.com](mailto:jj.filiault@gmail.com)  
LinkedIn Profile - <http://www.linkedin.com/in/jjfiliault>  
Website - <http://berkshirefairfieldinsurance.com/>

This e-mail transmission may contain information that is proprietary, privileged and/or confidential and is intended exclusively for the person(s) to whom it is addressed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. If you are not the intended recipient or their designee, please notify the sender immediately by return e-mail and delete all copies.

---

**From:** Tony Odonnell [mailto:[todonnell@quakerma.com](mailto:todonnell@quakerma.com)]  
**Sent:** Monday, November 06, 2017 4:10 PM

**To:** JJ Filiault <jjfiliault@berkshirefairfield.com>  
**Cc:** Kristen Coty <kcoty@berkshirefairfield.com>  
**Subject:** RE: 900 East Fayette Group, LLC, GL/UMB Bind Request

JJ

Thanks for the order. Please confirm the Address for the AI ( Mortgagee) and the AI ( SIDA)

See note from the Colony underwriter below

To confirm our phone conversation this afternoon, we can add the SIDA as an additional insured via CG2026 including PNC on OI for 900 East Fayette Group, LLC.

We quoted coverage with two AI's – to be determined. As you explained, one of them will be SIDA. Therefore, we can add them including PNC with no AP.

Tony O'Donnell CPCU ASLI  
Vice President  
Quaker Special Risk

800 252 8679 ext 104  
774 420 3607 Direct Dial  
508 753 0646 fax  
508 414 3392 cell

Check out our web site at [www.quakerma.com](http://www.quakerma.com) and [Like Us on Facebook](#)  
claims: [claims@quakerma.com](mailto:claims@quakerma.com)  
loss runs: [lossruns@quakerma.com](mailto:lossruns@quakerma.com)

---

**From:** JJ Filiault [<mailto:jjfiliault@berkshirefairfield.com>]  
**Sent:** Monday, November 06, 2017 3:26 PM  
**To:** Tony Odonnell  
**Cc:** Kristen Coty  
**Subject:** 900 East Fayette Group, LLC, GL/UMB Bind Request

Tony,

Attached please find the signed applications and TRIA forms rejecting terrorism coverage. Please bind coverage effective today, 11/6/2017.

Please confirm in writing, preferably direct from the underwriter, that AI with primary non-contributory language is added for the Syracuse Industrial Development Agency.

Thank you.

Please let me know if you need anything further from my office.

Thanks,

J.J. Filiault, CIC, LIA

President

Berkshire Fairfield Insurance Agency, LLC

Commercial Insurance & Risk Management Specialty

128 South Street

Pittsfield, MA 01201

Office - 413-443-0077

Fax – 413-443-2691

Cell - 413-822-3284

Business Email - [jjfiliault@berkshirefairfield.com](mailto:jjfiliault@berkshirefairfield.com)

Personal Email - [jj.filiault@gmail.com](mailto:jj.filiault@gmail.com)

LinkedIn Profile - <http://www.linkedin.com/in/jjfiliault>

Website – <http://berkshirefairfieldinsurance.com/>

This e-mail transmission may contain information that is proprietary, privileged and/or confidential and is intended exclusively for the person(s) to whom it is addressed. Any use, copying, retention or disclosure by any person other than the intended recipient or the intended recipient's designees is strictly prohibited. If you are not the intended recipient or their designee, please notify the sender immediately by return e-mail and delete all copies.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/9/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Reagan Insurance 8 E Main St Marcellus NY 13108	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 315-673-2094      FAX (A/C, No): 315-673-1121 E-MAIL ADDRESS:	
	<b>INSURER(S) AFFORDING COVERAGE</b> NAIC #	
<b>INSURED</b> VIPSTR VIP Structures, Inc. 1 Websters Landing Syracuse NY 13202	INSURER A : Cincinnati Insurance Company      10677	
	INSURER B : Milwaukee Casualty Ins Co      26662	
	INSURER C : Hanover Insurance Companies      22292	
	INSURER D : National Union Fire Ins Co. of PA      19445	
	INSURER E : INSURER F :	

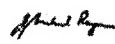
**COVERAGES**      **CERTIFICATE NUMBER:** 496817280      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	SUBROGATION	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	NU5R9KL	1/1/2017	1/1/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/>	Y	Y	XW7RCW	1/1/2017	1/1/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Hired Phys Dmg \$30,000
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000	Y	Y	BE024550519	1/1/2017	1/1/2018	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	MWC1016497	1/1/2017	1/1/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Leased & Rented Equip & Builder's Risk			5POQPIB	1/1/2017	1/1/2018	\$300,000      \$5,000 Ded. 1,500,000      2,500 Ded.

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Additional Insured and Waiver of Subrogation are applicable when required by contract/General Liability policy is on a primary & non-contributory basis & includes products completed operations coverage & independent contractors/Auto Policy is on a primary & non-contributory basis  
 Umbrella policy is on a primary & non-contributory basis & coverage follows form/Auto Hired Physical Damage Deds \$100 Comp/\$500 Coll.  
 The certificate holder is listed as additional insured on the General Liability policy on a primary & non-contributory basis regarding the project located at 900 East Fayette St., Syracuse, NY.

<b>CERTIFICATE HOLDER</b> City of Syracuse Industrial Development Agency City Hall Commons 201 E. Washington St. 7th Floor Syracuse NY 13202	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

© 1988-2015 ACORD CORPORATION. All rights reserved.

ENDORSEMENT No.

This endorsement, effective 12:01 AM: .

Forms a part of policy no:

Issued to:

By: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

**Commercial Umbrella Liability Policy with CrisisResponse®**

**Commercial General Liability Limitation Endorsement**

This policy is amended as follow:

**Section V. EXCLUSIONS** is amended to include the following additional exclusion:

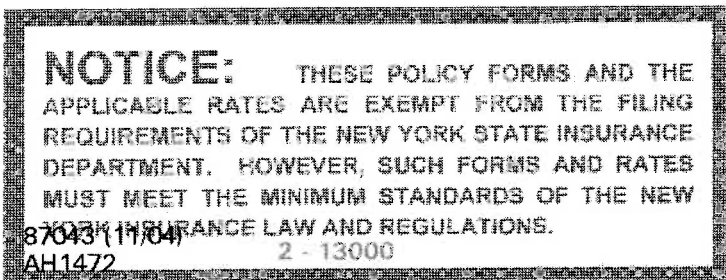
**Commercial General Liability**

This insurance does not apply to Commercial General Liability.

However, if insurance for Commercial General Liability is provided by a policy listed in **Scheduled Underlying Insurance**:

1. This exclusion shall not apply; and
2. Coverage under this policy will follow the terms, definitions, conditions and exclusions of **Scheduled Underlying Insurance**, subject to the **Policy Period**, Limits of Insurance, premium and all other terms, definitions, conditions and exclusions of this policy. Provided, however, that coverage provided by this policy will be no broader than the coverage provided by **Scheduled Underlying Insurance**.

All other terms, definitions, conditions and exclusions remain unchanged.



A handwritten signature in black ink, appearing to be "R. B.", written over a horizontal line.

Authorized Representative  
or Countersignature (Where Applicable)



**ENDORSEMENT No.**

**This endorsement, effective 12:01 AM:**

**Forms a part of policy no:**

**Issued to:**

**By: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.**

**Commercial Umbrella Liability Policy with CrisisResponse®**

**Additional Insured Endorsement - Products-Completed Operations and Primary Non-Contributing**

This policy is amended as follows:

**Section VII. DEFINITIONS**, Paragraph M. is amended to include the following additional provision:

**Insured** means:

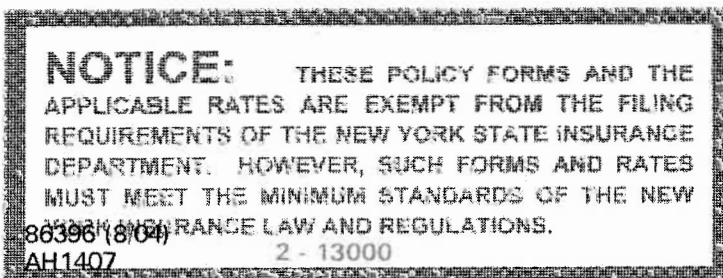
Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is an additional insured on your policy, but only if such person or organization is included under the coverage provided by **Scheduled Underlying Insurance**. Such person or organization is an additional insured only with respect to liability:

1. arising out of **Your Work** at the location designated; or
2. included within the **Products-Completed Operations Hazard**.

This provision does not apply to liability arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf.

Coverage afforded to these additional insured parties will be primary to, and non-contributory with, any other insurance available to that person or organization.

All other terms, definitions, conditions, and exclusions of this policy remain unchanged.



**Authorized Representative**  
or Countersignature (Where Applicable)

# COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this Coverage Part restrict this insurance. Read the entire Coverage Part carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Coverage Part. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V - DEFINITIONS**.

## SECTION I - COVERAGES

### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**; **SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**; or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS**.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under

### SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, you did not know, per Paragraph 1.d. below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part.

- c. "Bodily injury" or "property damage" which:

- (1) Occurs during the "coverage term"; and
- (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have occurred;

includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.

- d. You will be deemed to know that "bodily injury" or "property damage" has occurred at the earliest time when any "authorized representative":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
- (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
- (5) Becomes aware, or reasonably should have become aware, of a

condition from which "bodily injury" or "property damage" is substantially certain to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected or Intended Injury

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. When a claim for such "bodily injury" or "property damage" is made, we will defend that claim provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation and Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured sustained in the "workplace";
- (2) An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or
- (3) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraphs (1) or (2) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

### f. Pollutant

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants":

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, Paragraph (a) does not apply to:

- 1) "Bodily injury" to any person injured while on any premises, site or location owned or occupied by, or rented or loaned to, you provided:

- a) The injury is caused by the inadequate ventilation of vapors;
- b) The person injured is first exposed to such vapors during the policy period; and
- c) Within 30 days of such first exposure, the person injured is clinically diagnosed or treated by a physician for the medical condition caused by the exposure to such vapors. However, Paragraph c) does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

This exception 1) shall apply only to Named Insureds; we shall have no duty to defend or pay damages for any person or organization that is not a Named Insured. However, this paragraph does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

For the purpose of the exception granted in Paragraph 1) only, vapors means any gaseous or airborne irritant or airborne contaminant, including smoke, fumes, vapor or soot, but excluding asbestos, which is discharged, dispersed, emitted, released or escapes from materials, machinery or equipment used in the service or maintenance of the premises. Vapors does not mean any gaseous or

airborne irritants or contaminants used in a manufacturing process or which is the product or by-product of any manufacturing process;

- 2) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor, and the owner or lessee of such premises, site or location has been added to this Coverage Part as an additional insured with respect to your ongoing operations or "your work" performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
  - 3) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - 1) Any insured; or
    - 2) Any person or organization for whom you may be legally responsible;
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, Paragraph (d) does not apply to:
    - 1) "Bodily injury" or "property damage" arising out of the discharge, dispersal, seepage, migration, release, es-

cape or emission of fuels, lubricants or other operating fluids, or exhaust gases, which are needed to perform, or are the result of, the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released or emitted from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released or emitted with the intent to cause "bodily injury" or "property damage" or with the knowledge that "bodily injury" or "property damage" is substantially certain to occur, or if such fuels, lubricants or other operating fluids, or exhaust gases, are brought on or to the premises, site or location with such intent to escape, seep or migrate, or be discharged, dispersed, released or emitted as part of the operations being performed by such insured, contractor or subcontractor;

- 2) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - 3) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the op-

erations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, Paragraphs (2)(a) and (b) do not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

#### g. Aircraft, Auto or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and

(b) Not being used to carry persons or property for a charge;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
- (a) The operation of machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

#### **h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### **i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by

governmental authority in hindering or defending against any of these.

#### **j. Damage to Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of an insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire or explosion) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days, for which the amount we will pay is limited to the Damage To Premises Rented To You Limit as described in **SECTION III - LIMITS OF INSURANCE**.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

#### **k. Damage to Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**I. Damage to Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage to Impaired Property or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall of Products, Work or Impaired Property**

Any liability or damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal and Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Asbestos**

"Bodily injury" or "property damage" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**q. Employment-Related Practices**

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**r. Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part, prior to the "coverage term" in which such "bodily injury" or "property damage" occurs or begins to occur.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that "bodily injury" or "property damage" has occurred or has begun to occur at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
- (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "bodily injury" or "property damage" is substantially certain to occur.

**s. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

**t. Distribution of Material in Violation of Statutes**

Bodily injury or property damage arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through q. do not apply to "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the Damage to Premises Rented To You Limit as described in **SECTION III - LIMITS OF INSURANCE**.

**COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**; or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS**.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**.

- b. This insurance applies to "personal and advertising injury" only if:
  - (1) The "personal and advertising injury" is caused by an offense arising out of your business; and
  - (2) The "personal and advertising injury" offense was committed in the "coverage territory" during the policy period; and
  - (3) Prior to the "coverage term" in which the "personal and advertising injury" offense is committed, you did not know, per Paragraph 1.d. below, that the offense had been committed or had begun to be committed, in whole or in part.
- c. "Personal and advertising injury" caused by an offense which:
  - (1) Was committed during the "coverage term"; and



- (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have been committed;

includes any continuation, change or resumption of that offense after the end of the "coverage term" in which it first became known by you.

- d. You will be deemed to know that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means, other than as described in (3) above, that the offense had been committed or had begun to be committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

## 2. Exclusions

This insurance does not apply to:

### a. Knowing Violation of Rights of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

### b. Material Published With Knowledge of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

### c. Material Published Prior to Coverage Term

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the later of the following:

- (1) The inception of this Coverage Part; or

- (2) The "coverage term" in which insurance coverage is sought.

### d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

### e. Contractual Liability

"Personal and advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "personal and advertising injury" is caused by or arises out of an offense committed subsequent to the execution of the contract or agreement. When a claim for such "personal and advertising injury" is made, we will defend that claim, provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

### f. Breach of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

### g. Quality or Performance of Goods - Failure to Conform to Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

### h. Wrong Description of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

### i. Infringement of Copyright, Patent, Trademark or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, pat-

ent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds in Media and Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 17. a., b. and c. of "personal and advertising injury" under **SECTION V - DEFINITIONS**.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet is not, by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board any insured hosts, owns, or over which any insured exercises control.

**l. Unauthorized Use of Another's Name or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Employment Related Practices**

"Personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation

or discrimination directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**n. Pollutant**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" at any time.

**o. Pollutant-Related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**p. Asbestos**

"Personal and advertising injury" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**q. Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that a "personal and advertising injury" offense had been committed or had begun to be committed, in whole or in part, prior to the "coverage term" in which such offense

was committed or began to be committed.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that a "personal and advertising injury" offense has been committed or has begun to be committed at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that the "personal and advertising injury" offense had been committed or had begun to be committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

**r. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**s. Distribution of Material in Violation of Statutes**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**COVERAGE C. MEDICAL PAYMENTS**

**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within three years of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury on Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers' Compensation and Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletic Activities**

To any person injured while officiating, coaching, practicing for, instructing or participating in any physical exercises or games, sports, or athletic contests or exhibitions of an athletic or sports nature.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY.**

**SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", in-

cluding actual loss of earnings up to \$250 a day because of time off from work.

5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on that part of the judgment we become obligated to pay and which falls within the applicable limit of insurance. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

**SECTION II - WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
  - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts

within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by; or
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by,

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Insurance under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. a. The General Aggregate Limit is the most we will pay for the sum of:

- (1) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;
- (2) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

(3) Damages under **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY.**

This General Aggregate Limit will not apply if either the Location General Aggregate Limit of Insurance, Paragraph 2.b., or the Construction Project General Aggregate Limit of Insurance, Paragraph 2.c. applies.

- b. A separate Location General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each location owned by, or rented or leased to you and is the most we will pay for the sum of:

(1) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

(2) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**,

which can be attributed to operations at only a single location owned by, or rented or leased to you.

- c. A separate Construction Project General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each construction project and is the most we will pay for the sum of:

(1) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

(2) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

which can be attributed only to ongoing operations and only at a single construction project.

- d. Only for the purpose of determining which General Aggregate Limit of Insurance, 2.a., 2.b., or 2.c., applies:

(1) Location means premises involving the same or connecting lots, or premises, whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

(2) Construction project means a location you do not own, rent or lease

where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on your behalf at the same location for the same persons or organizations, no matter how often or under how many different contracts, will be deemed to be a single construction project.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to 2.a. above, the Personal and Advertising Injury Limit is the most we will pay under **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

a. Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**; and

b. Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner.

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under **COVERAGE C. MEDICAL PAYMENTS** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each "coverage term".

## SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### 2. Duties in the Event of Occurrence, Offense, Claim or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or a "personal and advertising injury" offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part as of the latter of:

- a. The date we implemented the change in your state, or
- b. The date this Coverage Part became effective; and

will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

### 5. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** or **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** of this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

#### b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar insurance for "your work";
  - (b) That is Fire or Explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
  - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, g. Aircraft, Auto or Watercraft.**
- (2) Any other primary insurance available to the insured covering liability for damages arising out of the premises or operations, or the products and completed operations, for which the insured has been added as an additional insured by attachment of an endorsement.
- (3) Any other insurance:
  - (a) Whether primary, excess, contingent or on any other basis, except when such insurance is written specifically to be excess over this insurance; and
  - (b) That is a consolidated (wrap-up) insurance program which has been provided by the prime contractor/project manager or owner of the consolidated project in which you are involved.

When this insurance is excess, we will have no duty under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** or **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

#### c. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 6. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If:
  - (1) The earned premium is less than the deposit premium, we will return the excess to the first Named Insured; or
  - (2) The earned premium is greater than the deposit premium, the difference will be due and payable to us by the first Named Insured upon notice from us.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.



## 7. Representations

By accepting this Coverage Part, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this Coverage Part in reliance upon your representations.

## 8. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

## 9. Transfer of Rights of Recovery Against Others to Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

## 10. Two or More Coverage Forms or Policies Issued by Us

If this Coverage Part and any other Coverage Form, Coverage Part or policy issued to you by us or any company affiliated with us apply to the same "occurrence" or "personal and advertising injury" offense, the aggregate maximum limit of insurance under all the Coverage Forms, Coverage Parts or policies shall not exceed the highest applicable limit of insurance under any one Coverage Form, Coverage Part or policy. This condition does not apply to any Coverage Form, Coverage Part or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Part.

## 11. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast, telecast or published to the general pub-

lic or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. "Advertisement" includes a publicity article. For purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".

## 2. "Authorized representative" means:

- a. If you are designated in the Declarations as:
  - (1) An individual, you and your spouse are "authorized representatives".
  - (2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".
  - (3) A limited liability company, your members and your managers are "authorized representatives".
  - (4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".
  - (5) A trust, your trustees are "authorized representatives".
- b. Your "employees":
  - (1) Assigned to manage your insurance program; or
  - (2) Responsible for giving or receiving notice of an "occurrence", "personal and advertising injury" offense, claim or "suit";are also "authorized representatives".

## 3. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

4. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
5. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:
  - a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:
    - (1) The day the policy period shown in the Declarations ends; or
    - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
  - b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
6. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication,provided the insured's responsibility to pay damages is determined in a "suit" on

the merits, in the territory described in a. above or in a settlement to which we agree.

7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (2) above and supervisory, inspection, architectural or engineering activities;
- (4) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materi-

als; market research; public relations and new product development;

- (5) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (4), above;
- (6) That indemnifies a web-site designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search engines; marketing analysis; and providing access to the Internet or other similar networks; or
- (7) Under which the insured, if a web-site designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (6), above.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered autos.

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your "advertisement"; or
  - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
18. "Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, re-conditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:
  - a. The insured is regularly or otherwise engaged in activities which taint or degrade the environment; or
  - b. The insured uses, generates or produces the "pollutant".
19. "Products-completed operations hazard":
  - a. Includes all "bodily injury" and "property damage" occurring away from premises

you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed; or
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured,
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a schedule, states that products-completed operations are included.

**20. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which money damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
  - c. An appeal of a civil proceeding.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
24. "Workplace" means that place and during such hours to which the "employee" sustaining "bodily injury" was assigned by you, or any other person or entity acting on your behalf, to work on the date of "occurrence".
25. "Your product":
  - a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.
  - c. Does not include vending machines or other property rented to or located for the use of others but not sold.
26. "Your work":
- a. Means:
    - (1) Work or operations performed by you or on your behalf; and

- (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes:
  - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
  - (2) The providing of or failure to provide warnings or instructions.

# NUCLEAR ENERGY LIABILITY EXCLUSION (Broad Form)

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

(1) With respect to which an insured under this Coverage Part is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this Coverage Part not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured, or (b) has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by

an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this exclusion:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

A. Any "nuclear reactor";

B. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

C. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

D. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET WAIVER OF SUBROGATION - AUTO**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: .	Policy Number:
Named Insured: .	
Countersigned by: .	

(Authorized Representative)

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

#### **1. Blanket Waiver of Subrogation**

**SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer of Rights of Recovery Against Others to Us** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization because

of payments we make for "bodily injury" or "property damage" arising out of the operation of a covered "auto" when you have assumed liability for such "bodily injury" or "property damage" under an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the "insured contract".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED BY CONTRACT**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM**

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Policy Number:
Named Insured:	
Countersigned by:	

(Authorized Representative)

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured** is amended to include as an insured any person or organization with which you have agreed in a valid written contract to provide insurance as is afforded by this policy.

This provision is limited to the scope of the valid written contract.

This provision does not apply unless the valid written contract has been executed prior to the "bodily injury" or "property damage".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Endorsement - Table of Contents:

<u>Coverage:</u>	<u>Begins on Page:</u>
1. Employee Benefit Liability Coverage.....	3
2. Unintentional Failure to Disclose Hazards .....	8
3. Damage to Premises Rented to You .....	8
4. Supplementary Payments .....	9
5. Medical Payments.....	9
6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.).....	9
7. 180 Day Coverage for Newly Formed or Acquired Organizations .....	10
8. Waiver of Subrogation .....	10
9. Automatic Additional Insured - Specified Relationships: .....	10
x Managers or Lessors of Premises;	
x Lessor of Leased Equipment;	
x Vendors;	
x State or Political Subdivisions - Permits Relating to Premises;	
x State or Political Subdivisions - Permits; and	
x Contractors' Operations	
10. Broadened Contractual Liability - Work Within 50' of Railroad Property.....	14
11. Property Damage to Borrowed Equipment .....	14
12. Employees as Insureds - Specified Health Care Services: .....	14
x Nurses;	
x Emergency Medical Technicians; and	
x Paramedics	
13. Broadened Notice of Occurrence.....	15

---

#### B. Limits of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

##### 1. Employee Benefit Liability Coverage

Each Employee Limit:     \$ 1,000,000  
Aggregate Limit:         \$ 3,000,000  
Deductible:               \$ 1,000

##### 3. Damage to Premises Rented to You

The lesser of:

- The Each Occurrence Limit shown in the Declarations; or
- \$500,000 unless otherwise stated \$ \_\_\_\_\_

##### 4. Supplementary Payments

- Bail bonds:             \$ 1,000
- Loss of earnings:       \$ 350

**5. Medical Payments**

Medical Expense Limit: \$ 10,000

**6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.)**

Limits of Insurance (Each Occurrence)

Coverage a. \$1,000

Coverage b. \$5,000 unless otherwise stated \$ \_\_\_\_\_

Deductibles (Each Occurrence)

Coverage a. \$250

Coverage b. \$250 unless otherwise stated \$ \_\_\_\_\_

COVERAGE	PREMIUM BASIS (a) Area (b) Payroll (c) Gross Sales (d) Units (e) Other	RATE  (For Limits in Excess of \$5,000)	ADVANCE PREMIUM  (For Limits in Excess of \$5,000)
b. Care, Custody or Control			\$
<b>TOTAL ANNUAL PREMIUM</b>			<b>\$</b>

**11. Property Damage to Borrowed Equipment**

Each Occurrence Limit: \$ 10,000

Deductible: \$ 250

**C. Coverages:**

**1. Employee Benefit Liability Coverage**

a. The following is added to **SECTION I - COVERAGES: Employee Benefit Liability Coverage.**

**(1) Insuring Agreement**

(a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

(b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and

- 1) Occurs during the policy period; and or

2) You did not have knowledge of a claim or "suit" on or before the effective date of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
- ii) Receives a written or verbal demand or claim for damages because of the act, error or omission.

**(2) Exclusions**

This insurance does not apply to:

**(a) Bodily Injury, Property Damage or Personal and Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

**(b) Dishonest, Fraudulent, Criminal or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

**(c) Failure to Perform a Contract**

Damages arising out of failure of performance of contract by any insurer.

**(d) Insufficiency of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation**

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past performance of investment vehicles; or
- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation and Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;

- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(3) Supplementary Payments**

**SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** also apply to this Coverage.

**b. Who is an Insured**

As respects Employee Benefit Liability Coverage, **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced by the following:

- (1) If you are designated in the Declarations as:
  - (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
  - (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "ex-

ecutive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- (2) Each of the following is also an insured:
- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program".
  - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
  - (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:
- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

### c. Limits of Insurance

As respects Employee Benefit Liability Coverage, **SECTION III - LIMITS**

**OF INSURANCE** is deleted in its entirety and replaced by the following:

- (1) The Limits of Insurance shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:
- (a) Insureds;
  - (b) Claims made or "suits" brought;
  - (c) Persons or organizations making claims or bringing "suits";
  - (d) Acts, errors or omissions; or
  - (e) Benefits included in your "employee benefit program".
- (2) The Aggregate Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
- (a) An act, error or omission; or
  - (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions, negligently committed in the "administration" of your "employee benefit program".
- However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".
- (4) **Deductible Amount**

(a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

(b) The deductible amount stated in **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** as applicable to Each Employee applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

(c) The terms of this insurance, including those with respect to:

1) Our right and duty to defend the insured against any "suits" seeking those damages; and

2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,

apply irrespective of the application of the deductible amount.

(d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

**d. Additional Conditions**

As respects **Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

(1) **Item 2. Duties in the Event of Occurrence, Offense, Claim or Suit** is deleted in its entirety and replaced by the following:

**2. Duties in the Event of an Act, Error or Omission, or Claim or Suit**

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

(1) What the act, error or omission was and when it occurred; and

(2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

(2) **Item 5. Other Insurance** is deleted in its entirety and replaced by the following:



**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

**b. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**e. Additional Definitions**

As respects Employee Benefit Liability Coverage, SECTION V - DEFINITIONS is amended as follows:

(1) The following definitions are added:

**1. "Administration" means:**

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";

- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or
- d. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
  - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
2. "Cafeteria plans" means plan authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
3. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pen-

sion plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;

- c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and
- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

(2) The following definitions are deleted in their entirety and replaced by the following:

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
- c. An appeal of a civil proceeding.

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

## 2. Unintentional Failure to Disclose Hazards

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations** is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

## 3. Damage to Premises Rented to You

a. The last Subparagraph of Paragraph **2. SECTION I - COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE, 2. LIABILITY Exclusions** is hereby deleted and replaced by the following:

Exclusions **c.** through **q.** do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner.

## b. Limit of Insurance

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

(2) Paragraph **6.** of **SECTION III - LIMITS OF INSURANCE** is hereby deleted and replaced by the following:

**6.** Subject to **5.** above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "occurrence" to which this insurance applies.

(3) The amount we will pay is limited as described in **Section B. Limits of Insurance, 3. Damage to Premises Rented to You** of this endorsement.

## 4. Supplementary Payments

**Under SECTION I - COVERAGE, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B:**

- a. Paragraph 2. is replaced by the following:

Up to the limit shown in Section B. **Limits of Insurance, 4.a.** Bail Bonds of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section B. **Limits of Insurance, 4.b.** Loss of Earnings of this endorsement per day because of time off from work.

**5. Medical Payments**

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section B. **Limits of Insurance, 5. Medical Payments** of this endorsement.

**6. Voluntary Property Damage and Care, Custody or Control Liability Coverage**

**a. Voluntary Property Damage Coverage**

We will pay for "property damage" to property of others arising out of operations incidental to the insured's business when:

- (1) Damage is caused by the insured; or
- (2) Damage occurs while in the insured's possession.

With your consent, we will make these payments regardless of fault.

**b. Care, Custody or Control Liability Coverage**

**SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, j. Damage to Property.** Subparagraphs (3), (4) do not apply to "property damage" to the property of others described therein.

With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

- a. The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (1) Insureds;
- (2) Claims made or "suits" brought; or
- (3) Persons or organizations making claims or bringing "suits".

**b. Deductible Clause**

- (1) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the deductible amount stated in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.

- (2) **Condition 2. Duties in the Event of Occurrence, Offense, Claim or Suit,** applies to each claim or "suit" irrespective of the amount.

- (3) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**7. 180 Day Coverage for Newly Formed or Acquired Organizations**

**SECTION II - WHO IS AN INSURED** is amended as follows:

Subparagraph a. of Paragraph 4. is hereby deleted and replaced by the following:

- a. Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

#### 8. Waiver of Subrogation

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 9. Transfer of Rights of Recovery Against Others to Us** is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

#### 9. Automatic Additional Insured - Specified Relationships

- a. The following is hereby added to **SECTION II - WHO IS AN INSURED:**

(1) Any person or organization described in Paragraph 9.a.(2) below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:

- (a) A written contract or agreement; or
- (b) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued,

is an insured, provided:

- (a) The written or oral contract or agreement is:
  - 1) Currently in effect or becomes effective during the policy period; and

- 2) Executed prior to an "occurrence" or offense to which this insurance would apply; and

(b) They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

(2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

(a) The manager or lessor of a premises leased to you with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

1) Any "occurrence" which takes place after you cease to be a tenant in that premises.

2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(b) Any person or organization from which you lease equipment with whom you have agreed per Paragraph 9.a.(1) above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organization(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

(c) Any person or organization (referred to below as ven-

dor) with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- 1) The insurance afforded the vendor does not apply to:
  - a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
  - b) Any express warranty unauthorized by you;
  - c) Any physical or chemical change in the product made intentionally by the vendor;
  - d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of

business, in connection with the distribution or sale of the products;

- f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
  - g) Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
- 2) This insurance does not apply to any insured person or organization:
    - a) From whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products; or
    - b) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.
  - (d) Any state or political subdivision with which you have agreed per Paragraph 9. a.(1) above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

- 1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
  - 2) The construction, erection, or removal of elevators; or
  - 3) The ownership, maintenance, or use of any elevators covered by this insurance.
- (e) Any state or political subdivision with which you have agreed per Paragraph 9.a.(1) above to provide insurance, subject to the following provisions:
- 1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
  - 2) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or political subdivision.
- (f) Any person or organization with which you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to liability arising out of "your work" performed for that additional insured by you or on your behalf. A person or organization's status as an insured under this provision of this endorsement continues for only the period of time required by the written contract or agreement, but in no event beyond the expiration date of this Coverage Part. If there is no written contract or agreement, or if no period
- of time is required by the written contract or agreement, a person or organization's status as an insured under this endorsement ends when your operations for that insured are completed.
- (3) Any insurance provided to an additional insured designated under Paragraph 9.a.(2):
- (a) Subparagraphs (e) and (f) does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard";
  - (b) Subparagraphs (a), (b), (d), (e) and (f) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or their agents, "employees" or any other representative of the additional insured; or
  - (c) Subparagraph (f) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:
    - 1) Defects in design furnished by or on behalf of the additional insured; or
    - 2) The rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
      - a) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
      - b) Supervisory, inspection, architectural or engineering activities.

- 3) "Your work" for which a consolidated (wrap-up) insurance program has been provided by the prime contractor-project manager or owner of the construction project in which you are involved.
- b. Only with regard to insurance provided to an additional insured designated under Paragraph 9.a.(2) Sub-paragraph (f) above, **SECTION III - LIMITS OF INSURANCE** is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever are less. If no limits are specified in the written contract or agreement, or if there is no written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

- c. **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is hereby amended as follows:

(1) Condition 5, Other Insurance is amended to include:

(a) Where required by a written contract or agreement, this insurance is primary and / or noncontributory as respects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies, with this insurance.

(b) Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:

- 1) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or
- 2) For any other valid and collectible insurance

available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

- (2) Condition 11, **Conformance to Specific Written Contract or Agreement** is hereby added:

**11. Conformance to Specific Written Contract or Agreement**

With respect to additional insureds described in Paragraph 9.a.(2)(f) above only:

If a written contract or agreement between you and the additional insured specifies that coverage for the additional insured:

- a. Be provided by the Insurance Services Office additional insured form number **CG 20 10** or **CG 20 37** (where edition specified); or
- b. Include coverage for completed operations; or
- c. Include coverage for "your work";

and where the limits or coverage provided to the additional insured is more restrictive than was specifically required in that written contract or agreement, the terms of Paragraphs 9.a.(3)(a), 9.a.(3)(b) or 9.b. above, or any combination thereof, shall be interpreted as providing the limits or coverage required by the terms of the written contract or agreement, but only to the extent that such limits or coverage is included within the terms of the Coverage Part to which this endorsement is attached. If, however, the written contract or agreement specifies the Insurance Services Office additional insured form num-

ber **CG 20 10** but does not specify which edition, or specifies an edition that does not exist. Paragraphs **9.a.(3)(a)** and **9.a.(3)(b)** of this endorsement shall not apply and Paragraph **9.b.** of this endorsement shall apply.

**10. Broadened Contractual Liability - Work Within 50' of Railroad Property**

It is hereby agreed that Paragraph **f.(1)** of Definition **12.** "Insured contract" (**SECTION V - DEFINITIONS**) is deleted.

**11. Property Damage to Borrowed Equipment**

a. The following is hereby added to Exclusion **j. Damage to Property** of Paragraph **2., Exclusions** of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Paragraphs **(3)** and **(4)** of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

**(1)** The Limits of insurance shown in the Declarations are replaced by the limits designated in Section **B. Limits of Insurance, 11.** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section **B. Limits of Insurance, 11.** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (a)** Insureds;
- (b)** Claims made or "suits" brought; or
- (c)** Persons or organizations making claims or bring "suits".

**(2) Deductible Clause**

**(a)** Our obligation to pay damages on your behalf applies only to the amount of dam-

ages for each "occurrence" which are in excess of the Deductible amount stated in Section **B. Limits of Insurance, 11.** of this endorsement. The limits of insurance will not be reduced by the application of such Deductible amount.

**(b)** Condition **2. Duties in the Event of Occurrence, Offense, Claim or Suit.** applies to each claim or "suit" irrespective of the amount.

**(c)** We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**12. Employees as Insureds - Specified Health Care Services**

It is hereby agreed that Paragraph **2.a.(1)(d)** of **SECTION II - WHO IS AN INSURED,** does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

- a.** Nurses;
- b.** Emergency Medical Technicians; or
- c.** Paramedics,

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place.

**13. Broadened Notice of Occurrence**

Paragraph **a.** of Condition **2. Duties in the Event of Occurrence, Offense, Claim or Suit** (**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**) is hereby deleted and replaced by the following:

**a.** You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1)** How, when and where the "occurrence" or offense took place;
- (2)** The names and addresses of any injured persons and witnesses; and



(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".



# INSURANCE BINDER

DATE (MM/DD/YYYY)  
10/30/2017**THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON PAGE 2 OF THIS FORM.**

<b>AGENCY</b> Berkshire Fairfield Insurance Agency 128 South Street  Pittsfield MA 01201 PHONE (A/C, No, Ext): (413) 443-5300 FAX (A/C, No): (413) 443-2691 CODE: 20084 SUB CODE:		<b>COMPANY</b> Selective Insurance Company <b>BINDER #</b> B17103000205												
<b>AGENCY CUSTOMER ID:</b> 00000564 <b>INSURED AND MAILING ADDRESS</b> 900 East Fayette Group, LLC 121 Genesee St. Suite 1 Syracuse NY 13120		<table border="1"> <tr> <th>DATE</th> <th>EFFECTIVE</th> <th>TIME</th> <th>DATE</th> <th>EXPIRATION</th> <th>TIME</th> </tr> <tr> <td>10/27/2017</td> <td>12:01</td> <td><input checked="" type="checkbox"/> AM</td> <td>11/26/2017</td> <td><input checked="" type="checkbox"/> NOON</td> <td></td> </tr> </table> <p> <input type="checkbox"/> THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY  <input type="checkbox"/> PER EXPIRING POLICY #: 17-18       </p> <b>DESCRIPTION OF OPERATIONS / VEHICLES / PROPERTY (Including Location)</b> Loc# 00001/Bldg# 00001 900 East Fayette St. Syracuse, NY 13120	DATE	EFFECTIVE	TIME	DATE	EXPIRATION	TIME	10/27/2017	12:01	<input checked="" type="checkbox"/> AM	11/26/2017	<input checked="" type="checkbox"/> NOON	
DATE	EFFECTIVE	TIME	DATE	EXPIRATION	TIME									
10/27/2017	12:01	<input checked="" type="checkbox"/> AM	11/26/2017	<input checked="" type="checkbox"/> NOON										

**COVERAGES****LIMITS**

TYPE OF INSURANCE	CAUSES OF LOSS	COVERAGE / FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY	<input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC	Builders Risk	10,000		8,000,000
GENERAL LIABILITY	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE	\$	
			DAMAGE TO RENTED PREMISES	\$	
			MED EXP (Any one person)	\$	
			PERSONAL & ADV INJURY	\$	
			GENERAL AGGREGATE	\$	
			PRODUCTS - COMP/OP AGG	\$	
VEHICLE LIABILITY	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		COMBINED SINGLE LIMIT	\$	
			BODILY INJURY (Per person)	\$	
			BODILY INJURY (Per accident)	\$	
			PROPERTY DAMAGE	\$	
			MEDICAL PAYMENTS	\$	
			PERSONAL INJURY PROT	\$	
			UNINSURED MOTORIST	\$	
VEHICLE PHYSICAL DAMAGE	<input type="checkbox"/> COLLISION: <input type="checkbox"/> OTHER THAN COL:	<input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES	ACTUAL CASH VALUE		
			STATED AMOUNT	\$	
GARAGE LIABILITY	<input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT	\$	
			OTHER THAN AUTO ONLY:		
			EACH ACCIDENT	\$	
			AGGREGATE	\$	
EXCESS LIABILITY	<input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE	\$	
			AGGREGATE	\$	
			SELF-INSURED RETENTION	\$	
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY			PER STATUTE		
			E.L. EACH ACCIDENT	\$	
			E.L. DISEASE - EA EMPLOYEE	\$	
			E.L. DISEASE - POLICY LIMIT	\$	
SPECIAL CONDITIONS / OTHER COVERAGES	City of Syracuse Industrial Development Agency is listed as additional insured.		FEES	\$	
			TAXES	\$	
			ESTIMATED TOTAL PREMIUM	\$	

**NAME & ADDRESS**

City of Syracuse Industrial Development A a public corporation of the State of NY w 201 East Washington St. 7th Floor Syracuse, NY 13202	<input type="checkbox"/> MORTGAGEE	<input type="checkbox"/> ADDITIONAL INSURED
	<input checked="" type="checkbox"/> LOSS PAYEE	
	LOAN #:	
	AUTHORIZED REPRESENTATIVE  K Coty, CISR, CLCS/KC	



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/1/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Berkshire Fairfield Insurance Agency 128 South Street  Pittsfield MA 01201	CONTACT NAME: Kristen Coty, CISR, CLCS
	PHONE (A/C, No, Ext): (413) 443-5300 FAX (A/C, No): (413) 443-2691 E-MAIL ADDRESS: kcoty@berkshirefairfield.com
INSURED 900 East Fayette Group, LLC 121 Genesee St. Suite 1 Syracuse NY 13120	INSURER(S) AFFORDING COVERAGE
	INSURER A :Colony Insurance Company
	INSURER B :Quaker Special Risk
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES CERTIFICATE NUMBER:17-18 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD   WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>	GL	11/6/2017	11/6/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		17-18 UMBRELLA	11/6/2017	11/6/2018	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Certificate Holder is an additional insured with respects to General Liability where required by written contract.

<b>CERTIFICATE HOLDER</b>  City of Syracuse Industrial Development A a public corporation of the State of NY w offices at 201 East Washington St. 7th Floor Syracuse, NY 13202	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  K Coty, CISR, CLCS/KC

© 1988-2014 ACORD CORPORATION. All rights reserved.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/01/2017

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Berkshire Fairfield Insurance Agency 128 South Street  Pittsfield MA 01201	<b>CONTACT NAME:</b> Kristen Coty, CISR, CLCS <b>PHONE (A/C, No, Ext):</b> (413)443-5300 <b>E-MAIL ADDRESS:</b> kcoty@berkshirefairfield.com	<b>FAX (A/C, No):</b> (413)443-2691
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b>  900 East Fayette Group, LLC 121 Genesee St. Suite 1 Syracuse NY 13120	<b>INSURER A:</b> Lloyds of London	<b>NAIC #</b>
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

### COVERAGES

**CERTIFICATE NUMBER:** 17-18

**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		GL	10/27/2017	10/27/2018	EACH OCCURRENCE \$ 3,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000						
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 3,000,000
							GENERAL AGGREGATE \$ 3,000,000
							PRODUCTS - COMP/OP AGG \$ Excluded
							\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
							E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is an additional insured with respects to General Liability where required by written contract.

### CERTIFICATE HOLDER

City of Syracuse Industrial Development Agency a public corporation of  
 201 East Washington St.  
 7th Floor  
 Syracuse NY 13202

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/01/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Berkshire Fairfield Insurance Agency 128 South Street  Pittsfield MA 01201	<b>CONTACT NAME:</b> Kristen Coty, CISR, CLCS <b>PHONE (A/C, No, Ext):</b> (413)443-5300 <b>E-MAIL ADDRESS:</b> kcoty@berkshirefairfield.com <b>FAX (A/C, No):</b> (413)443-2691
	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Lloyds of London <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES**                      **CERTIFICATE NUMBER:** 17-18                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	Y		GL	10/27/2017	10/27/2018	EACH OCCURRENCE	\$ 3,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 3,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						GENERAL AGGREGATE	\$ 3,000,000
							PRODUCTS - COMP/OP AGG	\$ Excluded
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> OWNED AUTOS ONLY	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS ONLY	<input type="checkbox"/> NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB						EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR						AGGREGATE	\$
	EXCESS LIAB							\$
	<input type="checkbox"/> CLAIMS-MADE							\$
	DED							\$
	RETENTION \$							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/>	N/A				E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Certificate Holder is an additional insured with respects to General Liability where required by written contract.

<b>CERTIFICATE HOLDER</b>  Five Star Bank ISAOA PO Box 391224  Solon OH 44139-0224	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  
---	---

ACORD 25 (2016/03)                      The ACORD name and logo are registered marks of ACORD                      © 1988-2015 ACORD CORPORATION. All rights reserved.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/01/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Berkshire Fairfield Insurance Agency 128 South Street  Pittsfield MA 01201	CONTACT NAME: Kristen Coty, CISR, CLCS
	PHONE (A/C, No, Ext): (413)443-5300 FAX (A/C, No): (413)443-2691 E-MAIL ADDRESS: kcoty@berkshirefairfield.com
INSURED  900 East Fayette Group, LLC 121 Genesee St. Suite 1 Syracuse NY 13120	INSURER(S) AFFORDING COVERAGE
	INSURER A : Lloyds of London
	INSURER B :
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

## COVERAGES

CERTIFICATE NUMBER: 17-18

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y		GL	10/27/2017	10/27/2018	EACH OCCURRENCE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 3,000,000
							PRODUCTS - COMP/OP AGG \$ Excluded
							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						\$
	<input type="checkbox"/> NON-OWNED AUTOS ONLY						
	UMBRELLA LIAB						EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR						AGGREGATE \$
	EXCESS LIAB						\$
	<input type="checkbox"/> CLAIMS-MADE						
	DED						\$
	RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is an additional insured with respects to General Liability where required by written contract.

## CERTIFICATE HOLDER

## CANCELLATION

Five Star Bank ISAOA  
PO Box 391224

Solon

OH 44139-0224

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.



**THE CINCINNATI INSURANCE COMPANY**  
A STOCK INSURANCE COMPANY  
**COMMERCIAL GENERAL LIABILITY COVERAGE**  
**PART DECLARATIONS**

Attached to and forming part of POLICY NUMBER: CPP 089 92 10 Effective Date: 01-01-2017

Named Insured: **IS THE SAME AS IT APPEARS ON THE COMMON POLICY DECLARATIONS**

**LIMITS OF INSURANCE**

EACH OCCURRENCE LIMIT	\$ <u>1,000,000</u>	
GENERAL AGGREGATE LIMIT	\$ <u>2,000,000</u>	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$ <u>2,000,000</u>	
PERSONAL & ADVERTISING INJURY LIMIT	\$ <u>1,000,000</u>	ANY ONE PERSON OR ORGANIZATION
DAMAGE TO PREMISES RENTED TO YOU LIMIT \$100,000 limit unless otherwise indicated herein:	\$ <u>SEE GA233</u>	ANY ONE PREMISES
MEDICAL EXPENSE LIMIT \$5,000 limit unless otherwise indicated herein:	\$ <u>SEE GA233</u>	ANYONEPERSON

CLASSIFICATION	CODE NO.	PREMIUM BASE A - Area B - Payroll C - Gross Sales D - Units E - Other	RATE		ADVANCE PREMIUM	
			Products / Completed Operations	All Other	Products / Completed Operations	All Other
LIABILITY DAMAGE TO YOUR PRODUCT & WORK	25099					2,209
VACANT LAND INCL PROD AND/OR COMP OP LOC 4 - NY LOC 2 - FL LOC 6 - NY	49451	E IF ANY ACRES E 7 ACRES E 21 ACRES		2.445 2.704 2.445		STA 19 51
DWELLINGS-ONE-FAMILY INCL PROD AND/OR COMP OP	63010	E 1 EACH		95.839		96
COMPOSITE RATE-PAYROLL BASIS	20490	B 2,015,000	REFER TO	GA471	INCL	63,900
COMPOSITE RATE-OTHER THAN GROSS SALES	20498	C 22,500,000	REFER TO	GA471	INCL	46,395
AUTOMATIC ADD. INSURED-CONTRACTORS OPERATIONS	29970			4%		108
CONTRACTORS BROADENED COVERAGE	29975					107

The General Liability Coverage Part is subject to an annual minimum premium.

TOTAL ANNUAL PREMIUM \$ **112,885**

**FORMS AND / OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:  
REFER TO GA901**



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**COMMERCIAL GENERAL LIABILITY  
SUPPLEMENTAL SCHEDULE**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**FORMS AND/OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:**

<b>GA901</b>	<b>01/92</b>	<b>GA101</b>	<b>12/04</b>	<b>GA4062NY</b>	<b>10/01</b>	<b>GA4065NY</b>	<b>12/02</b>
<b>GA4173NY</b>	<b>12/04</b>	<b>GA4175NY</b>	<b>01/14</b>	<b>GA4285NY</b>	<b>09/08</b>	<b>CG2293</b>	<b>12/07</b>
<b>GA223</b>	<b>10/01</b>	<b>GA4240</b>	<b>01/06</b>	<b>CG0300</b>	<b>01/96</b>	<b>GA233NY</b>	<b>02/07</b>
<b>GA3024</b>	<b>05/14</b>	<b>GA340</b>	<b>10/01</b>	<b>GA350</b>	<b>10/01</b>	<b>GA375</b>	<b>11/02</b>
<b>GA4144</b>	<b>10/01</b>	<b>GA471</b>	<b>10/01</b>				

# COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this Coverage Part restrict this insurance. Read the entire Coverage Part carefully to determine rights, duties and what is and is not covered.

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Coverage Part. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V - DEFINITIONS**.

## SECTION I - COVERAGES

### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**; or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS**.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under

### SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, you did not know, per Paragraph 1.d. below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part.
- c. "Bodily injury" or "property damage" which:
- (1) Occurs during the "coverage term"; and
  - (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have occurred;
- includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.
- d. You will be deemed to know that "bodily injury" or "property damage" has occurred at the earliest time when any "authorized representative":
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
  - (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
  - (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
  - (5) Becomes aware, or reasonably should have become aware, of a

condition from which "bodily injury" or "property damage" is substantially certain to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected or Intended Injury

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. When a claim for such "bodily injury" or "property damage" is made, we will defend that claim provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation and Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured sustained in the "workplace";
- (2) An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or
- (3) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraphs (1) or (2) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

### f. Pollutant

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, Paragraph (a) does not apply to:

- 1) "Bodily injury" to any person injured while on any premises, site or location owned or occupied by, or rented or loaned to, you provided:

- a) The injury is caused by the inadequate ventilation of vapors;
- b) The person injured is first exposed to such vapors during the policy period; and
- c) Within 30 days of such first exposure, the person injured is clinically diagnosed or treated by a physician for the medical condition caused by the exposure to such vapors. However, Paragraph c) does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

This exception 1) shall apply only to Named Insureds; we shall have no duty to defend or pay damages for any person or organization that is not a Named Insured. However, this paragraph does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

For the purpose of the exception granted in Paragraph 1) only, vapors means any gaseous or airborne irritant or airborne contaminant, including smoke, fumes, vapor or soot, but excluding asbestos, which is discharged, dispersed, emitted, released or escapes from materials, machinery or equipment used in the service or maintenance of the premises. Vapors does not mean any gaseous or

airborne irritants or contaminants used in a manufacturing process or which is the product or by-product of any manufacturing process;

- 2) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor, and the owner or lessee of such premises, site or location has been added to this Coverage Part as an additional insured with respect to your ongoing operations or "your work" performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- 3) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

- 1) Any insured; or
- 2) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, Paragraph (d) does not apply to:

- 1) "Bodily injury" or "property damage" arising out of the discharge, dispersal, seepage, migration, release, es-

escape or emission of fuels, lubricants or other operating fluids, or exhaust gases, which are needed to perform, or are the result of, the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released or emitted from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released or emitted with the intent to cause "bodily injury" or "property damage" or with the knowledge that "bodily injury" or "property damage" is substantially certain to occur, or if such fuels, lubricants or other operating fluids, or exhaust gases, are brought on or to the premises, site or location with such intent to escape, seep or migrate, or be discharged, dispersed, released or emitted as part of the operations being performed by such insured, contractor or subcontractor;

- 2) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- 3) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or

- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the op-

erations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, Paragraphs (2)(a) and (b) do not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and

- (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
  - (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by

governmental authority in hindering or defending against any of these.

**j. Damage to Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of an insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire or explosion) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days, for which the amount we will pay is limited to the Damage To Premises Rented To You Limit as described in SECTION III - LIMITS OF INSURANCE.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage to Your Product**

"Property damage" to "your product" arising out of it or any part of it.



**l. Damage to Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage to Impaired Property or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall of Products, Work or Impaired Property**

Any liability or damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal and Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Asbestos**

"Bodily injury" or "property damage" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**q. Employment-Related Practices**

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**r. Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part, prior to the "coverage term" in which such "bodily injury" or "property damage" occurs or begins to occur.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that "bodily injury" or "property damage" has occurred or has begun to occur at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
- (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "bodily injury" or "property damage" is substantially certain to occur.

**s. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

**t. Distribution of Material in Violation of Statutes**

Bodily injury or property damage arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **q.** do not apply to "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the Damage to Premises Rented To You Limit as described in **SECTION III - LIMITS OF INSURANCE**.

**COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:
  - (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
  - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**; or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS**.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**.

- b. This insurance applies to "personal and advertising injury" only if:
  - (1) The "personal and advertising injury" is caused by an offense arising out of your business; and
  - (2) The "personal and advertising injury" offense was committed in the "coverage territory" during the policy period; and
  - (3) Prior to the "coverage term" in which the "personal and advertising injury" offense is committed, you did not know, per Paragraph 1.d. below, that the offense had been committed or had begun to be committed, in whole or in part.
- c. "Personal and advertising injury" caused by an offense which:
  - (1) Was committed during the "coverage term"; and

- (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have been committed;

includes any continuation, change or resumption of that offense after the end of the "coverage term" in which it first became known by you.

- d. You will be deemed to know that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means, other than as described in (3) above, that the offense had been committed or had begun to be committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

## 2. Exclusions

This insurance does not apply to:

### a. Knowing Violation of Rights of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

### b. Material Published With Knowledge of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

### c. Material Published Prior to Coverage Term

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the later of the following:

- (1) The inception of this Coverage Part; or
- (2) The "coverage term" in which insurance coverage is sought.

### d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

### e. Contractual Liability

"Personal and advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "personal and advertising injury" is caused by or arises out of an offense committed subsequent to the execution of the contract or agreement. When a claim for such "personal and advertising injury" is made, we will defend that claim, provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

### f. Breach of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

### g. Quality or Performance of Goods - Failure to Conform to Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

### h. Wrong Description of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

### i. Infringement of Copyright, Patent, Trademark or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, pat-

ent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds in Media and Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 17. a., b. and c. of "personal and advertising injury" under **SECTION V - DEFINITIONS**.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet is not, by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board any insured hosts, owns, or over which any insured exercises control.

**l. Unauthorized Use of Another's Name or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Employment Related Practices**

"Personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation

or discrimination directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**n. Pollutant**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" at any time.

**o. Pollutant-Related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**p. Asbestos**

"Personal and advertising injury" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**q. Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that a "personal and advertising injury" offense had been committed or had begun to be committed, in whole or in part, prior to the "coverage term" in which such offense

was committed or began to be committed.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that a "personal and advertising injury" offense has been committed or has begun to be committed at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that the "personal and advertising injury" offense had been committed or had begun to be committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

**r. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**s. Distribution of Material in Violation of Statutes**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**COVERAGE C. MEDICAL PAYMENTS**

**1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within three years of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury on Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers' Compensation and Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletic Activities**

To any person injured while officiating, coaching, practicing for, instructing or participating in any physical exercises or games, sports, or athletic contests or exhibitions of an athletic or sports nature.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**.

**SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", in-

cluding actual loss of earnings up to \$250 a day because of time off from work.

5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on that part of the judgment we become obligated to pay and which falls within the applicable limit of insurance. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

**SECTION II - WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
  - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts

within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

(a) Owned, occupied or used by; or

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by,

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Insurance under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits".

2. a. The General Aggregate Limit is the most we will pay for the sum of:

(1) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

(2) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

(3) Damages under **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY.**

This General Aggregate Limit will not apply if either the Location General Aggregate Limit of Insurance, Paragraph 2.b., or the Construction Project General Aggregate Limit of Insurance, Paragraph 2.c. applies.

- b. A separate Location General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each location owned by, or rented or leased to you and is the most we will pay for the sum of:

(1) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

(2) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**,

which can be attributed to operations at only a single location owned by, or rented or leased to you.

- c. A separate Construction Project General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each construction project and is the most we will pay for the sum of:

(1) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

(2) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

which can be attributed only to ongoing operations and only at a single construction project.

- d. Only for the purpose of determining which General Aggregate Limit of Insurance, 2.a., 2.b., or 2.c., applies:

(1) Location means premises involving the same or connecting lots, or premises, whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

(2) Construction project means a location you do not own, rent or lease

where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on your behalf at the same location for the same persons or organizations, no matter how often or under how many different contracts, will be deemed to be a single construction project.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to 2.a. above, the Personal and Advertising Injury Limit is the most we will pay under **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

a. Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**; and

b. Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner.

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under **COVERAGE C. MEDICAL PAYMENTS** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each "coverage term".



## SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### 2. Duties in the Event of Occurrence, Offense, Claim or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or a "personal and advertising injury" offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part as of the latter of:

- a. The date we implemented the change in your state; or
- b. The date this Coverage Part became effective; and

will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

### 5. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** or **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** of this Coverage Part, our obligations are limited as follows:

#### a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

#### b. Excess Insurance

This insurance is excess over:

(1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar insurance for "your work";

(b) That is Fire or Explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, g. Aircraft, Auto or Watercraft.**

(2) Any other primary insurance available to the insured covering liability for damages arising out of the premises or operations, or the products and completed operations, for which the insured has been added as an additional insured by attachment of an endorsement.

(3) Any other insurance:

(a) Whether primary, excess, contingent or on any other basis, except when such insurance is written specifically to be excess over this insurance; and

(b) That is a consolidated (wrap-up) insurance program which has been provided by the prime contractor/project manager or owner of the consolidated project in which you are involved.

When this insurance is excess, we will have no duty under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** or **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

#### c. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 6. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If:

(1) The earned premium is less than the deposit premium, we will return the excess to the first Named Insured; or

(2) The earned premium is greater than the deposit premium, the difference will be due and payable to us by the first Named Insured upon notice from us.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## 7. Representations

By accepting this Coverage Part, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this Coverage Part in reliance upon your representations.

## 8. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

## 9. Transfer of Rights of Recovery Against Others to Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

## 10. Two or More Coverage Forms or Policies Issued by Us

If this Coverage Part and any other Coverage Form, Coverage Part or policy issued to you by us or any company affiliated with us apply to the same "occurrence" or "personal and advertising injury" offense, the aggregate maximum limit of insurance under all the Coverage Forms, Coverage Parts or policies shall not exceed the highest applicable limit of insurance under any one Coverage Form, Coverage Part or policy. This condition does not apply to any Coverage Form, Coverage Part or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Part.

## 11. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast, telecast or published to the general pub-

lic or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. "Advertisement" includes a publicity article. For purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".

## 2. "Authorized representative" means:

- a. If you are designated in the Declarations as:

- (1) An individual, you and your spouse are "authorized representatives".

- (2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".

- (3) A limited liability company, your members and your managers are "authorized representatives".

- (4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".

- (5) A trust, your trustees are "authorized representatives".

- b. Your "employees":

- (1) Assigned to manage your insurance program; or

- (2) Responsible for giving or receiving notice of an "occurrence", "personal and advertising injury" offense, claim or "suit";

are also "authorized representatives".

## 3. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

4. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
5. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:
  - a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:
    - (1) The day the policy period shown in the Declarations ends; or
    - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
  - b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
6. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication,provided the insured's responsibility to pay damages is determined in a "suit" on

the merits, in the territory described in a. above or in a settlement to which we agree.

7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
  - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
12. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (2) above and supervisory, inspection, architectural or engineering activities;
- (4) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materi-

als; market research; public relations and new product development;

- (5) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (4), above;
- (6) That indemnifies a web-site designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search engines; marketing analysis; and providing access to the Internet or other similar networks; or
- (7) Under which the insured, if a web-site designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (6), above.

13. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".

14. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

15. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered autos .

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

18. "Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:

- a. The insured is regularly or otherwise engaged in activities which taint or degrade the environment; or
- b. The insured uses, generates or produces the "pollutant".

19. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises

you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed; or
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a schedule, states that products-completed operations are included.

20. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

21. "Suit" means a civil proceeding in which money damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
  - c. An appeal of a civil proceeding.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
24. "Workplace" means that place and during such hours to which the "employee" sustaining "bodily injury" was assigned by you, or any other person or entity acting on your behalf, to work on the date of "occurrence".
25. "Your product":
  - a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

- (2) The providing of or failure to provide warnings or instructions.
  - c. Does not include vending machines or other property rented to or located for the use of others but not sold.
- 26. "Your work":
  - a. Means:
    - (1) Work or operations performed by you or on your behalf; and

- (2) Materials, parts or equipment furnished in connection with such work or operations.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
    - (2) The providing of or failure to provide warnings or instructions.



# NUCLEAR ENERGY LIABILITY EXCLUSION

## (Broad Form)

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

(1) With respect to which an insured under this Coverage Part is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this Coverage Part not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured, or (b) has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by

an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this exclusion:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

A. Any "nuclear reactor";

B. Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

C. Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

D. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NEW YORK CHANGES - CONSENT TO SETTLE**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
NEW YORK CONTRACTOR'S LIMITED WORKSITE POLLUTION LIABILITY COVERAGE PART  
PRODUCTS / COMPLETED OPERATIONS LIABILITY COVERAGE PART**

The following is added to **Section IV - Conditions:**

### **CONSENT TO SETTLE**

When a deductible of at least \$10,000 is applicable to a claim or "suit", settlement will be made with the consent of the insured. If the insured refuses to consent to any settlement mutually agreed upon by us and the plaintiff, recommended in writing by us, and the insured elects to contest or continue any legal proceedings, our liability will not exceed the amount for which claim could have been settled plus the costs and the expenses incurred up to the date of such refusal.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NEW YORK CHANGES - OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**Section IV - Conditions, 5. Other Insurance** is revised as follows (**a.**, **b.** and **c.** remain as is):

#### **5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows in **a.**, **b.** and **c.** below. However, no person or organization will be entitled to receive duplicate payments for the same elements of loss under this Coverage Part and such other valid and collectible insurance. We will not make a duplicate payment under this Coverage Part for any element of loss for which payment has been made by or for any person or organization who is legally liable.

**Section IV - Conditions, 10. Two or More Coverage Forms or Policies Issued by Us** is deleted.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES - PREMIUM AUDIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCT WITHDRAWAL COVERAGE PART  
PRODUCTS / COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Paragraph **b.** of the **Premium Audit** Condition (**SECTION IV**) is replaced by the following:

6. **Premium Audit**

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. An audit to determine the final premium due or to be refunded will be completed within 180 days after the

expiration date of the policy. But the audit may be waived if the total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1500. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.

B. Except as provided in Paragraph **A.** above, the **Examination of Your Books and Records** Common Policy Condition continues to apply.





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CHANGES - COMMERCIAL GENERAL LIABILITY COVERAGE FORM

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 1. Insuring Agreement** is deleted in its entirety and replaced by the following:

**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**; or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS**.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period shown on the Declarations; and
  - (3) Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, you did not know, per Paragraph 1.d. below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part.
- c. "Bodily injury" or "property damage" which:
- (1) Occurs during the "coverage term"; and
  - (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have occurred;
- includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.
- d. You will be deemed to know that "bodily injury" or "property damage" has occurred at the earliest time when any "authorized representative":
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
  - (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
  - (4) Becomes aware, or reasonably should have become aware, by

any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or

(5) Becomes aware, or reasonably should have become aware, of a condition from which "bodily injury" or "property damage" was substantially certain to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

**B. SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY, 1. Insuring Agreement** is deleted in its entirety and replaced by the following:

**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**; or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS**.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**.

b. This insurance for the "coverage term" applies to "personal and advertising injury" only if:

(1) The "personal and advertising injury" is caused by an offense arising out of your business; and

(2) The "personal and advertising injury" offense was committed in the "coverage territory" during the policy period shown on the Declarations; and

(3) Prior to the "coverage term" in which the "personal and advertising injury" offense is committed, you did not know, per Paragraph 1.d. below, that the offense had been committed or had begun to be committed, in whole or in part.

c. "Personal and advertising injury" caused by an offense which:

(1) Was committed during the "coverage term"; and

(2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have been committed;

includes any continuation, change or resumption of that offense after the end of the "coverage term" in which it first became known by you.

d. You will be deemed to know that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":

(1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";

(3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";

(4) Becomes aware, or reasonably should have become aware, by any means, other than as described in (3) above, that the offense had been committed or had begun to be committed; or

(5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" was substantially certain to occur.

C. **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 3. Legal Action Against Us** is deleted in its entirety and replaced with the following:

**3. Legal Action Against Us**

a. Except as provided in Paragraph b., no person or organization has a right under this Coverage Part:

- (1) To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- (2) To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

b. With respect to all claims (except property damages claims), if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an insured:

- (1) Brings an action to declare the rights of the parties under the policy; and
- (2) Names the injured person, someone acting for the injured person or other claimant as a party to the action.

D. The following provision is added and supersedes any provision to the contrary:

Failure to give notice to us as required under this Coverage Part shall not invalidate any

claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

E. The following is added as Paragraph e. to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 2. Duties in the Event of Occurrence, Offense, Claim or Suit**:

e. Notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant, to any agent of ours in New York State, with particulars sufficient to identify the insured, shall be considered to be notice to us.

F. **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, f. Pollutant (1)(a)1** is deleted in its entirety and replaced by the following:

**f. Pollutant**

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, Paragraph (a) does not apply to:

1) "Bodily injury" to any person injured while on any premises, site or location owned or occupied by, or rented or loaned to, you provided:

a) The injury is caused by the inadequate ventilation of vapors;

b) The person injured is first exposed to such vapors during the policy period; and

c) Within 30 days of such first exposure, the person injured is clinically diagnosed or treated by a physician for the medical condition caused by the exposure to such vapors. However, Paragraph c) does not apply if the "bodily injury" is caused

by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

This exception 1) shall apply only to Named Insureds; we shall have no duty to defend or pay damages for any person or organization that is not a Named Insured. However, this paragraph does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

For the purpose of the exception granted in Paragraph 1) only, vapors means any gaseous or airborne irri-

tant or airborne contaminant, which is discharged, dispersed, emitted, released or escapes from materials, machinery or equipment used in the service or maintenance of the premises. Vapors does not mean any gaseous or airborne irritants or contaminants used in a manufacturing process or which is the product or by-product of any manufacturing process;

#### G. DEFINITIONS

1. Definition 14. "Loading or unloading" in SECTION V - DEFINITIONS does not apply.
2. Definition 18. "Pollutant" in SECTION V - DEFINITIONS is hereby deleted in its entirety and replaced with the following:

"Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NEW YORK CHANGES - TRANSFER OF DUTIES WHEN A LIMIT OF INSURANCE IS USED UP**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following Condition is added to COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

#### **Transfer of Duties When a Limit of Insurance is Used Up.**

- a. If we conclude that, based on "occurrences" offenses, claims or "suits" which have been reported to us and to which this insurance may apply, the:

- (1) General Aggregate Limit (other than the Products / Completed Operations Aggregate Limit);
- (2) Products / Completed Operations Aggregate Limit;
- (3) Personal and Advertising Injury Limit;
- (4) Each Occurrence Limit; or
- (5) Damage to Premises Rented to You

is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.

- b. When a limit of insurance described in Paragraph a. above has actually been used up in the payment of judgments or settlements:

- (1) We will notify the first Named Insured, in writing, as soon as practicable, that:

- (a) Such a limit has actually been used up; and
- (b) Our duty to defend "suits" seeking damages subject to that limit has also ended.

- (2) We will initiate, and cooperate in, the transfer of control, to any appropriate insured, of all claims and "suits" seeking damages which are subject to that limit and which are reported to us before that limit is used up. That insured must cooperate in the transfer of control of said claims and "suits".

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.

We will take no action whatsoever with respect to any claim or "suit" seeking damages that would have been subject to that limit, had it not been used up, if the claim or "suit" is reported to us after that limit of insurance has been used up.

- (3) The first Named Insured and any other insured involved in a "suit" seeking damages subject to that limit, must arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.

- c. The first Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph b.(2) above.

The duty of the first Named Insured to reimburse us will begin on:

- (1) The date on which the applicable limit of insurance is used up, if we sent notice in accordance with paragraph a. above; or
- (2) The date on which we sent notice in accordance with Paragraph b.(1) above, if we did not send notice in accordance with paragraph a. above.

- d. The exhaustion of any limit of insurance by the payments of judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **LAWN CARE SERVICES COVERAGE**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Paragraph (1)(d) of Exclusion f. under **Section I - Coverage A - Bodily Injury and Property Damage Liability** does not apply to the application of herbicides or pesticides, by an insured on lawns under your regular care.





# LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND WORK

This endorsement modifies insurance provided under the following:

## COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, k. Damage to Your Product and l. Damage to Your Work** are deleted and replaced by the following:

### **k. Damage to Your Product**

"Property damage" to "your product" arising out of it, or any part of it except when caused by:

- (1) Fire;
- (2) Smoke; or
- (3) Collapse.

### **l. Damage to Your Work**

"Property damage" to "your work" arising out of it, or any part of it and included in the "products and completed operations hazard".

This exclusion does not apply:

- (1) If the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor; or
- (2) If the cause of loss to the damaged work arises as a result of:
  - (a) Fire;
  - (b) Smoke; or
  - (c) Collapse.

### **Additional Definition:**

"Collapse" as used in this endorsement shall mean direct loss caused by or resulting from risks of direct physical loss involving collapse of all or part of a building or structure caused by one or more of the following:

- A. Fire; lightning; windstorm or hail; explosion; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage of fire extinguish-

ing equipment; sinkhole collapse; volcanic action; breakage of glass; falling objects; weight of snow, ice, sleet or water; water damage; all only as covered in this Coverage Part;

- B. Decay that is hidden from view, unless the presence of such decay is known or should reasonably have been known to an insured prior to collapse;
- C. Insect or vermin damage that is hidden from view, unless the presence of such damage is known or should reasonably have been known to an insured prior to collapse;
- D. Weight of people or personal property;
- E. Weight of rain that collects on a roof;
- F. Use of defective materials or methods in construction, remodeling, or renovation if the collapse does not occur as a direct or indirect result of an earthquake, landslide, earth movement, subsidence, earth settling, or movement of foundations, footings, pilings or other forms of support on which the building or structure rests.

### **Deductible:**

- A. The Company's obligation for coverage granted by this endorsement applies only to the amount by which the claim exceeds \$500 in any one "occurrence".
- B. The terms of the policy, including those with respect to the **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 2. Duties in the Event of Occurrence, Offense, Claim or Suit** apply irrespective of the application of the deductible amount.
- C. We may pay any part or all of the deductible amount to settle any claim or suit and, when we notify you of the action taken, you shall promptly reimburse us for such part of the deductible amount we paid.



# 2004 NOTICE TO POLICYHOLDERS

## COMMERCIAL GENERAL LIABILITY COVERAGE

### FORM AND ENDORSEMENTS

This is a summary of the major changes to **GA 101** Commercial General Liability Coverage Form and related endorsements. No coverage is provided by this summary nor can it be construed to replace any provisions of your policy or endorsements. You should read your policy and review your declaration page for complete information on the coverages you are provided. If there is any conflict between the policy and this summary, **THE PROVISIONS OF THIS POLICY SHALL PREVAIL.**

The areas within the policy that broaden, reduce or clarify coverage are highlighted below. This notice does not reference every editorial change made in your policy.

#### **BROADENINGS IN COVERAGE TO GA 101 12 04 - Commercial General Liability Coverage Form**

##### **POLLUTION EXCLUSION**

The exception to the Pollution Exclusion which provides coverage for bodily injury arising out of smoke, fumes, vapors or soot from building heating equipment has been expanded to also include water heaters and cooling and dehumidifying equipment in a building.

##### **CONDITIONS**

We have revised the Liberalization Condition so that it applies to changes made 60 days rather than 45 days prior to the inception of the policy period.

#### **REDUCTIONS IN COVERAGE TO GA 101 12 04 - Commercial General Liability Coverage Form**

##### **REVISED MOBILE EQUIPMENT COVERAGE:**

The definitions of "mobile equipment" and "auto" have been revised. Any land vehicle that had been classified as a piece of mobile equipment under your previous policy, will now be considered an auto if that vehicle is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. With this change, coverage is no longer provided for these types of land vehicles since they are now defined to be autos rather than mobile equipment and subject to the Aircraft, Auto and Watercraft exclusion in your policy. However, the operation of machinery or equipment that is attached to, or part of, such a vehicle will still be covered by your policy.

A corresponding definition change has been made to the Commercial Automobile. Mobile equipment which was excluded from the automobile policy will now meet the definition of "auto" if it is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

##### **EXCLUSION - ELECTRONIC DATA**

An exclusion for Electronic Data has been added to **GA 101** to reinforce that coverage for electronic data is not intended to be provided. This may be considered a reduction in coverage.

##### **EXCLUSION - VIOLATION OF STATUTES THAT GOVERN E-MAILS, FAX, PHONE CALLS OR OTHER METHODS OF SENDING MATERIAL OR INFORMATION**

An exclusion has been added to **GA 101** to exclude coverage for bodily injury and property damage under Coverage **A.** and personal and advertising injury under Coverage **B.** which arises directly or indirectly out of any action or omission that violates or is alleged to violate the Telephone Consumer Protection Act (TCPA), the CAN-SPAM Act of 2003, including any amendments of or addition to such laws, or any other statute, ordinance or regulation that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

This is a reduction in coverage in states where, absent the exclusion, courts would consider coverage to be provided for violations of the afore mentioned acts or of other similar statutes, regulations or ordinances.

## **EXCLUSION - MEDICAL PAYMENTS - ATHLETICS ACTIVITIES**

The Athletics Activities exclusion under Coverage C - Medical Payments has been revised to more clearly express what types of athletic activities are excluded with respect to medical payments. Medical expenses are not intended to be provided to a person injured while practicing, instructing or participating in any physical exercises or games, sports or athletic contests. This may be considered a reduction in coverage.

## **DEFINITIONS**

The definition of Pollutant is amended to specifically mention petroleum in addition to petroleum products and petroleum by-products.

## **CLARIFICATIONS OR NO IMPACT IN COVERAGE TO GA 101 12 04 - Commercial General Liability Coverage Form**

### **WAR EXCLUSION**

We have incorporated the war exclusion (formerly added via mandatory endorsement) into the coverage form. If the War Liability exclusion endorsement had not already been added to your policy, this is a reduction in coverage.

### **POLLUTANT EXCLUSION**

The Pollutant Exclusion is amended to use certain terms, "discharge, dispersal, seepage, migration, release, escape or emission", consistently throughout the exclusion.

### **MATERIAL PUBLISHED PRIOR TO COVERAGE TERM**

This exclusion which applies to only personal and advertising injury is clarified as to when coverage will not apply.

### **OTHER INSURANCE**

Prior to this revision, if you were added as an additional insured to another policy, the policy would be excess over that insurance for damages arising out of the premises or operations. The Other Insurance Condition has been revised so that now if you are added as an additional insured to another policy this policy is excess over that insurance for damages arising out of both the premises or operations and products and completed operations.

---

## **ENDORSEMENTS**

---

### **BROADENINGS IN COVERAGE**

**GA 4136 12 04 - Pollution Exclusion - Named Peril Limited Exception for a Short Term Pollution Event**

**GA 4137 12 04 - Pollution Exclusion - Limited Exception for a Short-Term Pollution Event**

**GA 368 12 04 - Total Pollution Exclusion with a Building Equipment Exception and a Hostile Fire Exception**

The exception to the Pollution Exclusion in these endorsements which provides coverage for bodily injury arising out of smoke, fumes, vapors or soot from building heating equipment has been expanded to also include water heaters and cooling and dehumidifying equipment in a building.

**GA 367 12 04 - Exclusion - Internet Service Providers and Internet Access Providers Errors and Omissions**

**CG 22 99 12 04 - Professional Liability Exclusion - Web-Site Designers**

With this revised endorsement attached to your policy, internet providers and web-site designers are provided personal and advertising injury coverage for false arrest, malicious prosecution and wrongful eviction offenses. This coverage was not previously afforded under your policy.

**GA 4145 12 04 - Principals Protective Liability Coverage**

The exception to the Pollution Exclusion in this endorsement which provides coverage for bodily injury arising out of smoke, fumes, vapors or soot from building heating equipment has been expanded to also include water heaters and cooling and dehumidifying equipment. The Pollutant Exclusion is also

amended to use certain terms, "discharge, dispersal, seepage, migration, release, escape or emission", consistently throughout the exclusion.

## **REDUCTIONS IN COVERAGE**

### **Existing Endorsements**

#### **GA 366 12 04 - Exclusion - Volunteer Workers**

If you previously had volunteer workers who operated autos, aircraft or watercraft not owned by, or rented or loaned to any insured, liability arising out of the ownership, maintenance or entrustment to others of any aircraft, auto or watercraft operated by volunteer workers will no longer be covered under your policy.

### **New Endorsements**

#### **GA 397 08 04 - Exclusion - Silica**

This exclusion excludes coverage for bodily injury and property damage under Coverage A and personal and advertising injury under Coverage B for any injury or damage arising from silica or any derivative of silica.

#### **CG 23 01 12 04 - Exclusion - Real Estate Agents Errors or Omissions**

#### **GA 395 04 04 - Exclusion - Travel Agents Errors or Omissions**

#### **GA 396 04 04 - Exclusion - Lawyers Professional**

These new endorsements may replace another version in which a profession was specified or may be new to your policy. The professional services of a real estate agent, travel agent or lawyer will be excluded. To the extent that professional services may be covered under your policy, attachment of this endorsement may result in a reduction of coverage.

## **CLARIFICATIONS OR NO IMPACT IN COVERAGE**

#### **GA 237 12 04 - Electronic Data Liability**

This revised endorsement indicates that the Electronic Data Exclusion that was added to your General Liability coverage form(s) does not apply to the coverage provided under this endorsement.

## **OTHER COVERAGE PARTS WHICH MAY IMPACT YOU**

#### **GA 115 12 04 - Liquor Liability Coverage Form (Occurrence)**

Prior to this revision, this exclusion precluded coverage when your liquor license was suspended, expired, cancelled or revoked. The exclusion has been revised so that now it applies if your liquor license was suspended, expired, cancelled, revoked or not in effect.

#### **PA 109 12 04 - Cemetery Liability**

The form is reorganized but the coverages remain unchanged. We also change the statement "in the charge of the insured" to "in the care, custody or control of the insured" to parallel usage under the GA 101.

#### **PA 121 12 04 - Funeral Service Provider Professional Liability** and all state variations of this form

The form is amended to correspond to language and references within GA 101. We delete references to policy period and refer the defined term "coverage term". The reference in Who is an Insured is amended to Paragraph 3. instead of 4. Under Duties we clarify that offense refers to "personal and advertising injury" and the nature of the cooperation required. We clarify that related incidents will be treated as one and as having occurred in the earliest "coverage term".



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

### SCHEDULE

COVERAGE	Amount and Basis of Deductible PER CLAIM or PER OCCURRENCE	
Bodily Injury Liability OR	\$	\$
Property Damage Liability OR	\$ 5,000	\$
Bodily Injury Liability and/or Property Damage Liability Combined	\$	\$

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**APPLICATION OF ENDORSEMENT** (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

**THE STATED DEDUCTIBLE APPLIES TO BODILY INJURY LIABILITY AND/OR PROPERTY DAMAGE LIABILITY ARISING OUT OF, RESULTING FROM, CAUSED BY, CONTRIBUTED TO, OR IN ANY WAY RELATED TO ANY BACTERIA OR FUNGI ON OR WITHIN A BUILDING OR STRUCTURE, INCLUDING ITS CONTENTS, WHETHER OCCURRING SUDDENLY OR GRADUALLY. FUNGI MEANS ANY TYPE OR FORM OF FUNGUS, AND INCLUDES, BUT IS NOT LIMITED TO, ANY FORM OR TYPE OF MOLD, MUSHROOM OR MILDEW AND ANY MYCOTOXINS, SPORES, SCENTS OR BYPRODUCTS PRODUCED OR RELEASED BY FUNGI.**

A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.

Combined, to all damages sustained by any one person because of:

- (1) "Bodily injury";
- (2) "Property damage"; or
- (3) "Bodily injury" and "property damage" combined

B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:

as the result of any one "occurrence".

If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.

1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:

With respect to "property damage", person includes an organization.

- a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage

2. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage



Combined, to all damages because of:

- (1) "Bodily injury";
- (2) "Property damage"; or
- (3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

- C. The terms of this insurance, including those with respect to:

1. Our right and duty to defend the insured against any "suits" seeking those damages; and
2. Your duties in the event of an "occurrence", claim, or "suit"

apply irrespective of the application of the deductible amount.

- D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NEW YORK CONTRACTORS' COMMERCIAL GENERAL LIABILITY BROADENED ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Endorsement - Table of Contents:

<u>Coverage:</u>	<u>Begins on Page:</u>
1. Employee Benefit Liability Coverage.....	3
2. Unintentional Failure to Disclose Hazards .....	8
3. Damage to Premises Rented to You .....	8
4. Supplementary Payments .....	9
5. Medical Payments.....	9
6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.).....	9
7. 180 Day Coverage for Newly Formed or Acquired Organizations .....	10
8. Waiver of Subrogation .....	10
9. Automatic Additional Insured - Specified Relationships: .....	10
x Managers or Lessors of Premises;	
x Lessor of Leased Equipment;	
x Vendors;	
x State or Political Subdivisions - Permits Relating to Premises;	
x State or Political Subdivisions - Permits; and	
x Contractors' Operations	
10. Broadened Contractual Liability - Work Within 50' of Railroad Property.....	14
11. Property Damage to Borrowed Equipment .....	14
12. Employees as Insureds - Specified Health Care Services: .....	14
x Nurses;	
x Emergency Medical Technicians; and	
x Paramedics	
13. Broadened Notice of Occurrence.....	15

#### B. Limits of Insurance:

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

##### 1. Employee Benefit Liability Coverage

Each Employee Limit: \$ 1,000,000  
Aggregate Limit: \$ 3,000,000  
Deductible: \$ 1,000

##### 3. Damage to Premises Rented to You

The lesser of:

- The Each Occurrence Limit shown in the Declarations; or
- \$500,000 unless otherwise stated \$ \_\_\_\_\_

##### 4. Supplementary Payments

- Bail bonds: \$ 1,000
- Loss of earnings: \$ 350

**5. Medical Payments**

Medical Expense Limit: \$ 10,000

**6. Voluntary Property Damage (Coverage a.) and Care, Custody or Control Liability Coverage (Coverage b.)**

Limits of Insurance (Each Occurrence)

Coverage a. \$1,000

Coverage b. \$5,000 unless otherwise stated \$ \_\_\_\_\_

Deductibles (Each Occurrence)

Coverage a. \$250

Coverage b. \$250 unless otherwise stated \$ \_\_\_\_\_

COVERAGE	PREMIUM BASIS (a) Area (b) Payroll (c) Gross Sales (d) Units (e) Other	RATE (For Limits in Excess of \$5,000)	ADVANCE PREMIUM (For Limits in Excess of \$5,000)
b. Care, Custody or Control			\$
<b>TOTAL ANNUAL PREMIUM</b>			<b>\$</b>

**11. Property Damage to Borrowed Equipment**

Each Occurrence Limit: \$ 10,000

Deductible: \$ 250

**C. Coverages:**

**1. Employee Benefit Liability Coverage**

- a. The following is added to **SECTION I - COVERAGES: Employee Benefit Liability Coverage.**

**(1) Insuring Agreement**

(a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

(b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and

- 1) Occurs during the policy period; and or

- 2) You did not have knowledge of a claim or "suit" on or before the effective date of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
- ii) Receives a written or verbal demand or claim for damages because of the act, error or omission.

**(2) Exclusions**

This insurance does not apply to:

**(a) Bodily Injury, Property Damage or Personal and Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

**(b) Dishonest, Fraudulent, Criminal or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

**(c) Failure to Perform a Contract**

Damages arising out of failure of performance of contract by any insurer.

**(d) Insufficiency of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy of Performance of Investment / Advice Given With Respect to Participation**

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past performance of investment vehicles; or
- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation and Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;

- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(3) Supplementary Payments**

**SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** also apply to this Coverage.

**b. Who is an Insured**

As respects Employee Benefit Liability Coverage, **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced by the following:

- (1) If you are designated in the Declarations as:
  - (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
  - (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "ex-

ecutive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- (2) Each of the following is also an insured:
- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program".
  - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.
  - (c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- (3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:
- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
  - (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

#### c. Limits of Insurance

As respects Employee Benefit Liability Coverage, **SECTION III - LIMITS**

**OF INSURANCE** is deleted in its entirety and replaced by the following:

- (1) The Limits of Insurance shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:
- (a) Insureds;
  - (b) Claims made or "suits" brought;
  - (c) Persons or organizations making claims or bringing "suits";
  - (d) Acts, errors or omissions; or
  - (e) Benefits included in your "employee benefit program".
- (2) The Aggregate Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
- (a) An act, error or omission; or
  - (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions, negligently committed in the "administration" of your "employee benefit program".
- However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".
- (4) **Deductible Amount**

(a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

(b) The deductible amount stated in **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** as applicable to Each Employee applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

(c) The terms of this insurance, including those with respect to:

1) Our right and duty to defend the insured against any "suits" seeking those damages; and

2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,

apply irrespective of the application of the deductible amount.

(d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

**d. Additional Conditions**

As respects **Employee Benefit Liability Coverage, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

(1) **Item 2. Duties in the Event of Occurrence, Offense, Claim or Suit** is deleted in its entirety and replaced by the following:

**2. Duties in the Event of an Act, Error or Omission, or Claim or Suit**

a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

(1) What the act, error or omission was and when it occurred; and

(2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

(2) **Item 5. Other Insurance** is deleted in its entirety and replaced by the following:

**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **b.** below.

**b. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**e. Additional Definitions**

As respects Employee Benefit Liability Coverage, SECTION V - DEFINITIONS is amended as follows:

(1) The following definitions are added:

**1. "Administration" means:**

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";

- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or
- d. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
  - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
2. "Cafeteria plans" means plan authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
  3. "Employee benefit programs" means a program providing some or all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:

- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
- b. Profit sharing plans, employee savings plans, employee stock ownership plans, pen-



sion plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;

- c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and
- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

(2) The following definitions are deleted in their entirety and replaced by the following:

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
- c. An appeal of a civil proceeding.

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

## 2. Unintentional Failure to Disclose Hazards

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 7. Representations** is hereby amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

## 3. Damage to Premises Rented to You

a. The last Subparagraph of Paragraph **2. SECTION I - COVERAGES, COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE, 2. LIABILITY Exclusions** is hereby deleted and replaced by the following:

Exclusions **c.** through **q.** do not apply to damage by fire, explosion, lightning, smoke or soot to premises while rented to you or temporarily occupied by you with permission of the owner.

## b. Limit of Insurance

The Damage to Premises Rented to You Limit as shown in the Declarations is amended as follows:

(2) Paragraph **6.** of **SECTION III - LIMITS OF INSURANCE** is hereby deleted and replaced by the following:

**6.** Subject to **5.** above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one "occurrence" to which this insurance applies.

(3) The amount we will pay is limited as described in **Section B. Limits of Insurance, 3. Damage to Premises Rented to You** of this endorsement.

## 4. Supplementary Payments

Under **SECTION I - COVERAGE, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B:**

- a. Paragraph 2. is replaced by the following:

Up to the limit shown in Section B. **Limits of Insurance, 4.a.** Bail Bonds of this endorsement for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- b. Paragraph 4. is replaced by the following:

All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section B. **Limits of Insurance, 4.b.** Loss of Earnings of this endorsement per day because of time off from work.

5. **Medical Payments**

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section B. **Limits of Insurance, 5. Medical Payments** of this endorsement.

6. **Voluntary Property Damage and Care, Custody or Control Liability Coverage**

- a. **Voluntary Property Damage Coverage**

We will pay for "property damage" to property of others arising out of operations incidental to the insured's business when:

- (1) Damage is caused by the insured; or
- (2) Damage occurs while in the insured's possession.

With your consent, we will make these payments regardless of fault.

- b. **Care, Custody or Control Liability Coverage**

**SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, j. Damage to Property.** Subparagraphs (3), (4) do not apply to "property damage" to the property of others described therein.

With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

- a. The Limits of Insurance shown in the Declarations are replaced by the limits designated in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (1) Insureds;
- (2) Claims made or "suits" brought; or
- (3) Persons or organizations making claims or bringing "suits".

b. **Deductible Clause**

- (1) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the deductible amount stated in Section B. **Limits of Insurance, 6. Voluntary Property Damage and Care, Custody or Control Liability Coverage** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.
- (2) Condition 2. **Duties in the Event of Occurrence, Offense, Claim or Suit**, applies to each claim or "suit" irrespective of the amount.
- (3) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

7. **180 Day Coverage for Newly Formed or Acquired Organizations**

**SECTION II - WHO IS AN INSURED** is amended as follows:

Subparagraph a. of Paragraph 4. is hereby deleted and replaced by the following:

- a. Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

#### 8. Waiver of Subrogation

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 9. Transfer of Rights of Recovery Against Others to Us** is hereby amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

#### 9. Automatic Additional Insured - Specified Relationships

- a. The following is hereby added to **SECTION II - WHO IS AN INSURED:**

(1) Any person or organization described in Paragraph 9.a.(2) below (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of:

- (a) A written contract or agreement; or
- (b) An oral agreement or contract where a certificate of insurance showing that person or organization as an additional insured has been issued,

is an insured, provided:

- (a) The written or oral contract or agreement is:
  - 1) Currently in effect or becomes effective during the policy period; and

2) Executed prior to an "occurrence" or offense to which this insurance would apply; and

- (b) They are not specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part.

(2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

- (a) The manager or lessor of a premises leased to you with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of a premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

1) Any "occurrence" which takes place after you cease to be a tenant in that premises.

2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

- (b) Any person or organization from which you lease equipment with whom you have agreed per Paragraph 9.a.(1) above to provide insurance. Such person(s) or organization(s) are insureds solely with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person(s) or organizations(s). However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- (c) Any person or organization (referred to below as ven-

dor) with whom you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1) The insurance afforded the vendor does not apply to:

- a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b) Any express warranty unauthorized by you;
- c) Any physical or chemical change in the product made intentionally by the vendor;
- d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of

business, in connection with the distribution or sale of the products;

f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

g) Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

2) This insurance does not apply to any insured person or organization:

a) From whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products; or

b) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.

(d) Any state or political subdivision with which you have agreed per Paragraph 9.a.(1) above to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent or control and to which this insurance applies:

- 1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
  - 2) The construction, erection, or removal of elevators; or
  - 3) The ownership, maintenance, or use of any elevators covered by this insurance.
- (e) Any state or political subdivision with which you have agreed per Paragraph 9.a.(1) above to provide insurance, subject to the following provisions:
- 1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
  - 2) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or political subdivision.
- (f) Any person or organization with which you have agreed per Paragraph 9.a.(1) above to provide insurance, but only with respect to liability arising out of "your work" performed for that additional insured by you or on your behalf. A person or organization's status as an insured under this provision of this endorsement continues for only the period of time required by the written contract or agreement, but in no event beyond the expiration date of this Coverage Part. If there is no written contract or agreement, or if no period of time is required by the written contract or agreement, a person or organization's status as an insured under this endorsement ends when your operations for that insured are completed.
- (3) Any insurance provided to an additional insured designated under Paragraph 9.a.(2):
- (a) Subparagraphs (e) and (f) does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard";
  - (b) Subparagraphs (a), (b), (d), (e) and (f) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence or willful misconduct of the additional insured or their agents, "employees" or any other representative of the additional insured; or
  - (c) Subparagraph (f) does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:
    - 1) Defects in design furnished by or on behalf of the additional insured; or
    - 2) The rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
      - a) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
      - b) Supervisory, inspection, architectural or engineering activities.

- 3) "Your work" for which a consolidated (wrap-up) insurance program has been provided by the prime contractor-project manager or owner of the construction project in which you are involved.
- b. Only with regard to insurance provided to an additional insured designated under Paragraph 9.a.(2) Subparagraph (f) above, **SECTION III - LIMITS OF INSURANCE** is amended to include:

The limits applicable to the additional insured are those specified in the written contract or agreement or in the Declarations of this Coverage Part, whichever are less. If no limits are specified in the written contract or agreement, or if there is no written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations of this Coverage Part. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

- c. **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is hereby amended as follows:

- (1) Condition 5. **Other Insurance** is amended to include:

- (a) Where required by a written contract or agreement, this insurance is primary and / or noncontributory as respects any other insurance policy issued to the additional insured, and such other insurance policy shall be excess and / or noncontributing, whichever applies, with this insurance.

- (b) Any insurance provided by this endorsement shall be primary to other insurance available to the additional insured except:

- 1) As otherwise provided in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance**; or
- 2) For any other valid and collectible insurance

available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, the coverage provided under this endorsement shall also be excess.

- (2) Condition 11. **Conformance to Specific Written Contract or Agreement** is hereby added:

**11. Conformance to Specific Written Contract or Agreement**

With respect to additional insureds described in Paragraph 9.a.(2)(f) above only:

If a written contract or agreement between you and the additional insured specifies that coverage for the additional insured:

- a. Be provided by the Insurance Services Office additional insured form number **CG 20 10** or **CG 20 37** (where edition specified); or
- b. Include coverage for completed operations; or
- c. Include coverage for "your work";

and where the limits or coverage provided to the additional insured is more restrictive than was specifically required in that written contract or agreement, the terms of Paragraphs 9.a.(3)(a), 9.a.(3)(b) or 9.b. above, or any combination thereof, shall be interpreted as providing the limits or coverage required by the terms of the written contract or agreement, but only to the extent that such limits or coverage is included within the terms of the Coverage Part to which this endorsement is attached. If, however, the written contract or agreement specifies the Insurance Services Office additional insured form num-

ber **CG 20 10** but does not specify which edition, or specifies an edition that does not exist, Paragraphs **9.a.(3)(a)** and **9.a.(3)(b)** of this endorsement shall not apply and Paragraph **9.b.** of this endorsement shall apply.

**10. Broadened Contractual Liability - Work Within 50' of Railroad Property**

It is hereby agreed that Paragraph **f.(1)** of Definition **12. "Insured contract"** (**SECTION V - DEFINITIONS**) is deleted.

**11. Property Damage to Borrowed Equipment**

- a. The following is hereby added to Exclusion **j. Damage to Property** of Paragraph **2., Exclusions** of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

Paragraphs **(3)** and **(4)** of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

- b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

**(1)** The Limits of insurance shown in the Declarations are replaced by the limits designated in Section **B. Limits of Insurance, 11.** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in Section **B. Limits of Insurance, 11.** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (a)** Insureds;
- (b)** Claims made or "suits" brought; or
- (c)** Persons or organizations making claims or bring "suits".

**(2) Deductible Clause**

- (a)** Our obligation to pay damages on your behalf applies only to the amount of dam-

ages for each "occurrence" which are in excess of the Deductible amount stated in Section **B. Limits of Insurance, 11.** of this endorsement. The limits of insurance will not be reduced by the application of such Deductible amount.

- (b)** Condition **2. Duties in the Event of Occurrence, Offense, Claim or Suit**, applies to each claim or "suit" irrespective of the amount.

- (c)** We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**12. Employees as Insureds - Specified Health Care Services**

It is hereby agreed that Paragraph **2.a.(1)(d)** of **SECTION II - WHO IS AN INSURED**, does not apply to your "employees" who provide professional health care services on your behalf as duly licensed:

- a. Nurses;
- b. Emergency Medical Technicians; or
- c. Paramedics,

in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place.

**13. Broadened Notice of Occurrence**

Paragraph **a.** of Condition **2. Duties in the Event of Occurrence, Offense, Claim or Suit** (**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**) is hereby deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1)** How, when and where the "occurrence" or offense took place;
- (2)** The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".





THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - ACCESS OR DISCLOSURE OF  
CONFIDENTIAL OR PERSONAL INFORMATION AND  
DATA-RELATED LIABILITY - WITH  
LIMITED BODILY INJURY EXCEPTION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

- A. Exclusion 2.s. of **Section I - Coverage A - Bodily Injury and Property Damage Liability** is replaced by the following:

**2. Exclusions**

This insurance does not apply to:

- s. **Access or Disclosure of Confidential or Personal Information and Data-Related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

ing out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury".

- B. The following is added to Paragraph 2. **Exclusions of Section I - Coverage B - Personal and Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**Access or Disclosure of Confidential or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION - CONTRACTORS - PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2. **Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, and Paragraph 2. **Exclusions of SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY:**

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
  - a. Providing engineering, architectural or surveying services to others; and
  - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.
2. Subject to Paragraph 3., below, professional services include:
  - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
  - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION - DESIGNATED OPERATIONS COVERED BY A  
CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SCHEDULE**

**Description and Location of Operations:**

**ALL OCIP & CCIP JOBS**

**A. The following exclusion is added to SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions.**

This insurance does not apply to "bodily injury" or "property damage":

- (1) Arising out of either your ongoing operations or operations included within the "products-completed operations hazard"; and
- (2) At the location described in the Schedule of this endorsement,

as a consolidated (wrap-up) insurance program has been provided by the prime con-

tractor / project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part;
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.

**B. With respect to only the Description and Location of Operations shown in the Schedule, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 5. Other Insurance, b. Excess Insurance, (3)(b) is deleted.**



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS ("EIFS") AND DIRECT-APPLIED EXTERIOR FINISH SYSTEMS ("DEFS") - BROAD FORM**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

1. The following exclusion is added to Paragraph 2. Exclusions of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, and Paragraph 2. Exclusions of SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" that arises out of, is caused by, or is attributable to, whether in whole or in part, any of the following:

- a. The design, manufacture, sale, service, handling, construction, fabrication, preparation, installation, application, maintenance, disposal or repair, including remodeling, service, correction, or replacement, of a "wall finish system", or any part thereof, including any method or procedure used to correct problems with installed or partially installed "wall finish systems"; or
- b. Any work or operations conducted by or on behalf of any insured on or to a "wall finish system", or any component thereof, or any component of a building or structure to which a "wall finish system" attaches that results, directly or indirectly, in the intrusion of water or moisture, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage.

This exclusion also applies to any "bodily injury", "property damage" or "personal and advertising injury":

- a. For which any insured assumes liability in any part of any contract or agreement, regardless of whether such contract or agreement is an "insured contract";
- b. Arising out of, caused by, or attributable to, whether in whole or in part, warranties or representations made at any time with respect to the fitness, quality, durability or performance of a "wall finish system"; and

- c. Arising out of, caused by, or attributable to, whether in whole or in part, the providing of or failure to provide any warning or instructions with regard to a "wall finish system".

2. SECTION V - DEFINITIONS is amended to include the following:

- a. "Direct-applied exterior finish system" (commonly referred to as DEFS) means an exterior cladding or finish system and all component parts therein, used on any part of any structure, and consisting of:

- (1) A rigid or semi-rigid substrate;
- (2) The adhesive and / or mechanical fasteners used to attach the substrate to the structure including any water-durable exterior wall substrate;
- (3) A reinforced or unreinforced base coat or mesh;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

- b. "Exterior insulation and finish system" (commonly referred to as EIFS) means an exterior cladding or finish system and all component parts therein, used on any part of any structure, and consisting of:

- (1) A rigid or semi-rigid insulation board made of expanded polystyrene or other materials;
- (2) The adhesive and / or mechanical fasteners used to attach the insulation board to the substrate;
- (3) A reinforced or unreinforced base coat or mesh;



- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any conditioners, primers, accessories, flashing, coatings, caulking or sealants used with the system for any purpose;

that interact to form an energy efficient wall.

c. "Wall finish system" means:

- (1) An "exterior insulation and finish system";
- (2) A "direct-applied exterior finish system"; or
- (3) Any energy efficient exterior cladding or finish system substantially similar to Paragraph (1) or (2) above.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CONTRACTUAL LIABILITY - RAILROADS**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

#### **SCHEDULE**

**Scheduled Railroad:**

**FINGER LAKES RAILWAY CORP**

**Designated Job Site:**

**GOULDS PUMPS INC  
SENECA FALLS NY**

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in **SECTION V - DEFINITIONS** is replaced by the following:

**12. "Insured Contract" means:**

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, sur-

veys, field orders, change orders or drawings and specifications; or

- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory inspection, architectural or engineering activities;
- (3) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materials; market research; public relations and new product development;
- (4) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (3), above;
- (5) That indemnifies a web-site designer or content provider, or Internet search, access, content or service

provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet Services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search engines; marketing analysis; and

providing access to the Internet or other similar networks; or

- (6) Under which the insured, if a website designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (5), above.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMERCIAL GENERAL LIABILITY COMPOSITE RATE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The premium for this Coverage Part is based on the Rating Basis shown in the Schedule. The premium shall be computed by applying the rate shown in the Schedule to the amount of the Premium Basis.

The premium shown as the Advance Annual Premium is subject to an annual audit as declared in the Premium Audit Condition applicable to the Commercial General Liability Coverage Part.

### **SCHEDULE**

<b>Rating Basis</b>	<b>Estimated Premium Basis</b>	<b>Rate</b>	<b>Advance Annual Premium</b>
	<b>2,015,000</b>	<b>31.712</b>	<b>63,900</b>
<input checked="" type="checkbox"/> Payroll			
<input type="checkbox"/> Gross Sales			
<input type="checkbox"/> Other			
_____			
_____			



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY COMPOSITE RATE ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

The premium for this Coverage Part is based on the Rating Basis shown in the Schedule. The premium shall be computed by applying the rate shown in the Schedule to the amount of the Premium Basis.

The premium shown as the Advance Annual Premium is subject to an annual audit as declared in the Premium Audit Condition applicable to the Commercial General Liability Coverage Part.

### SCHEDULE

Rating Basis	Estimated Premium Basis	Rate	Advance Annual Premium
<input type="checkbox"/> Payroll	22,500,000	2.062	46,395
<input checked="" type="checkbox"/> Gross Sales			
<input type="checkbox"/> Other			
_____			
_____			





# INSURANCE BINDER

DATE (MM/DD/YYYY)  
10/27/2017

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON PAGE 2 OF THIS FORM.

<b>AGENCY</b> Berkshire Fairfield Insurance Agency 128 South Street  Pittsfield MA 01201 PHONE (A/C, No, Ext): (413) 443-5300 FAX (A/C, No): (413) 443-2691 CODE: 20084 SUB CODE: AGENCY CUSTOMER ID: 00000564 INSURED AND MAILING ADDRESS 900 East Fayette Group, LLC 121 Genesee St. Suite 1 Syracuse NY 13120		<b>COMPANY</b> Selective Insurance Company BINDER # B17102700202 DATE EFFECTIVE TIME DATE EXPIRATION TIME 10/27/2017 12:01 PM 11/26/2017 X 12:01 AM NOON <input type="checkbox"/> THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #: 17-18 <b>DESCRIPTION OF OPERATIONS / VEHICLES / PROPERTY (including Location)</b> Loc# 00001/Bldg# 00001 900 East Fayette St. Syracuse, NY 13120	
--	--	--	--

COVERAGES		LIMITS	
TYPE OF INSURANCE	COVERAGE / FORMS	DEDUCTIBLE	AMOUNT
<b>PROPERTY</b> CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC <input checked="" type="checkbox"/> Special	Builder's Risk	10,000	8,000,000
<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR RETRO DATE FOR CLAIMS MADE:		EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$	
<b>VEHICLE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ MEDICAL PAYMENTS \$ PERSONAL INJURY PROT \$ UNINSURED MOTORIST \$	
<b>VEHICLE PHYSICAL DAMAGE</b> DED <input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES <input type="checkbox"/> COLLISION <input type="checkbox"/> OTHER THAN COL:		ACTUAL CASH VALUE STATED AMOUNT \$	
<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$	
<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM RETRO DATE FOR CLAIMS MADE:		EACH OCCURRENCE \$ AGGREGATE \$ SELF-INSURED RETENTION \$ PER STATUTE	
<b>WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY</b>		E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	
<b>SPECIAL CONDITIONS / OTHER COVERAGES</b> Five Star Bank is listed as additional insured		FEES \$ TAXES \$ ESTIMATED TOTAL PREMIUM \$	

### NAME & ADDRESS

Five Star Bank ISAOA PO Box 391224 Solon, OH 44139-0224	<input type="checkbox"/> MORTGAGEE <input type="checkbox"/> LOSS PAYEE	<input checked="" type="checkbox"/> ADDITIONAL INSURED <b>Mortgagee &amp; Loss Payee</b>
	LOAN #: AUTHORIZED REPRESENTATIVE K Coty, CISR, CLCS/KC	





# INSURANCE BINDER

DATE (MM/DD/YYYY)  
10/27/2017

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON PAGE 2 OF THIS FORM.

<b>AGENCY</b> Berkshire Fairfield Insurance Agency 128 South Street  Pittsfield MA 01201 PHONE (A/C, No, Ext): (413) 443-5300 FAX (A/C, No): (413) 443-2691 CODE: SUB CODE: AGENCY CUSTOMER ID: 00000564		<b>COMPANY</b> Lloyds of London BINDER # B17102700204																									
<b>INSURED AND MAILING ADDRESS</b> 900 East Fayette Group, LLC 121 Genesee St. Suite 1 Syracuse NY 13120		<table border="1"> <tr> <th>DATE</th> <th>EFFECTIVE</th> <th>TIME</th> <th>DATE</th> <th>EXPIRATION</th> <th>TIME</th> </tr> <tr> <td></td> <td>10/27/2017</td> <td>12:01</td> <td></td> <td>11/26/2017</td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td>X 12:01 AM</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td>X NOON</td> </tr> </table>		DATE	EFFECTIVE	TIME	DATE	EXPIRATION	TIME		10/27/2017	12:01		11/26/2017							X 12:01 AM						X NOON
DATE	EFFECTIVE	TIME	DATE	EXPIRATION	TIME																						
	10/27/2017	12:01		11/26/2017																							
					X 12:01 AM																						
					X NOON																						
		<input type="checkbox"/> THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY # 17-18																									
		<b>DESCRIPTION OF OPERATIONS / VEHICLES / PROPERTY (Including Location)</b> Loc# 00001/Bldg# 00001 900 East Fayette St. Syracuse, NY 13120																									

COVERAGES		LIMITS		
TYPE OF INSURANCE	COVERAGE / FORMS	DEDUCTIBLE	COINS %	AMOUNT
<b>PROPERTY</b> CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC <input checked="" type="checkbox"/> <b>Special</b>	Building, Special	10,000	80	2,500,000
<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR RETRO DATE FOR CLAIMS MADE:				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
<b>VEHICLE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ MEDICAL PAYMENTS \$ PERSONAL INJURY PROT \$ UNINSURED MOTORIST \$
<b>VEHICLE PHYSICAL DAMAGE</b> DED <input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES <input type="checkbox"/> COLLISION <input type="checkbox"/> OTHER THAN COL:				ACTUAL CASH VALUE STATED AMOUNT \$
<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM RETRO DATE FOR CLAIMS MADE:				EACH OCCURRENCE \$ AGGREGATE \$ SELF-INSURED RETENTION \$ PER STATUTE
<b>WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY</b>				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
<b>SPECIAL CONDITIONS / OTHER COVERAGES</b> Five Star Bank is listed as additional insured				FEES \$ TAXES \$ ESTIMATED TOTAL PREMIUM \$

<b>NAME &amp; ADDRESS</b>		<input type="checkbox"/> MORTGAGEE <input type="checkbox"/> LOSS PAYEE		<input checked="" type="checkbox"/> ADDITIONAL INSURED <b>Mortgagee &amp; Loss Payee</b>	
Five Star Bank ISAOA PO Box 391224 Solon, OH 44139-0224		LOAN #: AUTHORIZED REPRESENTATIVE K Coty, CISR, CLCS/KC			



# INSURANCE BINDER

DATE (MM/DD/YYYY)  
10/27/2017**THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON PAGE 2 OF THIS FORM.**

<b>AGENCY</b> Berkshire Fairfield Insurance Agency 128 South Street  Pittsfield MA 01201 PHONE (A/C, No, Ext): (413) 443-5300 FAX (A/C, No): (413) 443-2691 CODE: SUB CODE: AGENCY CUSTOMER ID: 00000564 INSURED AND MAILING ADDRESS 900 East Fayette Group, LLC 121 Genesee St. Suite 1 Syracuse NY 13120		<b>COMPANY</b> Lloyds of London <b>BINDER #</b> B17102700204 <b>DATE EFFECTIVE</b> 10/27/2017 <b>TIME</b> 12:01 <b>AM</b> <input checked="" type="checkbox"/> <b>DATE EXPIRATION</b> 11/26/2017 <b>TIME</b> 12:01 <b>NOON</b> <input type="checkbox"/> THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #: 17-18 <b>DESCRIPTION OF OPERATIONS / VEHICLES / PROPERTY (Including Location)</b> Loc# 00001/Bldg# 00001 900 East Fayette St. Syracuse, NY 13120	
--	--	---	--

COVERAGES		LIMITS	
TYPE OF INSURANCE	CAUSES OF LOSS	COVERAGE / FORMS	AMOUNT
<input type="checkbox"/> PROPERTY <input type="checkbox"/> BASIC <input checked="" type="checkbox"/> <b>Special</b>	<input type="checkbox"/> BROAD <input type="checkbox"/> SPEC	<b>Building, Special</b>  <b>10,000</b>	<b>2,500,000</b>  <b>80</b>
<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR RETRO DATE FOR CLAIMS MADE:		EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$	
<b>VEHICLE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ MEDICAL PAYMENTS \$ PERSONAL INJURY PROT \$ UNINSURED MOTORIST \$	
<b>VEHICLE PHYSICAL DAMAGE</b> DED <input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES <input type="checkbox"/> COLLISION <input type="checkbox"/> OTHER THAN COL:		ACTUAL CASH VALUE STATED AMOUNT \$	
<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$	
<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMERELLA FORM RETRO DATE FOR CLAIMS MADE:		EACH OCCURRENCE \$ AGGREGATE \$ SELF-INSURED RETENTION \$ PER STATUTE	
<b>WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY</b>		E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	
<b>SPECIAL CONDITIONS / OTHER COVERAGES</b> City of Syracuse Industrial Deleopment Agency is listed as additional insured		FEES \$ TAXES \$ ESTIMATED TOTAL PREMIUM \$	

<b>NAME &amp; ADDRESS</b> City of Syracuse Industrial Development A a public corporation of the State of NY w 201 East Washington St. 7th Floor Syracuse, NY 13202		MORTGAGEE <input checked="" type="checkbox"/> LOSS PAYEE LOAN # AUTHORIZED REPRESENTATIVE K Coty, CISR, CLCS/KC	ADDITIONAL INSURED
---	--	---	--------------------



# INSURANCE BINDER

DATE (MM/DD/YYYY)  
10/30/2017**THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON PAGE 2 OF THIS FORM.**

AGENCY Berkshire Fairfield Insurance Agency 128 South Street  Pittsfield MA 01201		COMPANY Selective Insurance Company	BINDER # B17103000205
PHONE (A/C, No, Ext): (413) 443-5300	FAX (A/C, No): (413) 443-2691	DATE EFFECTIVE 10/27/2017	TIME 12:01
CODE: 20084	SUB CODE:	DATE EXPIRATION 11/26/2017	TIME 12:01 AM
AGENCY CUSTOMER ID: 00000564		THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #: 17-18	
INSURED AND MAILING ADDRESS 900 East Fayette Group, LLC 121 Genesee St. Suite 1 Syracuse NY 13120		DESCRIPTION OF OPERATIONS / VEHICLES / PROPERTY (including Location) Loc# 00001/Bldg# 00001 900 East Fayette St. Syracuse, NY 13120	

**COVERAGES****LIMITS**

TYPE OF INSURANCE	COVERAGE / FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC <input checked="" type="checkbox"/> Special	Builders Risk	10,000		8,000,000
GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE	\$	
		DAMAGE TO RENTED PREMISES	\$	
		MED EXP (Any one person)	\$	
		PERSONAL & ADV INJURY	\$	
		GENERAL AGGREGATE	\$	
		PRODUCTS - COMP/OP AGG	\$	
VEHICLE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		COMBINED SINGLE LIMIT	\$	
		BODILY INJURY (Per person)	\$	
		BODILY INJURY (Per accident)	\$	
		PROPERTY DAMAGE	\$	
		MEDICAL PAYMENTS	\$	
		PERSONAL INJURY PROT	\$	
		UNINSURED MOTORIST	\$	
VEHICLE PHYSICAL DAMAGE DED <input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES		ACTUAL CASH VALUE		
COLLISION: OTHER THAN COL:		STATED AMOUNT	\$	
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT	\$	
		OTHER THAN AUTO ONLY:		
		EACH ACCIDENT	\$	
		AGGREGATE	\$	
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE	\$	
		AGGREGATE	\$	
		SELF-INSURED RETENTION	\$	
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY		PER STATUTE		
		E.L. EACH ACCIDENT	\$	
		E.L. DISEASE - EA EMPLOYEE	\$	
		E.L. DISEASE - POLICY LIMIT	\$	
SPECIAL CONDITIONS / OTHER COVERAGES	City of Syracuse Industrial Development Agency is listed as additional insured.	FEES	\$	
		TAXES	\$	
		ESTIMATED TOTAL PREMIUM	\$	

**NAME & ADDRESS**

City of Syracuse Industrial Development A a public corporation of the State of NY w 201 East Washington St. 7th Floor Syracuse, NY 13202	MORTGAGEE	ADDITIONAL INSURED
	<input checked="" type="checkbox"/> LOSS PAYEE	
	LOAN #:	
	AUTHORIZED REPRESENTATIVE	K Coty, CISR, CLCS/KC

9

## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

**THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT** (the “*Agreement*”) is made as of November 1, 2017 by **900 EAST FAYETTE GROUP, LLC** (the “*Indemnitor*” or the “*Company*”), for the benefit of the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the “*Agency*”).

### RECITALS

WHEREAS, the Agency has undertaken at the request of the Indemnitor, a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “*Existing Building*”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York, as more fully described on Schedule A annexed hereto (the “*Land*”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

**NOW, THEREFORE**, in consideration of the premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **Recitals; Definitions.**

(a) The foregoing recitals are incorporated into this Agreement by this reference.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Agency Lease as Exhibit “C.”

2. **Representations and Warranties.**

(a) Except as disclosed in Schedule B annexed hereto, Indemnitor represents and warrants that it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids,

liquid or gaseous products or any hazardous wastes or hazardous substances (collectively, "**Hazardous Substances**"), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "**Hazardous Waste Laws**"), at, upon, under or within the Project Facility or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Project Facility or on any contiguous real estate.

(b) Except as disclosed in the reports listed on Schedule B annexed hereto, Indemnitor further represents and warrants that (i) it has not been nor will be involved in operations at or near the Project Facility which operations could lead to (A) the imposition of liability on Indemnitor or on any subsequent or former owner of the Project Facility or (B) the creation of a lien on the Project Facility under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) it has not permitted, and will not permit, any tenant or occupant of the Project Facility to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on Agency, the Indemnitor or on any other owner of any of the Project Facility.

### 3. Covenants.

(a) Indemnitor shall comply strictly and in all respects with the requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations and shall notify Agency immediately in the event of any discharge or discovery of any Hazardous Substance at, upon, under or within the Project Facility which is not otherwise already disclosed in Schedule B. Indemnitor shall promptly forward to Agency copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge or the presence of any Hazardous Substance or any other matters relating to the Hazardous Waste Laws or any similar laws or regulations, as they may affect the Project Facility.

(b) Promptly upon the written request of Agency, Indemnitor shall provide Agency, at Indemnitor's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to the requesting Person, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Project Facility.

### 4. Indemnity.

(a) Indemnitor shall at all times indemnify and hold harmless Agency against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Agency, whether as contract vendor, owner, mortgagee, as mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

(1) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility whether or not the same originates or emanates from the Project Facility or any contiguous real estate including any loss of value of the Project Facility as a result of any of the foregoing;

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

(3) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Project Facility; and/or

(4) any other environmental matter affecting the Project Facility within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local agency.

The obligations of Indemnitor under this Agreement shall arise whether or not the Environmental Protection Agency, any other federal agency or any state or local agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(b) In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility, whether or not the same originates or emanates from the Project Facility or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Agency may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Project Facility and/or take any and all other actions as Agency shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure the noncompliance of Indemnitor.

(c) Indemnitor acknowledges that Agency has relied upon the representations, warranties, covenants and indemnities of Indemnitor in this Agreement. All of the representations, warranties, covenants and indemnities of this Agreement shall survive the repayment of Indemnitor's obligations under the Agency Lease or other Company Documents.

5. **Attorney's Fees.** If Agency retains the services of any attorney in connection with the subject of the indemnity herein, Indemnitor shall pay Agency's costs and reasonable attorneys' fees thereby incurred. Agency may employ an attorney of its own choice.

6. **Interest.** In the event that Agency incurs any obligations, costs or expenses under this Agreement, Indemnitor shall pay such Person immediately on demand, and if such payment is not received within ten (10) days, interest on such amount shall, after the expiration of the ten-

day period, accrue at the interest rate set forth in the Agency Lease until such amount, plus interest, is paid in full.

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

8. **Waiver by Indemnitor.** Indemnitor waives any right or claim of right to cause a marshalling of Indemnitor's assets or to cause Agency to proceed against any of the security for the Agency Lease before proceeding under this Agreement against Indemnitor or to proceed against Indemnitor in any particular order; Indemnitor agrees that any payments required to be made hereunder shall become due on demand; Indemnitor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

9. **Releases.** Any one or more of Indemnitor and any other party liable upon or in respect of this Agreement or the Agency Lease may be released without affecting the liability of any party not so released.

10. **Amendments.** No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Joint and Several Liability.** In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each Indemnitor, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

13. **Notices.** All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The



addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to:

City of Syracuse Industrial Development Agency  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202  
Attn: Corporation Counsel

(b) To the Company:

900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210  
Attn: Christopher Geiger, Managing Member

With a copy to:

Zenzel Law Offices  
6320 Fly Road, Suite 207  
East Syracuse, NY 13057  
Carol A. Zenzel, Esq.

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

14. **Waivers.** The parties waive trial by jury in any action brought on, under or by virtue of this Agreement. Indemnitor waives any right to require Agency at any time to pursue any remedy in such Person's power whatsoever. The failure of Agency to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such terms, nor shall it prevent Agency from insisting upon strict compliance with this Agreement or any other Company Document at any time thereafter.

15. **Severability.** If any clause or provisions herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision shall be held for naught as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

16. **Inconsistencies Among the Company Documents.** Nothing contained herein is intended to modify in any way the obligations of Indemnitor under the Agency Lease or any other Company Document. Any inconsistencies among the Company Documents shall be construed, interpreted and resolved so as to benefit Agency.

17. **Successors and Assigns.** This Agreement shall be binding upon Indemnitor's successors, assigns, heirs, personal representatives and estate and shall inure to the benefit of Agency and its successors and assigns.

18. **Controlling Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

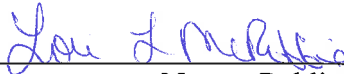
IN WITNESS WHEREOF, Indemnitor has executed this Agreement as of the date first above written.

900 EAST FAYETTE GROUP LLC

By:   
Christopher Geiger, Managing Member

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

On the 2<sup>nd</sup> day of November, in the year 2017 before me, the undersigned, a notary public in and for said state, personally appeared **Christopher Geiger**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

## SCHEDULE "A"

### LEGAL DESCRIPTION

#### **(A) 922-24 East Fayette Street**

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, described as follows: Beginning in the north line of Block Number two hundred forty (240) of the City of Syracuse, according to a map of said City made by J.M. Trowbridge, on the south line of East Fayette Street, ninety feet (90) west of the northeast corner of said block; thence west along the north line of said block forty (40) feet; thence south parallel to the east line of said block one hundred (100) feet; thence east parallel to East Fayette Street forty (40) feet, to a point ninety (90) feet from the east line of said block; thence north parallel with the east line of said block to the place of beginning.

#### **(B) 900-16 East Fayette Street**

All that tract or parcel of land situate in the City of Syracuse, New York, known and distinguished on a map made by J.M. Trowbridge as part of Lot No. 17 in Block No. 240 described as follows: Beginning at a point in the south line of E. Fayette Street 77.01 feet east of the northwest corner of said block which is 5 feet east of the east wall of the Sylvester Flats; thence west on the south line of E. Fayette Street to the northwest corner of said block; thence south on the west line of said block 66 feet; thence east on the south line of said Lot No. 17 76.86 feet; thence north 66 feet to the place of beginning.

Also all that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as the north half of Lot No. Twenty (20), Block No. Two Hundred Forty (240), according to a survey and map by Calvin Guiteau for Baldwin, Burt & Teall, subject to all unpaid taxes and monthly tenancies.

#### **(C) 918 E. Fayette Street**

All that tract or parcel of land, located in the City of Syracuse, County of Onondaga and State of New York commonly known as 918 E. Fayette Street, and being further described as being Lot Part 17 and 18, and 19, in Block 240, designated as Tax Map Book 1, Plate 116, Parcel 146, Property No. 1527009300; 48 X 66L2 x 34 feet, vacant lot also being described as:

All of that tract or parcel of land situate in the City of Syracuse, New York, being part of Block NO. 240 according to a map of said city made by J.M. Trowbridge, described as follows: Beginning in the south line of East Fayette Street 130 feet west of the northeast corner of said block; thence west along the north line of said block 48 feet to a point which is 77.01 feet east from the northwest corner of said block and is 5 feet east of the east wall of the Sylvester Flats; thence south 66 feet to a point in the south line of Lot No. 17 in said block which is 76.86 feet east of the west line of said block; thence east about 48.16 feet to a point 130 feet west of the east line of said block; thence

north parallel with the east line of said block 66 feet to the place of beginning; Also a strip of land about 2 feet in width extending southerly from the south line of the above described premises for a distance of 34 feet, the east line of which strip is an extension southerly of the east line of the above described parcel of land.

**(D) 305-07 Irving Avenue**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York. being north one-half of Lot No. 21 in Block 240 in said city, being 33 feet front on the east side of Irving Avenue, and 122.4 feet more or less deep.

Also all that tract or parcel of land situate in the City of Syracuse, in the county of Onondaga and State of New York, known and distinguished as the south half of Lot Number Twenty (20) of Block Number Two Hundred Forty (240) Syracuse, according to a survey and map made by Calvin Guiteau Baldwin, Burt & Teall of a certain larger tract; said lot lying on the east side of Irving Avenue fronting two (2) rods on said Avenue and Eight (8) rods deep, or thereabouts.

**Above Property Having been formally resubdivided into one lot that is now described as follows:**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York being part of Block Number 240 in said City being more particularly bounded and described as follows:

Beginning at the intersection of the southerly line of East Fayette Street with the east line of Irving Avenue;

Thence S 89° 30' 50" E, along the southerly line of East Fayette Street, a distance of 165.01 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 100.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the south line of East Fayette Street, a distance of 42.00 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 65.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the southerly line of East Fayette Street, a distance of 123.01 feet to a point in the easterly line of Irving Avenue;

Thence N 00° 29' 40" E, along the easterly line of Irving Avenue, a distance of 165.00 feet to the point and place of beginning.

**SCHEDULE "B"**

**EXCEPTIONS**

see attached



Civil Engineering  
Surveying  
Land Planning  
Environmental  
Municipal Services

October 4, 2013

Chris Geiger  
1221 East Genesee Street, Suite #2  
Syracuse, NY 13210

Re: Preliminary Investigation and Class V Underground Injection Well; 900 East Fayette Street, Syracuse,  
Onondaga County, New York.  
PVE Sheffler File #560900

Dear Mr. Geiger:

PVE Sheffler has completed a limited Investigation for the above-referenced property (Figure 1). Below is a summary of field activities, observations and recommendations.

#### **BACKGROUND**

Sanborn Fire Insurance maps indicate an automobile repair garage operated at the current detached garage on the subject property circa 1964 to 1990. A "tin shop" was present immediately south of the garage, on the subject property, in 1951 and 1953 maps. Several residential and commercial structures have also existed on the subject property. Currently the property only contains an apartment/office building and a detached garage.

#### **FIELD INVESTIGATIONS**

##### **Utility Mark-out & Drain Tracing**

Public utilities were marked-out by utility companies and a markout of private utilities was conducted by New York Leak Detection (NYLD) of Jamesville, New York. A floor drain was observed inside the detached garage which was surveyed and traced by NYLD. Based on their field investigations, this drain appears to be connected to the apartment/office building located to the northwest, which then presumably discharges to the municipal sanitary system. A second pipe exiting the drain was directed to the southeast corner of the garage, where it was found to terminate.

##### **Class V Underground Injection Well**

Based on USEPA Regulations, this floor drain is classified as a Class V Underground Injection Well, according to the Underground Injection Control Program. This Class V well is specifically prohibited from use because it is located in a former automotive repair garage, and is required to be closed in accordance with USEPA Regulations. A work plan outlining the Class V Well closure program would be submitted to USEPA Regional office for approval. Regulations require that the drain be permanently plugged and the outfall of the drain be excavated and disposed of in accordance with applicable regulations. The contents of the discharge location would be sampled and analyzed for the appropriate waste characterization parameters; in this instance, soil would be analyzed for volatile and semi-volatile organic compounds, and metals.



***Estimated Costs and Schedule***

Typically a work plan for a Class V UIC closure can be prepared, submitted and approved by USEPA within 2 weeks. Excavation, sampling and closure of the Class V well typically requires 2 to 3 weeks, but can be expedited if necessary. The cost to close a Class V well is dependent on the accessibility of the discharge location, and the volume of material to be excavated and disposed of off-site. Closure of the Class V well at the 900 East Fayette property is likely to cost between \$20,000 and \$40,000.

***Status***

The first step in proceeding with this well closure is to contact USEPA and begin the process of preparing and submitting the Closure Plan. Due to the Federal Government shut-down and reduced operating capacity, we cannot communicate with the USEPA at this time.

Feel free to contact me if you have any questions.

Sincerely,

PVE SHEFFLER, LLC

A handwritten signature in black ink, appearing to read "Christopher B. Brown".

Christopher B. Brown, CPG  
Principal/Senior Hydrogeologist

CBB/tla



**10**

## CLOSING RECEIPT

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION 900 EAST FAYETTE GROUP, LLC

CLOSING RECEIPT executed November 7, 2017 by the City of Syracuse Industrial Development Agency (the “*Agency*”) and 900 EAST FAYETTE GROUP, LLC (the “*Company*”) in connection with a certain project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “*Existing Building*”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “*Land*”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

#### WITNESSETH:

(1) The Agency has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party, and acknowledges receipt from the Company of its administrative fee.

(2) The Company has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party.

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: 

William M. Ryan, Chairman

**900 EAST FAYETTE GROUP LLC**

By: 

Christopher Geiger, Managing Member

**11**

---

**City of Syracuse**  
**Industrial Development Agency**  
City Hall Commons  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

---

November 1, 2017

900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210  
Attn: Christopher Geiger, Managing Member

Re: City of Syracuse Industrial Development Agency  
900 East Fayette Group, LLC  
Sales Tax Appointment Letter

Dear Mr. Geiger:

Pursuant to a resolution duly adopted on March 9, 2016, the City of Syracuse Industrial Development Agency (the “**Agency**”) appointed 900 East Fayette Group, LLC (the “**Company**”) the true and lawful agent of the Agency to undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an

interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved by the Agency for the benefit of the Project shall not exceed **\$316,800**.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any renovation, improvement, equipping and completion of any of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with renovation, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

This agency appointment includes the power to delegate such agency, in whole or in part, to a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***"). Additional Agents must be specifically appointed by the Company in accordance and compliance with the terms of the Agency Lease dated as of November 1, 2017 by and between the Agency and the Company (the "***Agency Lease***"). The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Additional Agent who provide materials, equipment, supplies or services to the Project Facility and deliver said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment. The Agency's obligation to execute any Form ST-60 relative to an Additional Agent is subject to the satisfaction of the conditions in the Agency Lease relative to such appointments.

The Company agrees, whenever requested by the Agency, to provide, or cause its Additional Agents to provide and certify, or cause to be certified, such information regarding use of local labor, job creation, exemptions from State and local sales and use tax, real property taxes and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation, including but not limited to those required by §875 of the Act.

November 1, 2017

Page 3

The Company acknowledges and agrees that pursuant to Section 875(3) of the Act, and in conjunction with the Agency's Recapture of Benefits Policy (the "**Recapture Policy**") dated as of June 21, 2016 and the Project Agreement between the Agency and the Company dated as of November 1, 2017, the Agency shall, and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**").

Each supplier or vendor should identify the Project Facility on each bill or invoice and indicate thereon which of the Company or its Additional Agents acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you and each Additional Agent should present to the supplier or other vendor of materials for the Project Facility, a completed "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123).

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance ("**NYSDTF**") on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you and your Additional Agents have claimed pursuant to the agency we have conferred on you with respect to this Project. The penalty for failure to file such statement is the removal of your authority to act as our agent. In addition, you must provide a copy of the completed Form ST-340 to the Agency within ten (10) days of the date it is due to be filed with the NYSDTF.

The agency created by this letter is limited to the Project Facility and will expire on the earlier of: (i) sixty (60) days after the issuance of a certificate of occupancy or similar document by the applicable municipality in which the Project Facility is located; or (i) **December 31, 2018**; unless the Agency Lease is terminated early in accordance with its terms in which case this appointment shall terminate at that time.

This letter is provided for the sole purpose of evidencing, in part, the exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

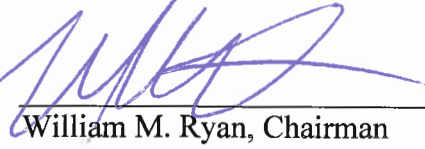
The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

November 1, 2017  
Page 4

Very truly yours

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

By:



---

William M. Ryan, Chairman



**12**



# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(4/13)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA City of Syracuse Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998) 31021711	
Street address 201 East Washington Street, 7th Floor		Telephone number ( 315 ) 448-8127	
City Syracuse		State NY	ZIP code 13202
Name of IDA project operator or agent 900 East Fayette Group, LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or social security number 46-4656257
Street address 1221 East Genesee Street, Suite 1		Telephone number ( 516 ) 413-6689	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
City Syracuse		State NY	ZIP code 13202
Name of project 900 East Fayette Group, LLC Project		Purpose of project (see instructions) other - commercial	
Street address of project site 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-16 East Fayette Street)			
City Syracuse		State NY	ZIP code
Description of goods and services intended to be exempted from New York State and local sales and use taxes building materials, equipment, fixtures and furnishings installed in the Project Facility			

Date project operator or agent appointed (mm/dd/yy) 11/01/17	Date project operator or agent status ends (mm/dd/yy) 12/31/18	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: \$3,960,000	Estimated value of New York State and local sales and use tax exemption provided: \$316,800	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA William M. Ryan	Print title Chairman
Signature 	Date 11-2-17
	Telephone number ( 315 ) 448-8127

## Instructions

### Filing requirements

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 days, send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

### Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



**Internet access: [www.tax.ny.gov](http://www.tax.ny.gov)**  
(for information, forms, and publications)



**Sales Tax Information Center:** (518) 485-2889

To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline**  
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

BARCLAY DAMON<sup>LLP</sup>

Susan R. Katzoff  
Partner

November 13, 2017

VIA CERTIFIED MAIL  
7016 3010 0001 1675 7933

New York State Tax Department  
IDA Unit  
Building 8, Room 738  
W.A. Harriman Campus  
Albany, New York 12227

Re: IDA Appointment of Project Operator or Agent for Sales Tax Purposes  
City of Syracuse Industrial Development Agency Appointment of  
900 East Fayette Group, LLC (900 East Fayette Group, LLC Project)  
IDA Project No. 31021711

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency, please find form ST-60 in connection with the appointment by the IDA of 900 East Fayette Group, LLC as its agent for sales tax purposes in connection with the IDA project identified therein.

Please do not hesitate to contact me with any questions. Thank you.

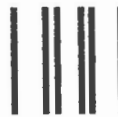
Very truly yours,  
**COPY**  
Susan R. Katzoff

SRK:llm  
Enclosure

USPS TRACKING#



9590 9402 2491 6306 6671 38



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

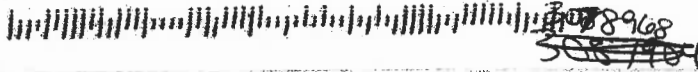
United States  
Postal Service

\* Sender: Please print your name and address, ZIP+4® in this box\*

**BARCLAY DAMON, LLP**

Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202

Attn: Cori McKiddie



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1.

New York State Tax Department  
IDA Unit  
Building 8, Room 738  
W.A. Harriman Campus  
Albany, New York 12227



9590 9402 2491 6306 6671 38

2. Article Number (Transfer from service label)

7016 3010 0001 1675 7933

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Addressee

B. Received by (Printed Name)

REC'D BY  
ALBANY, NY 12227

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

NOV 16 2011

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™  
CERTIFIED MAIL® RECEIPT  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

OFFICIAL USE

Certified Mail Fee  
\$ \_\_\_\_\_

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ \_\_\_\_\_

Return Receipt (electronic) \$ \_\_\_\_\_

Certified Mail Restricted Delivery \$ \_\_\_\_\_

Adult Signature Required \$ \_\_\_\_\_

Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postmark  
Here

Postage  
\$ \_\_\_\_\_

Total Postage and Fees  
\$ \_\_\_\_\_

Sent To  
Street and Apt. No., or PO Box No.  
\_\_\_\_\_  
City, State, ZIP+4®  
\_\_\_\_\_

7016 3010 0001 1675 7933

**13**

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

**and**

**900 EAST FAYETTE GROUP, LLC**

**PAYMENT IN LIEU OF TAX AGREEMENT**

**Dated as of: November 1, 2017**

**900 East Fayette Group, LLC**

**Federal Tax ID #:46-4656257**

**THIS PAYMENT IN LIEU OF TAX AGREEMENT**, (this “*Agreement*”) dated as of November 1, 2017 by and among the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the “*Agency*”), having an office at 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202 and **900 EAST FAYETTE GROUP, LLC**, a limited liability company organized under the laws of the State of New York, with offices at 1221 East Genesee Street, Suite 1, Syracuse, New York 13202 (hereinafter referred to as the “*Company*”).

**WITNESSETH:**

**WHEREAS**, the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the “*Enabling Act*”) authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among others, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease and to sell its projects, to charge and collect rent therefor, to issue its bonds or notes for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds or notes, to mortgage any or all of its facilities and to pledge the revenues and receipts therefrom to the payment of such bonds or notes; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 641 of the 1979 Laws of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”) created the Agency for the benefit of the City of Syracuse (hereinafter referred to as the “*Municipality*”) and the inhabitants thereof; and

**WHEREAS**, the Agency, by Resolution adopted on March 9, 2016, (the “*Resolution*”), resolved to undertake the “*Project*” (as hereinafter defined); and

**WHEREAS**, the Project will consist of: (A)(i) the acquisition of an interest in

approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency will lease the Land and Facility from the Company pursuant to that certain Company Lease Agreement dated as of November 1, 2017 (the “**Company Lease Agreement**”), between the Company and the Agency, obtain an interest in the Equipment pursuant to a bill of sale dated as of November 1, 2017 from the Company (the “**Bill of Sale**”), and sublease the Project Facility back to the Company pursuant to that certain Agency Lease Agreement dated as of November 1, 2017 (the “**Agency Lease Agreement**”), between the Agency and the Company (the Company Lease Agreement, the Bill of Sale and the Agency Lease Agreement are hereinafter collectively referred to as the “**Lease Agreement**”); and

**WHEREAS**, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any



of the property acquired by it or under its jurisdiction or supervision or control; and

**NOW, THEREFORE**, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## ARTICLE I

### REPRESENTATIONS AND WARRANTIES

#### **Section 1.01. Representations and Warranties by Agency**

The Agency does hereby represent and warrant as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) Intentions. The Agency intends to acquire a leasehold interest in the Project Facility from the Company and to sublease the Project Facility back to the Company, all pursuant to the provisions of the Lease Agreement.

(c) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(d) Validity. The Agency is not prohibited from entering into this Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound, and this Agreement is a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

#### **Section 1.02. Representations and Warranties by Company**

The Company does hereby represent and warrant as follows:

(a) Existence. The Company is a New York limited liability company duly organized, validly existing and in good standing under the laws of the State of New York.

(b) Authorization. The Company is authorized and has the power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. The Company has duly authorized the execution, delivery and performance of the Lease Agreement, this Agreement and the consummation of the transactions therein and herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization, Operating Agreement or any other restriction or any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will neither be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, nor result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Agreement is a legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(c) Title. The Company has valid and marketable fee title to the Project Facility, free and clear of all liens and encumbrances except for Permitted Encumbrances (as defined in the Lease Agreement).

(d) Governmental Consent. No further consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

**ARTICLE II**  
**COVENANTS AND AGREEMENTS**

**Section 2.01. Tax-Exempt Status of the Project Facility**

(a) Assessment of the Project Facility. Pursuant to the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of ownership or control of the Project Facility by the Agency, and for so long thereafter as the Agency shall own or control the Project Facility, the Project Facility shall be entitled to an exemption upon the first available assessment roll of the Municipality prepared subsequent to the acquisition by the Agency of ownership or control of the Project Facility. The time of commencement of the Agency's exemption shall be controlled by the Municipality's taxable status date, in conformity with Section 412-a of the Real Property Tax Law. The Company will be required to pay to the Municipality all taxes and assessments lawfully levied and/or assessed against the Project Facility, in spite of the Agency's actual ownership or control of the Project Facility, until the Project Facility shall be entitled to exempt status on the tax roll of the Municipality.

(b) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company will be required at all times to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

**Section 2.02. Payments in Lieu of Taxes**

(a) Agreement to Make Payments. The Company agrees that it shall make periodic payments in lieu of real property taxes in the amounts hereinafter provided. The said payments due to the Agency hereunder shall be paid by the Company, to the Municipality, on behalf of the Agency, by check made payable to "*Commissioner of Finance*". Upon receipt of the Company's payment, the Municipality, on behalf of the Agency, will disburse the appropriate portion of the said payment to the County of Onondaga and the Municipality, or such other taxing jurisdiction, pursuant to the Act. This Company obligation shall exist for so long as the Agency retains an interest in the Project Facility. Notwithstanding the appearance of the Agency's exemption on the Municipality's tax roll for the 2018/2019 City and School portion of the real property tax due on the Land and Facility, the year 1 payment due for the City and School portion of

the year 1 payment under **Exhibit "A"** shall commence on July 1, 2018. The year 1 payment due for the County and Water District portion of the year 1 payment under **Exhibit "A"** shall commence on January 1, 2019. Without regard to the Agency exemption, the Company shall continue paying real property tax through June 30, 2018 with respect to the City and School portion of the real property tax and through December 31, 2018 with respect to the County and Water District portion of the real property tax, based upon the assessment and the combined real property tax rate in effect for that period as if the Project Facility were privately owned and the Agency had no interest in the same.

(b) Amount of Payments in Lieu of Taxes. Unless otherwise stated, the Company's agreed upon annual payment in lieu of tax hereunder shall be an amount determined by reference to **Exhibit "A"**, attached hereto and made a part hereof. The payments in lieu of tax due, as set forth in **Exhibit "A"**, include any real property tax exemptions that might be afforded to the Company if the Project Facility were owned by the Company and not the Agency. As consideration for the benefits conferred on the Company pursuant to this Agreement, the Company hereby agrees to be bound by any determination by the City of Syracuse Board of Assessment Review resulting from a review of the assessment pertaining to the Project Facility and/or Additional Property throughout the term of this Agreement. The Company hereby agrees to waive any and all right to challenge or contest in a court of law (a "**Legal Challenge**"), those payments or the basis for those payments due pursuant to **Exhibit "A."** It shall also be an event of default under Article IV of this Agreement should the Company bring a Legal Challenge on the Project Facility and/or Additional Property.

(c) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Facilities, or any new or additional building shall be constructed on the real property described in **Exhibit "B"** that is in addition to the Facilities (such structural additions and additional buildings being hereinafter referred to as "**Additional Property**"), the Company agrees to make additional periodic payments in lieu of real property taxes (such additional payments being hereinafter collectively referred to as "**Additional Payments**") to the Municipality on behalf of the Agency with respect to such Additional Property. Such Additional Payments shall be computed as follows:

By multiplying (1) the value placed on such Additional Property, as value is determined by the Municipality's assessor by (2) the tax rate or rates of the Municipality that would

be applicable to such Additional Property if such Additional Property were owned or controlled by the Company and not the Agency; and (3) then reducing the amount so determined by the amounts of any properly acquired tax exemptions that would be afforded to the Company by the Municipality for such Additional Property as if it was owned or controlled by the Company and not the Agency.

(d) Revaluation. In the event of a real property assessment revaluation by the Municipality, the Company shall continue to make its payments in accordance with this Agreement; however, in the event that Exhibit "A" is no longer in effect, but payments are still being made hereunder for any reason, (including, but not limited to, the Agency still having an interest in the Project Facility), and would be effected by revaluation, each year's payments subsequent to such revaluation shall be adjusted to properly reflect revaluation, it being the intent of the parties that the level of payments following revaluation shall be equal to those payments contemplated by this Agreement.

(e) Damage or Destruction. In the event that all or substantially all of the Project Facility is damaged or destroyed, the Company shall continue to make the payments required by this Agreement for as long as the Agency shall own or control the Project Facility, without regard to such damage or destruction.

(f) Time of Payments. The Company agrees to pay the amounts due the Agency hereunder to the Municipality for each year of this Agreement, within the period that the Municipality allows payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts from the Municipality for such payments.

(g) Method of Payment. All payments by the Company hereunder shall be paid to the Municipality in lawful money of the United States of America, cash, money order or check.

### **Section 2.03. PILOT Statements**

The Municipality and/or the Agency shall submit to the Company written semi-annual statements specifying the amount and due date or dates of any payments due to the Agency hereunder. Each semi-annual PILOT statement shall be submitted to the Company at the same time that tax statements/bills are mailed by the Municipality to the owners of privately owned property. Failure to receive a PILOT statement shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an

appropriate PILOT Statement, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Municipality and the Agency and to have such a statement issued, and thereafter to make payment of the same no later than the due dates provided herein.

**Section 2.04. Obligations of Agency**

(a) Requirement that any Project Facility Agreements Require Payments in Lieu of Taxes. So long as the Project Facility shall be entitled to exemption from real property taxes as provided in Section 2.01(a) hereof, the Agency agrees, to the extent permitted by law, that it shall not make any agreement regarding the leasing or sale of the Project Facility which does not require that payments in lieu of taxes shall be paid to the Municipality in at least the amounts set forth in Article II hereof.

(b) Requirement that Mortgagees subordinate to Payments. The Agency and the Company agree that any mortgages on the Project Facility, given by either of them, shall provide that the rights of the mortgagees thereunder shall be subordinate to this Agreement and to the right of the Municipality to receive payments in lieu of taxes pursuant to Article II hereof.

**Section 2.05. Company to Furnish Information**

The Company agrees to promptly comply with the reporting and information requirements of the Agency and the Act, and to promptly furnish the applicable information required or requested by the Agency and/or the State of New York. The Company further agrees to assist the Agency with the preparation of any reports, or answer any inquiries, required by the State of New York in connection with the Act or the Agency's participation in the Project.

**Section 2.06. Interest**

(a) Agreement to Pay Interest on Missed Payments. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at the greater of: **(i) eighteen per cent (18%) per annum; or (ii) the rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.**

(b) Maximum Legal Rate. It is the intent of the Agency, the Municipality, and Company that in no event shall interest be payable at a rate in excess of the maximum rate

permitted by applicable law (the "*Maximum Legal Rate*"). Solely to the extent necessary to prevent interest under this Agreement from exceeding the Maximum Legal Rate, any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Agency or Municipality, shall be refunded to the Company.

### ARTICLE III

#### LIMITED OBLIGATION OF THE AGENCY

##### **Section 3.01. No Recourse; Limited Obligation of the Agency**

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, director, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based on or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement. It is expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent, servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein

shall not constitute or give rise to an obligation of the State of New York or the Municipality, and neither the State of New York nor the Municipality shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (i) the Agency shall have been requested to do so in writing by the Company and (ii) if compliance with such request is expected to result in the incurrence by the Agency (or any of its members, directors, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

#### ARTICLE IV

#### EVENTS OF DEFAULT

##### **Section 4.01. Events of Default**

Any one or more of the following events shall constitute an event of default under this Agreement, and the terms “*Event of Default*” or “*Default*” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement or the Lease Agreement.

(b) Commencement by the Company of a Legal Challenge, as defined in Section 2.02(b), to those payments or the basis for those payments due pursuant to Exhibit “A.”

(c) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed under this Agreement (other than as referred to in paragraph (a) above) or the Lease Agreement, and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure hereunder, or with respect to the Lease Agreement, continuance of such failure for the duration of any applicable cure period set forth therein after receipt of any required notice thereunder.



(d) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Lease Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement or the Lease Agreement.

(e) The Company violates any federal, state or local environmental law or allows or causes any Hazardous Materials (as Hazardous Materials is defined and described in any federal, state or local law) to be released at, on, to, into or from the Project Facility, except as permitted by the Lease Agreement or within the terms and conditions of a permit, certificate, license or other written approval of an authorized governmental body, and fails to remedy such violation within thirty (30) days; or if such failure cannot be cured within thirty (30) days, fails to commence a cure within thirty (30) days and thereafter diligently prosecute the cure thereof.

(f) The occurrence of any Event of Default or Default under this Agreement, the Lease Agreement or any other Project documents.

(g) Failure of the Company to commence the acquisition, construction, renovation, equipping and completion of the Project Facility within eight (8) months of the date of this Agreement.

#### **Section 4.02. Remedies on Company Default**

Whenever any Event of Default under Section 4.01 shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Agreement, the Agency may take whatever action at law or in equity, following applicable notice, as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement and/or the Lease Agreement. Notwithstanding anything herein to the contrary, if the Lease Agreement is terminated for any reason, this Agreement shall automatically terminate without any further notice or action required hereunder and the Project Facility shall immediately become taxable and revert to the tax roll.

The payment schedule contained in Exhibit "A" is for the benefit of the Company and its Project Facility. In the event that the Company defaults hereunder, and the Lease Agreement cannot be terminated, and/or the Agency's participation in the Project and this Agreement is not or cannot be terminated, the Company, or any assignee, or successor shall no longer be entitled to make

payments under this Agreement pursuant to Exhibit "A". In such an event, payments shall be made hereunder, for any remaining term of this Agreement, as if the Project Facility was privately owned and assessed and without any further regard to Exhibit "A".

**Section 4.03. Recording of Lease Terminations and Other Documents**

Whenever any Event of Default under Sections 4.01 shall have occurred and be continuing with respect to this Agreement or the Lease Agreement, the Agency may, upon notice to the Company provided for in this Agreement or the Lease Agreement, if any, terminate the Lease Agreement and record such termination or other necessary documents in the Onondaga County Clerk's Office, terminating the Agency's interest in the Project Facility and terminating this Agreement.

The recording of such a termination and any other documentation shall constitute delivery to, and acceptance of such, by the Company. In order to facilitate such a termination, the Company hereby appoints the Chairman or the Vice Chairman of the Agency as its agent for the purpose of executing and delivering all documents necessary to allow such termination by the Agency.

In the event that the Lease Agreement, for any reason, is extended by its terms, or for any reason this Agreement expires or terminates, but the Agency retains an interest or remains in title to the Project Facility, the Company shall continue to make payments in lieu of taxes to the Municipality, on behalf of the Agency, for as long as the Agency retains an interest in, or remains in title to, the Project Facility. Those payments shall be the equivalent of the real property taxes that would be due on the Project Facility if it were owned by the Company and the Agency had no interest therein. It is the intention of the parties hereto, that for so long as the Agency shall possess title to, or an interest in, the Property, the Company, or any permitted successors or assigns, shall make payments in lieu of taxes to the Municipality, on behalf of the Agency, that are either based upon Exhibit "A", or if Exhibit "A" is no longer applicable for any reason, are the equivalent of the real property taxes that would be due and owing if the Project Facility were privately owned and the Agency had no interest therein.

**Section 4.04. Payment of Attorney's Fees and Expenses**

If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Agency or the Municipality should employ attorneys (whether in-house or outside counsel) or incur other expenses for the collection of any amounts

payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency and/or the Municipality the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

Furthermore, should the Company bring a Legal Challenge on the Project Facility and/or Additional Property during the term of this Agreement, and the Agency and/or the Municipality waives its right to declare a default under this Agreement in regard to such Legal Challenge, or such Legal Challenge is determined not to be a default of this Agreement by any Court of competent jurisdiction, the Company agrees that in the event that the Company is unsuccessful in its Legal Challenge, it will, on demand, pay to the Agency and/or the Municipality the reasonable fees and disbursements of any attorneys employed (whether in-house or outside counsel) for the defense of such Legal Challenge as well as such other reasonable expenses so incurred.

**Section 4.05. Remedies; Waiver and Notice**

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

**ARTICLE V**  
**MISCELLANEOUS**

**Section 5.01. Term of Agreement**

(a) General. This Agreement shall become effective and the obligations of the Agency and the Company shall arise absolutely and unconditionally upon the execution and delivery of this Agreement. This Agreement shall terminate on the earliest to occur of: (i) the same date that the Agency Lease Agreement terminates; (ii) on any earlier date permitted under the Agency Lease Agreement; or (iii) upon the expiration on **June 30, 2034**, of the PILOT Schedule set forth in **Exhibit "A"** hereto. In the event of a termination of the Agency's interest in the Project Facility, the Company's payments due hereunder shall be pro-rated to the extent necessary to allow the Municipality to issue a supplemental PILOT Statement based upon the Agency's transfer of ownership or control of the Project Facility to the Company, and the loss of the Agency's tax exemption on the said Project Facility.

(b) Conflict. In the event of a conflict between this Agreement or any of its terms on the one hand, and the Lease Agreement or any other Project documents on the other hand, the provisions most favorable to the Agency shall govern. The Agency and the Company agree that the Agency's participation in this Agreement is for the benefit of the Company and that the Municipality must receive payments from the Company hereunder, during the entire term of this Agreement and/or the Agency's ownership or control of the Project Facility.

**Section 5.02. Company Acts**

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

**Section 5.03. Amendment of Agreement**

This Agreement may not be amended, changed, modified or altered unless such amendment, change, modification or alteration is in writing and signed by the Agency and the Company.

**Section 5.04. Notices**

All notices, certificates or other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended

recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

- (a) To the Agency:  
City of Syracuse Industrial Development Agency  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: Susan R. Katzoff, Esq.

And to:

Corporation Counsel  
City of Syracuse  
233 East Washington Street, Room 300  
Syracuse, New York 13202

- (b) To the Company:  
900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210  
Attn: Christopher Geiger, Manager

With a copy to:

Zenzel Law Offices  
6320 Fly Road, Suite 207  
East Syracuse, NY 13057  
Attn: Carol A. Zenzel, Esq.

The Agency and Company may, by notice given hereunder to each of the others, designate any further or different addresses to which the subsequent notices, certificates or other

communications to them shall be sent.

**Section 5.05. Binding Effect**

This Agreement shall inure to the benefit of, and shall be binding upon the Agency and the Company, and their respective successors and assigns.

**Section 5.06. Severability**

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

**Section 5.07. Counterparts**

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 5.08. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue of any action or proceeding brought hereunder shall be in the State or Federal Courts located in Onondaga County, New York.

**Section 5.09. Assignment**

This Agreement may not be assigned by the Company without the prior written consent of the Agency.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Agency and Company have caused this Agreement to be executed in their respective names on the date first above written.

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**


By:   
William M. Ryan, Chairman

**900 EAST FAYETTE GROUP, LLC**

By:   
Christopher Geiger, Managing Member

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss:

On the 2<sup>nd</sup> day of November, in the year 2017, before me the undersigned, a Notary Public in and for said state, personally appeared **William M. Ryan**, 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 he person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss:

On the 2<sup>nd</sup> day of November, in the year 2017, before me the undersigned, a notary public in and for said state, personally appeared **Christopher Geiger**, 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 he person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

**ACKNOWLEDGEMENT BY  
900 EAST FAYETTE GROUP, LLC**

**900 EAST FAYETTE GROUP, LLC**, (the "*Company*") hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.


**IN WITNESS WHEREOF**, the Company has caused this Acknowledgment to be executed in its name by its duly authorized representative, dated as of November 1, 2017.

**900 EAST FAYETTE GROUP, LLC**

By:   
Christopher Geiger, Managing Member

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA       ) ss:

On the 2<sup>nd</sup> day of November, in the year 2017, before me the undersigned, a notary public in and for said state, personally appeared **Christopher Geiger**, 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 he person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2018



**EXHIBIT "A"**  
**PILOT SCHEDULE**

<i>Year</i>	<i>Payment</i>
1	\$15,854.16
2	\$16,012.71
3	\$16,172.83
4	\$16,334.56
5	\$16,497.91
6	\$16,662.89
7	\$16,829.52
8	\$16,997.81
9	\$17,167.79
10	\$17,339.47
11	\$42,549.77
12	\$68,262.54
13	\$94,485.31
14	\$121,225.71
15	\$148,491.47
Total	\$640,884.43

**EXHIBIT "B"**  
**LEGAL DESCRIPTION**

**(A) 922-24 East Fayette Street**

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, described as follows: Beginning in the north line of Block Number two hundred forty (240) of the City of Syracuse, according to a map of said City made by J.M. Trowbridge, on the south line of East Fayette Street, ninety feet (90) west of the northeast corner of said block; thence west along the north line of said block forty (40) feet; thence south parallel to the east line of said block one hundred (100) feet; thence east parallel to East Fayette Street forty (40) feet, to a point ninety (90) feet from the east line of said block; thence north parallel with the east line of said block to the place of beginning.

**(B) 900-16 East Fayette Street**

All that tract or parcel of land situate in the City of Syracuse, New York, known and distinguished on a map made by J.M. Trowbridge as part of Lot No. 17 in Block No. 240 described as follows: Beginning at a point in the south line of E. Fayette Street 77.01 feet east of the northwest corner of said block which is 5 feet east of the east wall of the Sylvester Flats; thence west on the south line of E. Fayette Street to the northwest corner of said block; thence south on the west line of said block 66 feet; thence east on the south line of said Lot No. 17 76.86 feet; thence north 66 feet to the place of beginning.

Also all that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as the north half of Lot No. Twenty (20), Block No. Two Hundred Forty (240), according to a survey and map by Calvin Guiteau for Baldwin, Burt & Teall, subject to all unpaid taxes and monthly tenancies.

**(C) 918 E. Fayette Street**

All that tract or parcel of land, located in the City of Syracuse, County of Onondaga and State of New York commonly known as 918 E. Fayette Street, and being further described as being Lot Part 17 and 18, and 19, in Block 240, designated as Tax Map Book 1, Plate 116, Parcel 146, Property No. 1527009300; 48 X 66L2 x 34 feet, vacant lot also being described as:

All of that tract or parcel of land situate in the City of Syracuse, New York, being part of Block NO. 240 according to a map of said city made by J.M. Trowbridge, described as follows: Beginning in the south line of East Fayette Street 130 feet west of the northeast corner of said block; thence west along the north line of said block 48 feet to a point which is 77.01 feet east from the northwest corner of said block and is 5 feet east of the east wall of the Sylvester Flats; thence south 66 feet to a point in the south line of Lot No. 17 in said block which is 76.86 feet east of the west line of said block; thence east about 48.16 feet to a point 130 feet west of the east line of said block; thence north parallel with the east line of said block 66 feet to the place of beginning; Also a

strip of land about 2 feet in width extending southerly from the south line of the above described premises for a distance of 34 feet, the east line of which strip is an extension southerly of the east line of the above described parcel of land.

**(D) 305-07 Irving Avenue**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being north one-half of Lot No. 21 in Block 240 in said city, being 33 feet front on the east side of Irving Avenue, and 122.4 feet more or less deep.

Also all that tract or parcel of land situate in the City of Syracuse, in the county of Onondaga and State of New York, known and distinguished as the south half of Lot Number Twenty (20) of Block Number Two Hundred Forty (240) Syracuse, according to a survey and map made by Calvin Guiteau Baldwin, Burt & Teall of a certain larger tract; said lot lying on the east side of Irving Avenue fronting two (2) rods on said Avenue and Eight (8) rods deep, or thereabouts.

**Above Property Having been formally resubdivided into one lot that is now described as follows:**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York being part of Block Number 240 in said City being more particularly bounded and described as follows:

Beginning at the intersection of the southerly line of East Fayette Street with the east line of Irving Avenue;

Thence S 89° 30' 50" E, along the southerly line of East Fayette Street, a distance of 165.01 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 100.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the south line of East Fayette Street, a distance of 42.00 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 65.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the southerly line of East Fayette Street, a distance of 123.01 feet to a point in the easterly line of Irving Avenue;

Thence N 00° 29' 40" E, along the easterly line of Irving Avenue, a distance of 165.00 feet to the point and place of beginning.

**14**



**NYS DEPARTMENT OF TAXATION & FINANCE  
OFFICE OF REAL PROPERTY TAX 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 City of Syracuse Industrial Development Ag.  
 Street 201 E. Washington Street, 7th Floor  
 City Syracuse  
 Telephone no. Day (315) 473-3275  
 Evening ( ) N/A  
 Contact Honora Spillane  
 Title Executive Director

**2. OCCUPANT (IF OTHER THAN IDA)**

(If more than one occupant attach separate listing)

Name 900 East Fayette Group, LLC  
 Street 1221 East Genesee Street, Suite 1  
 City Syracuse  
 Telephone no. Day ( 516 ) 413-6689  
 Evening ( ) N/A  
 Contact Christopher Geiger  
 Title Manager

**3. DESCRIPTION OF PARCEL**

a. Assessment roll description (tax map no./roll year)  
see attached Schedule A  
 b. Street address see attached Schedule A  
 c. City, Town or Village Syracuse

d. School District Syracuse  
 e. County Onondaga  
 f. Current assessment see attached Schedule A  
 g. Deed to IDA (date recorded; liber and page)  
N/A lease/leaseback agreement -  
see Schedule A

**4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)**

a. Brief description (include property use) renovation and construction of approximately 53,000 square ft to house market rate apartment units and commercial space.  
 b. Type of construction steel/wood  
 c. Square footage .5 acres  
 d. Total cost approx. \$8,619,415  
 e. Date construction commenced 2017  
 f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)  
June 30, 2034

**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 See attached PILOT Agreement

b. Projected expiration date of agreement June 30, 2034

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Onondaga</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Syracuse</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village <u>Syracuse</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
School District _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>

d. Person or entity responsible for payment

Name 900 East Fayette Group, LLC  
 Title Christopher Geiger, Manager  
 Address 1221 East Genesee St., Ste.1  
Syracuse, New York 13210

e. Is the IDA the owner of the property?  Yes  No (check one)

If "No" identify owner and explain IDA rights or interest in an attached statement. See Schedule A

Telephone \_\_\_\_\_

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one)  Yes  No

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

7. A copy of this application, including all attachments, has been mailed or delivered on 12/22/17 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

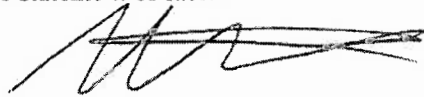
**CERTIFICATION**

I, William M. Ryan, Chairman of \_\_\_\_\_

Name Title  
City of Syracuse Industrial Development Agency hereby certify that the information  
 Organization

on this application and accompanying papers constitutes a true statement of facts.

11-2-17  
Date

  
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 as valorem levies for which the parcel is liable:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Assessor's signature

## SCHEDULE "A"

### Response to Item 3.a, f. *Description of Parcel:*

<b>Tax Parcel</b>	<b>Description</b>	<b>2017 Assessed Value (\$)</b>
048.-04-01.0	900-16 Fayette Street E	\$330,000
048.-04-02.0	918 Fayette Street E	\$32,000
048.-04-03.0	922-24 Fayette Street E	\$40,000
048-04-14.0	305-07 Irving Avenue	\$120,000

**Response to Item 3.g *Deed to IDA:*** Memorandum of Company Lease and Memorandum of Agency Lease, both dated as of November 1, 2017, were each recorded in the office of the Clerk of Onondaga County on November 9, 2017, Instrument Number: 2017-00041003 and Instrument Number: 2017-00041004, respectively.

### **Response to Item 5.e. *Is the IDA the owner of the property?***

No. The City of Syracuse Industrial Development Agency has a leasehold interest in the subject premises pursuant to a lease/leaseback arrangement as set forth in a certain Agency Lease and Company Lease each dated as of November 1, 2017, memorandums of which were filed as set forth above.

BARCLAY DAMON<sup>LLP</sup>

Susan R. Katzoff  
*Partner*

December 22, 2017

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

7016 3010 0001 1675 6998

Dave Clifford, Assessor  
City of Syracuse  
Department of Assessment  
Room 130, City Hall  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
900 East Fayette Group, LLC Project

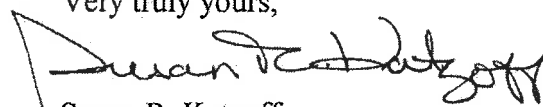
Dear Mr. Clifford:

Enclosed herewith please find an original RP-412-a form attendant with the above referenced Project, as well as a fully executed original PILOT Agreement, to be filed with your office.

Also enclosed for your file are fully executed copies of the Company Lease Agreement and the Agency Lease Agreement regarding this Project.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,


  
Susan R. Katzoff

SRK/llm  
Enclosure

cc: *Via Electronic Mail*  
Honora Spillane (without Enclosures)  
Judy DeLaney (without Enclosures)

Barclay Damon Tower – 125 East Jefferson Street – Syracuse, New York 13202 barclaydamon.com  
skatzoff@barclaydamon.com Direct: 315.425.2850 Fax: 315.425.6997



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <i>xRenie Adams</i> <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:  <i>Dave Clifford, Assessor  City of Syracuse  Department of Assessment  Room 130, City Hall, Syracuse, NY</i></p>	<p>B. Received by (Printed Name) _____ C. Date of Delivery  <i>12/26/17</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p>
 9590 9402 2491 6306 6605 11	<p>3. Service Type</p> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
<p>2. Article Number (Transfer from service label)  7016 3010 0001 1675 6998</p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053	Domestic Return Receipt



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

United States  
Postal Service

\* Sender: Please print your name, address, and ZIP+4® in this box\*

**BARCLAY DAMON, LLP**  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202  
Attw: *Low McRobbie*

2-202099



307 8968

U.S. Postal Service™  
**CERTIFIED MAIL® RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**OFFICIAL USE**

<p>Certified Mail Fee \$ _____</p> <p>Extra Services &amp; Fees (check box, add fee as appropriate)</p> <input type="checkbox"/> Return Receipt (hardcopy) \$ _____ <input type="checkbox"/> Return Receipt (electronic) \$ _____ <input type="checkbox"/> Certified Mail Restricted Delivery \$ _____ <input type="checkbox"/> Adult Signature Required \$ _____ <input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	<p>Postmark Here</p>
<p>Postage \$ _____</p> <p>Total Postage and Fees \$ _____</p>	
<p>Sent To <i>City Assessor</i></p> <p>Street and Apt. No., or PO Box No. _____</p> <p>City, State, ZIP+4® _____</p>	

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7016 3010 0001 1675 6998

BARCLAY DAMON<sup>LLP</sup>

Susan R. Katzoff  
Partner

December 22, 2017

**VIA CERTIFIED MAIL**

7016 3010 0001 1675 6981

Honorable Stephanie A. Miner  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

**VIA CERTIFIED MAIL**

7016 3010 0001 1675 7001

Honorable Joanne M. Mahoney  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

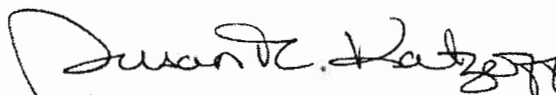
Re: City of Syracuse Industrial Development Agency  
900 East Fayette Group, LLC Project

Dear Mayor and County Executive:

Enclosed herewith please find the RP-412-a form attendant with the above referenced Project, along with a copy of the PILOT Agreement, which have been sent for filing with City of Syracuse Department of Assessment.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

  
Susan R. Katzoff

SRK/llm  
Enclosure

Barclay Damon Tower – 125 East Jefferson Street – Syracuse, New York 13202 [barclaydamon.com](http://barclaydamon.com)  
[skatzoff@barclaydamon.com](mailto:skatzoff@barclaydamon.com) Direct: 315.425.2260 Fax: 315.425.8597

December 22, 2017

Page 2

cc: *Via Electronic Mail*  
Honora Spillane (without Enclosures)  
Judy DeLaney (without Enclosures)

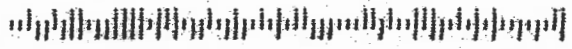


9590 9402 2491 6306 6605 04

First-Class Mail  
Postage & Fees P  
USPS  
Permit No. G-10

United States  
Postal Service

\* Sender: Please print your name, address, and ZIP+4® in this box.\*  
**BARCLAY DAMON, LLP**  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202  
Attn: Loui Melitto



3078968

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
Hon. Stephanie Minor  
Mayor, City of Syracuse  
City Hall  
233 E. Washington St., Syracuse, NY



9590 9402 2491 6306 6605 04

2. Article Number (Transfer from service label)  
7016 3010 0001 1675 6981

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
x *C. SO. TIES*  Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery  
12/26/17

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

7016 3010 0001 1675 6981

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$
- Return Receipt (electronic) \$
- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage \$

Total Postage and Fees \$

Sent To *Mayor*

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Postmark  
Here

USPS MAIL PERMIT NO. G-10



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

9590 9402 2491 6306 6605 28

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

**BARCLAY DAMON, LLP**

Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202

Attn: Lou McRobb



3078968

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hon. Joanne Mahoney  
County Executive, Onondaga Co.  
John Mulroy Civic Center, Rm 107  
421 Montgomery St. Syracuse, NY



13202

9590 9402 2491 6306 6605 28

2. Article Number (Transfer from service label):

7016 3010 0001 1675 7001

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*Janet Brantley*

- Agent
- Addressee

B. Received by (Printed Name)

T. Brown Bay

C. Date of Delivery

02/26/07

- D. Is delivery address different from item 1?  Yes
- If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

7016 3010 0001 1675 7001

U.S. Postal Service™  
**CERTIFIED MAIL® RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$
- Return Receipt (electronic) \$
- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Sent To

County Exec.

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

Postmark  
Here

**15**

Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2226

## Onondaga County Clerk Recording Cover Sheet

Received From :  
FITCH-SARAH ACCT: 1931 - Address:

Return To :  
PHILLIPS LYTTLE LLP  
28 EAST MAIN STREET STE 1400  
ROCHESTER, NY 14614

Method Returned : MAIL

First PARTY 1

900 EAST FAYETTE GROUP LLC

First PARTY 2

FIVE STAR BANK

Index Type : Land Records

Instr Number : 2017-00041005

Book : Page :

Type of Instrument : Mortgage

Type of Transaction : Mtg Type A

Recording Fee: \$160.50

Recording Pages : 23

The Property affected by this instrument is situated in Syracuse, in the County of Onondaga, New York

Mortgage Taxes

Property Located : Syracuse

Serial Number : D19117

Mortgage Amount : \$7,150,888.00

Basic Tax : \$0.00

Local Tax : \$0.00

Additional Tax : \$17,877.25

Transportation Auth Tax : \$0.00

SONYMA : \$0.00

County Tax : \$0.00

Total : \$17,877.25

Total Fees : \$18,037.75

State of New York

County of Onondaga

I hereby certify that the within and foregoing was recorded in the Clerk's office for Onondaga County, New York

On (Recorded Date) : 11/09/2017

At (Recorded Time) : 11:46:25 AM



Doc ID - 0256211900023

*Lisa Dell*

Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On : 11/09/2017 At : 11:50:17AM

**RECORD AND RETURN TO:**  
Raymond L. Ruff, Esq.  
Phillips Lytle LLP  
28 East Main Street, Suite 1400  
Rochester, New York 14614

---

**CONSTRUCTION LOAN AND PERMANENT LOAN MORTGAGE**

---

This Property is or will be secured by other than a 1 or 2 family residence.

**Mortgagor: 900 EAST FAYETTE GROUP, LLC**

**Agency: THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY**

**Mortgagee: FIVE STAR BANK**

**Mortgage Lien Amount: \$7,150,888.00**

**Date: November 2, 2017**

**Property Address: 900 - 916 East Fayette Street, City of Syracuse, County of Onondaga  
and State of New York**

**Tax Account No.: 48-4-1; 48-4-2; 48-4-3 and 48-4-14**



## CONSTRUCTION LOAN AND PERMANENT LOAN MORTGAGE

\*\*\*\*\*

THIS CONSTRUCTION LOAN AND PERMANENT LOAN MORTGAGE ("Mortgage") is made November 1, 2017, by **900 EAST FAYETTE GROUP, LLC**, a New York limited liability company with an address of or place of business at 1221 East Genesee Street, Suite 1, Syracuse, New York 13210 ("Mortgagor" or "Company"), and **THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate government agency constituting a body corporate and politic and a public benefit corporation of the State of New York ("Agency"), duly organized and existing under the laws of the State of New York, with a place of business at 201 East Washington Street, 7th Floor, Syracuse, New York 13202, in favor of **FIVE STAR BANK**, a New York banking corporation with an address of or place of business at 55 North Main Street, Warsaw, New York 14569 ("Mortgagee"). The Mortgagor and Agency in consideration of credit extended and/or to be extended by the Mortgagee to Mortgagor, hereby mortgages to the Mortgagee the Premises described in Schedule A, attached hereto (the "Premises" or "Property") more commonly known as 900 - 916 East Fayette Street, City of Syracuse, County of Onondaga and State of New York.

TOGETHER with (1) the rights of the Mortgagor and Agency, if any, in the Premises; (2) the rents, issues and profits of the Premises; (3) all strips and gores of land adjoining or abutting the Premises; (4) all right, title, and interest of the Mortgagor and Agency, if any, in and to the land lying in the bed of any street running through or adjoining the Premises; (5) all buildings, structures, and improvements now or hereafter situated upon the Premises; (6) apparatus, fixtures, chattels and articles of personal property now or hereafter attached to or used in connection with the Premises, together with replacements and additions, and (7) all awards made to the Mortgagor for taking by eminent domain, including awards for changes of grade of streets, which awards are assigned to the Mortgagee, who is authorized to collect and receive the proceeds of such awards, and to apply them to the indebtedness secured hereby, notwithstanding the fact that the amount owing may not then be due and payable; and the Mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the awards to the Mortgagee, free of any encumbrances. All of the foregoing together with the Property: the "Mortgaged Property".

Excepting from the Mortgaged Property the Agency's Unassigned Rights as defined in the Agency Lease.

THE Agency obtained a leasehold interest in the land and improvements pursuant to the Company Lease and subleased the land and improvements back to the Mortgagor pursuant the Agency Lease.

**DEFINITIONS.** For the purpose of this Mortgage, the following definitions shall apply:

**Agency Lease:** means the Agency Lease Agreement dated as of November 1, 2017 by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**Company Lease:** means the Company Lease Agreement dated as of November 1, 2017 by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**PILOT Agreement:** means the payment in lieu of taxes agreement dated as of November 1, 2017 between the Agency and the Company with respect to the Mortgaged Property.

THIS GRANT constitutes continuing security for the payment, when due, of any and all indebtedness or liability of any kind, including, but not limited to the Construction Loan and Permanent Loan Note in the amount of \$7,150,888.00, dated November 2, 2017 (the "Note") and all modifications and extensions of such Note, and any other debts or notes, whether direct or contingent, or whether now due or hereafter to become due, which the Mortgagee now holds or may hereafter hold against the Mortgagor, and all renewals or extensions, to a principal amount not to exceed Seven Million One Hundred Fifty Thousand Eight Hundred Eighty-Eight and 00/100 Dollars (\$7,150,888.00) plus interest, taxes, assessments, water rates, insurance, and expenses paid or incurred by the Mortgagee in connection with the Mortgage and the indebtedness secured by the Mortgage, all of which is secured by the Mortgage (the "Indebtedness").

The Mortgagor covenants with the Mortgagee that:

1. **PAY INDEBTEDNESS.** The Mortgagor will pay the Indebtedness secured hereby with interest as provided in any and all promissory notes executed in favor of Mortgagee, including, but not limited to, the Note in the amount of \$7,150,888.00, dated of even date herewith and any other notes, bonds and/or other instruments which now or hereafter evidence any or all of the Indebtedness secured by this Mortgage (the "Loan"). If default occurs, the Mortgagee shall have the rights and remedies provided in this Mortgage and according to law.
2. **INSURANCE.** The Mortgagor will keep the buildings on the Premises and the fixtures and articles of personal property covered by the Mortgage insured against loss by fire and other hazards, casualties and contingencies, including flood insurance, if required. The Mortgagor shall maintain insurance for the benefit of the Mortgagee in an amount not less than the unpaid principal balance secured by the Mortgage and name the Mortgagee as mortgagee and lender loss payee on such insurance policy. The insurance policy as required hereby shall contain an extended coverage endorsement and shall provide for thirty (30) days written notice to Mortgagee prior to cancellation. In addition thereto, the Mortgagor will keep the Premises insured against risk and any other hazard that may reasonably be required by law, regulation or the Mortgagee. The Mortgagor will assign and deliver the policies to the Mortgagee. The Mortgagor will reimburse the Mortgagee for any premiums paid by the Mortgagee on the Mortgagor's default. The provisions of this paragraph shall be construed with Section 254(4) of the Real Property Law, but the Mortgagor consents that the Mortgagee may without qualification or limitation by virtue of said section, retain and apply the proceeds of any such insurance in satisfaction or reduction of the Mortgage, or it may pay the same to the Mortgagor for the repair or replacement of the buildings or personal property. If the Mortgagee shall retain insurance proceeds, the lien of the Mortgage shall be affected only by a reduction of the amount of such lien by the amount of such insurance money received and retained by Mortgagee.
3. **ALTERATIONS, DEMOLITION OR REMOVAL.** No building, fixtures, or personal property covered by the Mortgage shall be removed, demolished, or substantially altered without the prior written consent of the Mortgagee.
4. **WASTE, MAINTENANCE AND REPAIRS.** The Mortgagor will not commit any waste on the Premises or make any change in the use of the Premises that increase any risk of fire or other hazard. The Mortgagor will keep and maintain all buildings and other improvements, and the sidewalks and curbs on or abutting the Premises in good condition, and will make all structural and non-structural exterior and interior, ordinary and extraordinary, foreseen and unforeseen repairs and replacements necessary. In the

event that the Premises are damaged or destroyed, or in the event of a taking of a portion of the Premises by eminent domain, the Mortgagor shall promptly restore the Premises to the condition existing prior to the casualty or taking. The Mortgagor will give the Mortgagee prompt written notice of any damage to the Premises and of the commencement of condemnation proceedings affecting the Premises.

5. **TAXES AND ASSESSMENTS.** Subject to the Mortgagee's rights under Paragraph 9 hereof, the Mortgagor will pay all taxes, payments in lieu of taxes, assessments, insurance premiums, sewer rents, or water rates, and in default thereon, the Mortgagee may pay the same. Any sums advanced by the Mortgagee shall bear interest at the maximum legal rate of interest at the time of such advance, and any shall be a lien on the Premises, and shall be secured hereby. Upon written request from Mortgagee, Mortgagor shall deliver to Mortgagee paid tax bills.
6. **MORTGAGEE MAY CURE MORTGAGOR'S DEFAULTS.** The Mortgagor agrees that the holder of this Mortgage may cure any default of Mortgagor on the Mortgage or any prior or subsequent mortgage, including payment of principal and interest. All costs and expenses, including reasonable attorneys' fees paid by the Mortgagee in curing said default shall be repaid by the Mortgagor to the Mortgagee on demand and shall be secured by the Mortgage.
7. **WARRANTY OF TITLE.** The Mortgagor warrants it has good and marketable title to the Premises and will execute any further assurance of the title to the Premises as Mortgagee may require.
8. **LIEN LAW COVENANT.** The Mortgagor will, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied for the purpose of paying the cost of improvement before using any part for any other purpose.
9. **ESCROW FOR TAXES AND INSURANCE.** If an event of default occurs under paragraph 22 hereof, the Mortgagee may require at any time that the Mortgagor establish an escrow account with the Mortgagee in which the Mortgagor shall pay monthly escrow payments to the Mortgagee on or before the first day of each month, totaling one twelfth of the known or estimated yearly taxes, assessments, liens, insurance premiums and charges levied or to be levied against the Premises. The Mortgagee shall hold such payments in trust without interest. As a part of such tax escrow, Mortgagee may require Mortgagor to pre-fund such escrow account to ensure adequate funds are available to pay taxes or insurance as they become due. If the total paid by the Mortgagor for taxes, assessments, liens, charges and insurance premiums shall exceed the amount of payments actually made by the Mortgagee, the excess shall be credited by the Mortgagee on subsequent payments. If the total paid by the Mortgagor for taxes, assessments, liens, charges and insurance premiums shall not be sufficient to pay therefor, then the Mortgagor shall pay to the Mortgagee the deficiency immediately upon the Mortgagee's request. If Mortgagor fails to make such payment, the Mortgagee may choose to pay such deficiency and add it to the unpaid balance of the Note.
10. **FINANCIAL STATEMENTS.** The Mortgagor must submit timely and accurate financial information to Mortgagee. The financial information must be acceptable in form and content to Mortgagee, in its sole discretion. The financial information must include (i) for Mortgagor, annual financial statements prepared by an independent

Certified Public Accountant within one hundred twenty (120) days after each fiscal year-end and copies of federal tax returns with all schedules prepared by an independent Certified Public Accountant within one hundred twenty (120) days after filing each fiscal year end or, if extended, no later than twenty (20) days after filing, and a rent roll for the Premises certified by Mortgagor to be true, correct and accurate, and (ii) for individual Guarantors, personal financial statements, including global cash flow statement and a list of all contingent liabilities, and copies of federal tax returns with all schedules within one hundred twenty (120) days after calendar year end or, if extended, no later than twenty (20) days after filing, and (iii) other financial information within thirty (30) days of request by Mortgagee. The Mortgagee shall have the right to examine the financial records for the operation of the Premises as often as the Mortgagee may reasonably require. If the Mortgagor fails to comply with this requirement, it may constitute an event of default under the Loan.

11. **FINANCIAL COVENANT.** Throughout the Permanent Loan Term (as defined in the Note), Mortgagor shall comply with the following Debt Service Coverage Ratio Covenant:

Minimum Debt Service Coverage Ratio of 1.20:1, tested annually, beginning with the first full fiscal year-end of the Permanent Loan Term. Debt Service Coverage Ratio shall be defined as: The ratio of Net Operating Income to the sum of (i) interest expense on all obligations and (ii) all regularly scheduled principal reduction. Net Operating Income will be defined as net income after taxes, *plus (+)* depreciation, *plus (+)* interest expense, *plus (+)* amortization.

12. **ASSIGNMENT OF RENTS.** The Mortgagor hereby assigns to the Mortgagee the rents, issues, and profits of the Premises as further security. The Mortgagor grants to the Mortgagee the right to enter upon and take possession of the Premises to collect the same, to lease the Premises or any part thereof, and to enforce its rights as assignee of the rents, issues and profits. This assignment shall continue until the Mortgage is paid. Mortgagor may collect rents, issues and profits until default under this Mortgage. Mortgagor agrees to use rents, issues and profits in payment of principal and interest and in payment of taxes, assessments, sewer rents, water rates, and charges against the Premises, but such right may be revoked by the Mortgagee upon default without notice. The Mortgagor will not collect rent from any tenant for more than one month in advance. Upon default, Mortgagor will pay monthly in advance to the Mortgagee, or to any receiver appointed to collect rents, issues and profits, the fair and reasonable rental value for the use and occupation of the Premises or of such part thereof as may be in the possession of the Mortgagor, and upon default in any such payment will vacate and surrender the Premises to the Mortgagee or receiver. In default thereof, Mortgagor may be evicted by self-help, summary proceedings or other legal process.
13. **LEASES.** Pursuant to Real Property Law Section 291-F, the Mortgagor shall not amend, cancel, terminate or otherwise modify any lease of the Premises. If the Mortgagor does so, the Mortgagee may declare the Indebtedness to be due and payable.
14. **COMPLIANCE WITH LAWS.** The Mortgagor will comply at all times with all applicable federal, state and local laws, regulations and ordinances. Mortgagor agrees that it shall not (a) be or become subject, at any time, to any law, regulation, or list of any governmental agency (including, without limitation, the U.S. Office of Foreign Asset Control lists) that prohibits or limits the Mortgagee from making any advance or

extension of credit to the Mortgagor or from otherwise conducting business with the Mortgagor, or (b) fail to provide documentary of other evidence of the Mortgagor's identity as may be requested by the Mortgagee at any time to enable the Mortgagee to verify the Mortgagor's identity or to comply with any applicable law or regulation, including, without limitation, Section 263 of the U.S. Patriot Act (Title III of Public Law 107-56) (the "Patriot Act"), as amended and in effect.

15. **COMPLIANCE WITH ZONING.** The Mortgagor covenants: (a) that the buildings and improvements now on the Premises are in compliance with applicable zoning codes, ordinances and regulations and deed restrictions, if any; and (b) that such compliance is based solely upon Mortgagor's ownership of such Premises, and not upon title to or interest in any other Premises. Buildings or improvements hereafter constructed on the Premises shall be in compliance with this section and shall lie wholly within the boundaries of the Premises and shall be independent operating units (except for utility lines and conduits coming directly to the Premises from a public road or from a private road on which Mortgagor maintains an easement).
16. **NO SECONDARY FINANCING.** The Mortgagor will not mortgage (including the so-called "wrap-around mortgage"), pledge, assign, grant a security interest in, cause or permit any lien or encumbrances to attach to or any levy to be made on the Premises, except for (a) taxes and assessments not yet delinquent; (b) any mortgage, pledge, security interest, assignment or other encumbrance to the Mortgagee; and (c) any prior mortgage agreed to by the Mortgagee.
17. **BANKRUPTCY.** Upon the making of an assignment for the benefit of creditors, or the filing of a petition in bankruptcy by or against the Mortgagor, or by or against any guarantor, or upon the appointment of a receiver for the Premises, or upon the legal incapacity of the Mortgagor or any guarantor, the Indebtedness shall immediately become due and payable.
18. **COVENANTS RUN WITH THE LAND.** The covenants contained in the Mortgage shall run with the land and bind the Mortgagor, its heir, representative, successors and assigns, and all subsequent owners, encumbrances, tenants and subtenants of the Premises, and shall enure to the benefit of the Mortgagee, its representatives, successors and assigns.
19. **ENVIRONMENTAL REPRESENTATIONS, WARRANTIES AND COVENANTS.**
  - A. Mortgagor makes the following representations and warranties that shall survive the delivery of the Mortgage:
    - (1) Mortgagor is in compliance in all respects with all applicable federal, state and local laws, including, without limitation, those relating to toxic and hazardous substances and other environmental matters.
    - (2) No portion of the Premises is being used or has been used at any previous time, for the disposal, storage, treatment, processing or other handling of any hazardous or toxic substances.
  - B. Mortgagee or its agents or representatives may, at any reasonable time and at Mortgagor's expense, inspect Mortgagor's books and records and inspect and

conduct any test on the Premises in order to determine whether Mortgagor is in continuing compliance with all environmental laws and regulations.

- C. If any environmental contamination is found on the Property, Mortgagor will remove it or take remedial action promptly and to Mortgagee's satisfaction.
- D. Mortgagor shall defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors from and against any claims, actions, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorney and consultant fees, investigation and laboratory fees, court cost and litigation expenses) arising out of or related to:
  - (1) The disposal, release or threatened release of any hazardous or toxic substances on the Premises;
  - (2) Any personal injury (including wrongful death or property damage) arising out of or related to hazardous or toxic substances;
  - (3) Any lawsuit brought or threatened, settlement reached or government order given relating to hazardous or toxic substances; and
  - (4) Any violation of any law, order, regulation, requirement, or demand of any government authority, or any policies or requirements of Mortgagee, which are based upon hazardous or toxic substances.
- E. Mortgagor knows of no location where hazardous or toxic substances from the Premises have been stored, treated, recycled or disposed of.
- F. Mortgagor will conduct no excavations at the Premises unless it gives Mortgagee ten days' notice of its intention to do so. Mortgagor will not commence excavation until Mortgagee has had the opportunity to sample and test at the excavation location. Should testing disclose the hazardous or toxic substances which require removal or remedy under any environmental laws or regulations, the suspension of excavation activity shall continue until the hazardous or toxic substances are removed and remedied to Mortgagee's satisfaction. Mortgagor shall pay all costs for testing, removal and remedy conducted pursuant to this paragraph.
- G. The breach of any of the covenants and warranties contained in this section shall be an event of default under the Mortgage.
- H. For purposes of this section, "hazardous and toxic substances" includes any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, the Hazardous Materials Transportation Act, as amended, the New York State Environmental Conservation Law, the Resource Conservation and Recovery Act, as amended, and in the regulation adopted and publications promulgated pursuant thereto. The provisions of this section shall be in addition to any other obligations and liabilities Mortgagor may have to Mortgagee at common law, and shall survive the transactions contemplated herein. Mortgagee may require

Mortgagor to carry insurance to fulfill Mortgagor's obligations under this paragraph.

20. **RIGHT TO INSPECT.** The Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Mortgaged Property at all reasonable times.
21. **ESTOPPEL STATEMENT.** Upon request by the Mortgagee, each Mortgagor shall furnish to the Mortgagee within ten days of Mortgagee's request an acknowledged written statement of the amount of the Indebtedness secured by this Mortgage and whether any defenses or offsets exist.
22. **TRANSFER.** The Indebtedness shall be immediately due and payable upon the voluntary or involuntary conveyance or transfer by operation of law of all or any part of the Premises, or any interest therein, including testate or intestate succession and conveyance by land contract. Acceptance of payments by the Mortgagee subsequent to any such conveyance, transfer or encumbering shall not waive the Mortgagee's rights. If the Mortgagor is a corporation, the sale, assignment, transfer, or other disposition of any stock by any party owning ten percent (10%) or more of the stock or other ownership interest of any corporation owning all or any part of the Premises or any interest therein, or any other similar significant change in ownership of such stock or other ownership interest or in the relative distribution thereof, by any method or means, whether by increased capitalization, merger with another corporation, corporate or other amendments, issuance of additional or new stock, reclassification of stock or otherwise, shall be a conveyance or transfer within the meaning of this provision. If the Mortgagor is a partnership, a sale or transfer by operation of law or otherwise of any partners' interest in the partnership or a change in the identity or composition of the partners of the Mortgagor shall be deemed a conveyance or transfer within the meaning of this provision.
23. **DEFAULT.** All of the Indebtedness secured by the Mortgage shall become due at the option of the Mortgagee upon (a) default in the payment of any required monthly payment obligation under the Note in the amount of \$7,150,888.00, dated November 17, 2017, or failure of Mortgagor to pay any of the Indebtedness when payment is due or demanded under any promissory note; (b) default in the payment of any tax, water rate, assessment, insurance premiums, or sewer rent for thirty days after notice and demand or default after notice and demand either in assigning and delivering the policies insuring the buildings against any casualty or in reimbursing the Mortgagee for premiums paid on insurance; (c) default in furnishing a statement of the amount due and whether any offsets or defenses exist against the Mortgage debt; (d) failure to provide to the Mortgagee, within ten days after demand, receipts showing payment of all taxes, water rates, sewer rents and assessments; (e) the actual or threatened alteration, demolition or removal of any building on the Premises without the written consent of the Mortgagee; (f) the assignment of the rents, issues and profits of the Premises without the written consent of the Mortgagee; (g) failure to maintain the buildings on the Premises in reasonably good repair; (h) failure to remedy or comply with any requirement or order or notice of violation issued by any governmental authority with respect to the Premises; (i) refusal of two or more fire insurance companies lawfully doing business in the State where the Premises are located to issue policies insuring the Premises; (j) removal, demolition or destruction of any of the fixtures, chattels or personal property, unless promptly replaced by property at least equal in quality and condition, free from security interest or encumbrances; (k) notice to the Mortgagor of the passage of any law deducting

from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or secured debts; (l) failure of Mortgagor to comply with any other covenants, conditions or agreements contained in the Mortgage; (m) use of the Premises for any unlawful purpose or public or private nuisance; (n) default under any other mortgage or loan document or other instrument delivered by Mortgagor or Guarantor to Mortgagee; (p) discharge or cancellation of Mortgagor's personal liability for the Indebtedness secured by this Mortgage, or (q) breach of any representation or warranty made by Mortgagor in the Mortgage or any other agreement or any other loan document by and between Mortgagor with Mortgagee; or (r) failure of Mortgagor to comply with any financial covenants or supply accurate and timely financial information as required herein. Upon the occurrence of any of the above, Mortgagee may foreclose the Mortgage and sell the premises according to law, sue to recover the Indebtedness, or pursue any other legal remedy. Mortgagee may, at its sole option, pursue judicial or non judicial foreclosure proceedings.

24. **APPOINTMENT OF RECEIVER.** The Mortgagee, in any action to foreclose the Mortgage, shall be entitled, without notice or demand and without regard to the adequacy of any security for the Indebtedness secured hereby or the solvency or insolvency of any person liable for the payment thereof, to the appointment of a receiver of the rents, issues and profits of the Premises.
25. **SECURITY AGREEMENT.** This Mortgage constitutes a security agreement under the Uniform Commercial Code and creates a security interest in all that property (and the proceeds thereof) included in the Premises which might otherwise be deemed "personal property".
26. **ANTI-MARSHALLING.** The Mortgagee may resort for the payment of any Indebtedness, liability or obligation secured hereby to its several securities thereof, in such order and manner as it may see fit.
27. **EXPENSES.** Mortgagor shall pay all Mortgagee's attorneys' fees and expenses incurred and to be incurred in connection with the preparation and recording of the Mortgage and all associated documents. If any action or proceeding shall be commenced to which action or proceeding the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of the Mortgage, all sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created by the Mortgage (including attorneys' fees), shall be paid by the Mortgagor and shall be secured by the Mortgage. If the Mortgage is referred to attorneys for foreclosure and/or referred to attorneys for collection of any or all of the Indebtedness secured hereby, the Mortgagor shall pay all sums, including attorney's fees, incurred by the Mortgagee, together with all statutory costs, disbursements, and allowances, with or without the institution of an action or proceeding. All such sums with interest thereon at the rate set forth in the paragraph above shall be secured by the Mortgage.
28. **INTEREST IN THE EVENT OF DEFAULT.** Upon default, the Mortgagee shall be entitled to receive interest on the unpaid principal sum until receipt and collection of the entire Indebtedness.
29. **LIENS.** The Premises shall be kept free and clear from any lien or encumbrance.



30. **NOTICES.** Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to or served upon either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval, or other communication with respect to this Mortgage or to the Mortgaged Property, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be deemed to have been sufficiently given or served when delivered by hand or by overnight courier service or when sent by registered or certified mail, return receipt requested, postage prepaid, directed to the party to receive the same at its address stated above or at such other addresses as may be substituted by notice given upon receipt or, if receipt is refused, three (3) days thereafter.
31. **WAIVER.** No waiver by the Mortgagee of any covenant contained in the Mortgage or other loan document, or failure of the Mortgagee to exercise any right, shall waive any other breach of the same or any other covenant, or of its rights thereafter to exercise any such option.
32. **MODIFICATION.** No change, amendment, modification, cancellation or discharge of this Mortgage shall be valid unless in writing and signed by the parties hereto.
33. **CORRECTIONS OR AMENDMENTS.** Mortgagor will execute (and pay any applicable recording costs) any further instrument to correct any error in this Mortgage, or to amend this Mortgage as required by the Mortgagee.
34. **SEVERABILITY.** If any provision of the Mortgage shall be invalid, illegal or unenforceable, then only such provision shall be affected, and no other provision of the Mortgage shall be affected.
35. **MARGINAL NOTES OR CAPTIONS.** The marginal notes or captions herein are inserted for convenience and are not a part of the Mortgage.
36. **CONSENT TO JURISDICTION.** In any action or proceeding relating to this Mortgage, each Mortgagor consents to the personal jurisdiction of any state or federal court located in the State of New York. Each Mortgagor further consents to service of process by registered mail directed to the Mortgagor at the last known address shown or Mortgagee's records relating to this Mortgage. Service by registered mail shall be complete five days after mailing, or as otherwise provided by law.
37. **WAIVER OF JURY TRIAL.** THE MORTGAGOR AND THE MORTGAGEE HEREBY WAIVE, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A JURY TRIAL IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE MORTGAGOR AND THE MORTGAGEE (A) CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGE THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS MORTGAGE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

38. **RIGHTS AND REMEDIES UPON DEFAULT.** Upon the occurrence of any Event of Default hereunder, the Mortgagee may, at its option, exercise any one or more of the following rights and remedies:

- A. **Right to Take Possession of Mortgaged Property.** The Mortgagor agrees to surrender possession of the Mortgaged Property to the Mortgagee upon demand, and the Mortgagee shall thereupon have the right to enter and take possession of the Mortgaged Property, to let the Premises, the Improvements, the Equipment, or any part thereof, to collect all Rents, Rental Insurance Proceeds and Business Interruption Insurance Proceeds and to apply the same on account of the Indebtedness, whether then matured or not, after payment of all proper costs, charges and expenses, including, but not limited to, (i) impositions, (ii) any premiums for fire, public liability and other insurance coverage affecting the Premises, the Improvements, the Equipment or any part thereof and (iii) any and all other costs, charges and expenses which it may be necessary or advisable for the Mortgagee to pay in the management, operation and maintenance of the Premises, the Improvements, the Equipment or any proceeds thereof, including, but not limited to, the cost of making repairs, alterations, and tenant improvements, commissions for renting the Premises, the Improvements, the Equipment, or any part thereof and reasonable legal expenses incurred in enforcing claims, preparing papers or any other services that may be desirable or required, or otherwise as a court of competent jurisdiction may direct. After taking possession of the Mortgaged Property, the Mortgagee may dispossess, by summary proceedings or otherwise, any tenants, subtenants or occupants of the Premises, the Improvements or any part thereof then or thereafter in default in the payment of any Rent, and the Mortgagor hereby irrevocably appoints the Mortgagee its agent and attorney in fact (which agency shall be deemed to be coupled with an interest), with full power of substitution, for such purpose. In the event that the Mortgagor is then an occupant of the Premises, the Improvements or any part thereof, it agrees to surrender possession thereof to the Mortgagee upon demand, and if the Mortgagor remains in possession thereof after such demand, such possession shall be as tenant of the Mortgagee, and the Mortgagor agrees to pay monthly in advance to the Mortgagee such rent for the Premises, the Improvements or any part thereof so occupied as the Mortgagee may reasonably demand, and in default of so doing, the Mortgagor may also be dispossessed by summary proceedings or otherwise.
- B. **Right to Foreclose Mortgage.** The Mortgagee may foreclose this Mortgage and sell, if permitted by law, or petition to be sold, the Premises in one parcel or in such parcels, manner or order as a court of competent jurisdiction may direct. If permitted by law, Mortgagee may foreclose this Mortgage for any portion of the Indebtedness or any other sums secured hereby which are then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due. If any real property transfer tax or real property transfer gains tax shall be due and payable upon the conveyance of the Premises pursuant to a judicial sale in any action, suit or proceeding brought to foreclose this Mortgage or by deed in lieu of foreclosure, the Mortgagor will pay or cause the same to be paid. In the event that the Mortgagor fails to pay any such tax within 20 days after notice and demand for payment is given by the Mortgagee, the Mortgagee is hereby authorized to pay the same, and any amount thereof so paid by the Mortgagee, together with all costs and expenses incurred by the

Mortgagee in connection with such payment, including, but not limited to, reasonable attorneys' fees and disbursements, and interest on all such amounts, costs and expenses at the rate of three percent (3%) per annum in excess of the interest rate specified with respect to the Indebtedness in effect from time to time, but in no event in excess of the maximum interest rate permitted by law, shall be paid by the Mortgagor to the Mortgagee on demand. Until paid by the Mortgagor, all such amounts, costs and expenses, together with interest thereon, shall be secured by this Mortgage and may be added to the judgment in any suit brought by the Mortgagee against the Mortgagor hereon.

- C. **Foreclosure Sale.** In the event of a foreclosure sale, the Property may be sold in one or in separate parcels, as the Mortgagee may so elect, and if the Property consists of more than one parcel, all of the parcels may be sold at a single foreclosure sale, either as one or separate parcels. In the latter case, the Mortgagee shall be entitled to a judgment directing the referee appointed in a foreclosure action to proceed pursuant to and consistent with this paragraph and the Mortgagor expressly waives any right that it may now or hereafter have to (a) request or require that the parcels be sold separately, or (b) request, in the event that the Mortgagee has elected to sell the parcels separately, that there be a determination of any deficiency amounts subsequent to any such separate sale or otherwise require a calculation of whether said parcel or parcels separately sold were conveyed for their "fair market value".
- D. **Right to Appointment of Receiver.** In any action to foreclose this Mortgage, the Mortgagee shall be entitled, without notice, without regard to the adequacy of any security for the Indebtedness secured hereby and without regard to the solvency of any person, firm or corporation who is or may become liable for the payment of all or any part of the Indebtedness secured hereby, to have a receiver appointed with all the rights and powers permitted under the laws of the State of New York. In addition the receiver shall be entitled to take any and all action necessary or deemed advisable to let the Mortgaged Property including without limitation landlord improvements or tenant improvements and adding the cost of same to the Indebtedness secured hereby. In the event that a receiver of the Premises is appointed hereunder, such receiver shall also have and may enforce all of the rights and remedies of the Mortgagee under subparagraph (a) hereof.
- E. **Additional Rights and Remedies.** The rights and remedies of the Mortgagee hereunder shall be in addition to its rights and remedies under the laws of the State of New York, including without limitation its rights and remedies under Section 254 of the Real Property Law. Nothing contained in this Mortgage shall be construed as requiring the Mortgagee to pursue any particular right or remedy for the purpose of procuring the satisfaction of the obligations and Indebtedness secured hereby, and the Mortgagee may exercise any or all of its rights and remedies under this Mortgage, the instruments evidencing the Indebtedness, or otherwise provided by law, in its sole discretion. No failure of the Mortgagee to insist upon strict performance by the Mortgagor of any of its covenants or obligations under this Mortgage or the instruments evidencing the Indebtedness, and no delay by the Mortgagee in exercising any of its rights or remedies hereunder, thereunder or otherwise provided by law, shall be deemed to be a waiver of such covenants or obligations or to preclude the exercise of such rights or remedies, and the Mortgagee, notwithstanding any such failure or delay, shall

have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of its covenants and obligations under this Mortgage and the instruments evidencing the Indebtedness, and to exercise any and all of its rights and remedies hereunder, thereunder or otherwise provided by law.

39. **AMERICANS WITH DISABILITIES ACT.** The Mortgagor and the Property are in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq) as amended, and with all applicable rules and regulations promulgated pursuant thereto (the "Act"). Mortgagor covenants and agrees with Mortgagee that so long as this Instrument remains a lien on the Property, the Mortgagor will: (a) promptly comply with all provisions of the Act which may effect the Mortgagor, the Property, any tenants or other occupants of the Property; (b) not cause or permit any action or activity to occur on or about the Property which is or may be in violation of the Act; (c) provide Mortgagee with written notice of any alleged violations of the Act and provide Mortgagee with such additional information relating to compliance with the Act as it may request from time to time; and (d) promptly remedy or cause to be remedied all violations of the Act.
40. **HISTORIC OR LANDMARK BUILDINGS.** No portion of the Improvements are designated by or registered with any governmental authority as historic or landmark buildings or any other similar designation or registration and Mortgagor shall not attempt to obtain or effect any such designation or registration.
41. **DISCLOSURE TO THIRD PARTIES.** Mortgagee may furnish financial information regarding Mortgagor or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including trustees, master servicers, special servicers, rating agencies and organizations maintaining databases on the underwriting and performance of the loan(s) secured by this Mortgage. Mortgagor irrevocably waives any and all rights Mortgagor may have under applicable law to prohibit such disclosure, including any right of privacy.
42. **SALE AND/OR ASSIGNMENT.** The Note or a partial interest in the Note (together with this Mortgage and the other loan documents) may be sold and/or assigned one or more times without prior notice to Mortgagor. A sale and/or assignment may result in a change of the loan servicer. There also may be one or more changes of the loan servicer unrelated to a sale and/or assignment of the Note and this Mortgage. If there is a change of the loan servicer, Mortgagor will be given notice of the change.
43. **BUILDING LOAN AGREEMENT.** This is a Building Loan and "Construction Loan" Mortgage, the proceeds of which are a loan for the purpose of financing the construction of certain improvements on the Premises. This Mortgage is subject to all the terms, covenants and conditions of a certain Building Loan Agreement dated the date hereof entered into between the Mortgagee and Mortgagor (the "Building Loan Agreement"), which Building Loan Agreement and all the terms, covenants and conditions thereof are by this reference incorporated herein and made a part hereof with the same force and effect as if set forth at length herein. The proceeds of the building loan secured hereby are to be advanced by the Mortgagee to the Mortgagor in accordance with the provisions of the Building Loan Agreement. The Mortgagor shall observe and perform all the terms, covenants, conditions, provisions and agreements of the Building Loan Agreement on the Mortgagor's part to be observed or performed. All advances made and all Indebtedness arising and accruing under the Building Loan Agreement from time to time shall be

secured hereby. In the event of any conflict or ambiguity between the terms, covenants and conditions of this Mortgage and the Building Loan Agreement, the terms, covenants and conditions which shall enlarge the rights and remedies of the Mortgagee and interest in the Mortgagee in the Mortgaged Property, afford the Mortgagee greater financial security in the Mortgaged Property and better assure payment of the Indebtedness in full, shall control.

44. **PATRIOT ACT.** The Mortgagee hereby notifies the Mortgagor that pursuant to the requirements of the U.S. Patriot Act (Title III of Public Law § 107-56), it is required to obtain, verify and record information that identifies the Mortgagor, which information includes the name and address of the Mortgagor and other information that will allow the Mortgagee to identify the Mortgagor in accordance with the aforesaid Patriot Act.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Mortgagor and Agency have duly executed this Mortgage the day and year first above written.

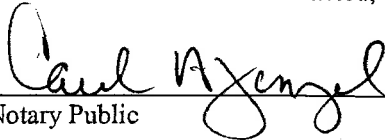
Mortgagor Name: 900 EAST FAYETTE GROUP, LLC

Signature: 

Print Name and Title: Christopher Geiger, Managing Member

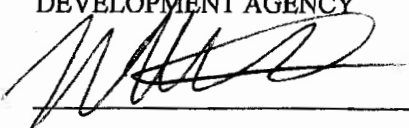
STATE OF NEW YORK )  
COUNTY OF Onondaga ) ss.:

On the 2<sup>nd</sup> day of November, in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **Christopher Geiger**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

CAROL A. ZENZEL  
Notary Public, State Of New York  
Qualified In Onondaga County, No. 4947349  
Commission Expires Feb. 21, 2019


Agency: CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

Signature: 

Print Name and Title: William M. Ryan, Chairman

STATE OF NEW YORK     )  
COUNTY OF Onondaga     )     ss.:

On the 2<sup>nd</sup> day of November, in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared William M. Ryan, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

## MORTGAGE RIDER

\* \* \* \* \*

The terms of this Mortgage Rider dated of even date herewith, are hereby incorporated by reference into this Mortgage.

**Mortgagor's Obligations to Comply with the Agency Leases and the Payment in Lieu of Taxes Agreement.** Mortgagor shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Agency Lease, the Company Lease and the PILOT Agreement, as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Agency Lease, the Company Lease and the PILOT Agreement for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Lease, the Company Lease and the PILOT Agreement to be performed, observed or complied with by Mortgagor as lessor under the Company Lease and lessee under the Agency Lease and as a party under the PILOT Agreement. If the Agency Lease, Company Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Mortgagor shall make the payment on or before the date on which the payment becomes due and payable. Mortgagor shall deliver evidence of the payment to Mortgagee within ten (10) days after receipt of a written request from Mortgagee for evidence of the payment.

**Subordination Provisions.** Notwithstanding anything in the Mortgage to the contrary, Lender by accepting this Mortgage, acknowledges and agrees that the rights of Lender hereunder shall be subordinate to the rights of the Agency to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by Mortgagor to the Agency shall have the same force, priority and effect as a real property tax lien under New York State law against the Mortgaged Property.

**Agency Executing at the Direction of Company.** The Company directs the Agency to execute and deliver this Mortgage to the Mortgagee, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Mortgage, including but not limited to reasonable attorney's fees.

**Hold Harmless Provisions.** The Company acknowledges that the terms of the Agency Lease, as amended and restated from time to time, are in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this Mortgage and makes same applicable hereto as if fully set forth herein.

### **No Recourse; Special Obligation.**

(1) The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith, and any instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements



shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights (as those terms are defined in the Agency Lease). No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section shall not alter the full force and effect of any Event of Default under the Agency Lease.

(d) For purposes of this Section, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(2) Notwithstanding anything else herein to the contrary, the Mortgagee acknowledges and agrees that the Agency has agreed to participate herein solely to subject its interests, if any, in the Mortgaged Property to this Mortgage and that any recourse or remedies the Mortgagee may have as against the Agency hereunder shall be sought solely against the Agency's interest in the Mortgaged Property and not against any other assets of the Agency.

**Miscellaneous Provision.** The Mortgagor and the Mortgagee hereto, by accepting this Mortgage, acknowledge that the Agency is executing this Mortgage solely to subject its interest in the Mortgaged Property, if any, to this Mortgage. Notwithstanding anything herein to the contrary, the Mortgagee acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be with respect to the Agency's interest in the Mortgaged Property.

[SIGNATURE PAGE FOLLOWS]

Mortgagor Name: 900 EAST FAYETTE GROUP, LLC

Signature: \_\_\_\_\_

Print Name and Title: Christopher Geiger, Managing Member


STATE OF NEW YORK )  
COUNTY OF Onondaga ) ss.:

On the 2nd day of November, in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **Christopher Geiger**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Carol A. Zenzel  
Notary Public

CAROL A. ZENZEL  
Notary Public, State Of New York  
Qualified In Onondaga County, No. 4947349  
Commission Expires Feb. 21, 2019

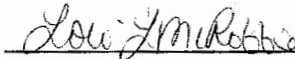
Agency: CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

Signature: 

Print Name and Title: William M. Ryan, Chairman

STATE OF NEW YORK        )  
COUNTY OF Onondaga    )        ss.:

On the 2<sup>nd</sup> day of November, in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared William M. Ryan, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

## SCHEDULE "A"

### Property Description

#### **(A) 922-24 East Fayette Street**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, described as follows: Beginning in the north line of Block Number two hundred forty (240) of the City of Syracuse, according to a map of said City made by J.M. Trowbridge, on the south line of East Fayette Street, ninety feet (90) west of the northeast corner of said block; thence west along the north line of said block forty (40) feet; thence south parallel to the east line of said block one hundred (100) feet; thence east parallel to East Fayette Street forty (40) feet, to a point ninety (90) feet from the east line of said block; thence north parallel with the east line of said block to the place of beginning.

#### **(B) 900-16 East Fayette Street**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, New York, known and distinguished on a map made by J.M. Trowbridge as part of Lot No. 17 in Block No. 240 described as follows: Beginning at a point in the south line of E. Fayette Street 77.01 feet east of the northwest corner of said block which is 5 feet east of the east wall of the Sylvester Flats; thence west on the south line of E. Fayette Street to the northwest corner of said block; thence south on the west line of said block 66 feet; thence east on the south line of said Lot No. 1776.86 feet; thence north 66 feet to the place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as the north half of Lot No. Twenty (20), Block No. Two Hundred Forty (240), according to a survey and map by Calvin Guiteau for Baldwin, Burt & Teall, subject to all unpaid taxes and monthly tenancies.

#### **(C) 918 E. Fayette Street**

ALL THAT TRACT OR PARCEL OF LAND, located in the City of Syracuse, County of Onondaga and State of New York commonly known as 918 E. Fayette Street, and being further described as being Lot Part 17 and 18, and 19, in Block 240, designated as Tax Map Book 1, Plate 116, Parcel 146, Property No. 1527009300; 48 X 66L2 x 34 feet, vacant lot also being described as:

ALL OF THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, New York, being part of Block NO. 240 according to a map of said city made by J.M. Trowbridge, described as follows: Beginning in the south line of East Fayette Street 130 feet west of the northeast corner of said block; thence west along the north line of said block 48 feet to a point which is 77.01 feet east from the northwest corner of said block and is 5 feet east of the east wall of the Sylvester Flats; thence south 66 feet to a point in the south line of Lot No. 17 in said block which is 76.86 feet east of the west line of said block; thence east about 48.16 feet to a point 130 feet west of the east line of said block; thence north parallel with the east line of said block 66 feet to the place of beginning; Also a strip of land about 2 feet in width extending southerly from the south line of the above described premises for a distance of 34 feet, the east line of which strip is an extension southerly of the east line of the above described parcel of land.

**(D) 305-07 Irving Avenue**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being north one-half of Lot No. 21 in Block 240 in said city, being 33 feet front on the east side of Irving Avenue, and 122.4 feet more or less deep.

ALSO ALL THAT TACT OR PARCEL OF LAND, situate in the City of Syracuse, in the county of Onondaga and State of New York, known and distinguished as the south half of Lot Number Twenty (20) of Block Number Two Hundred Forty (240) Syracuse, according to a survey and map made by Calvin Guiteau Baldwin, Burt & Teall of a certain larger tract; said lot lying on the east side of Irving Avenue fronting two (2) rods on said Avenue and Eight (8) rods deep, or thereabouts.

**Above Property Having been formally resubdivided into one lot that is now described as follows:**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York being part of Block Number 240 in said City being more particularly bounded and described as follows:

Beginning at the intersection of the southerly line of East Fayette Street with the east line of Irving Avenue;

Thence S 89° 30' 50" E, along the southerly line of East Fayette Street, a distance of 165.01 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 100.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the south line of East Fayette Street, a distance of 42.00 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 65.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the southerly line of East Fayette Street, a distance of 123.01 feet to a point in the easterly line of Irving Avenue;

Thence N 00° 29' 40" E, along the easterly line of Irving Avenue, a distance of 165.00 feet to the point and place of beginning.

**Property Address:** 900 - 916 East Fayette Street, City of Syracuse, County of Onondaga and State of New York

**Tax Account No.:** 48-4-1; 48-4-2; 48-4-3 and 48-4-14

16

Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2226

### Onondaga County Clerk Recording Cover Sheet

Received From :  
FITCH-SARAH ACCT: 1931 - Address:

Return To :  
PHILLIPS LYTTLE LLP  
28 EAST MAIN STREET STE 1400  
ROCHESTER, NY 14614

Method Returned : MAIL

First PARTY 1

900 EAST FAYETTE GROUP LLC

First PARTY 2

FIVE STAR BANK

Index Type : Land Records

Instr Number : 2017-00041006

Book : Page :

Type of Instrument : Mortgage

Type of Transaction : Mlg Type D-3

Recording Fee: \$126.00

Recording Pages : 16

The Property affected by this instrument is situated in No Tax District, in the County of Onondaga, New York

#### Mortgage Taxes

Property Located : No Tax District

Serial Number : D19118

Mortgage Amount : \$0.00

Basic Tax : \$0.00

Local Tax : \$0.00

Additional Tax : \$0.00

Transportation Auth Tax : \$0.00

SONYMA : \$0.00

County Tax : \$0.00

Total : \$0.00

Total Fees : \$126.00

State of New York  
County of Onondaga

I hereby certify that the within and foregoing was recorded in the Clerk's office for Onondaga County, New York

On (Recorded Date) : 11/09/2017

At (Recorded Time) : 11:47:21 AM



Doc ID - 0256212000016

*Lisa Dell*  
Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On : 11/09/2017 At : 11:50:18AM

**RECORD AND RETURN TO:**  
Raymond L. Ruff, Esq.  
Phillips Lytle LLP  
28 East Main Street, Suite 1400  
Rochester, New York 14614

---

**ASSIGNMENT OF LEASES, RENTS AND PROFITS**

---

**Assignor:** 900 EAST FAYETTE GROUP, LLC

**Agency:** THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY

**Bank:** FIVE STAR BANK

**Date:** November *2<sup>nd</sup>*, 2017

**Property Address:** 900-916 East Fayette Street, City of Syracuse, County of Onondaga and  
State of New York

**Tax Account No.:** 48-4-1; 48-4-2; 48-4-3 and 48-4-14



ASSIGNMENT OF LEASES, RENTS AND PROFITS

\*\*\*\*\*

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS, dated as of November 2, 2017 (the "Assignment"), is given by **900 EAST FAYETTE GROUP, LLC**, a limited liability company with an office at 1221 East Genesee Street, Suite 1, Syracuse, New York 13210 (the "Assignor" or "Company"), and **THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate government agency constituting a body corporate and politic and a public benefit corporation of the State of New York ("Agency"), duly organized and existing under the laws of the State of New York, with a place of business at 201 East Washington Street, 7th Floor, Syracuse, New York 13202, in favor of **FIVE STAR BANK**, a New York State bank with offices at 55 North Main Street, Warsaw, New York 14569 (the "Bank").

WHEREAS, the Assignor is the owner of certain land and improvements known as 900 - 916 East Fayette Street, City of Syracuse, County of Onondaga and State of New York and more particularly described in **SCHEDULE "A"** attached hereto and made a part hereof (the "Property"), and

WHEREAS, the Property has been mortgaged by the Assignor to the Bank pursuant to a certain Mortgage dated of even date herewith in the amount of Seven Million One Hundred Fifty Thousand Eight Hundred Eighty-Eight and 00/100 Dollars (\$7,150,888.00) (the "Mortgage"), given to secure payments of all obligations of the Assignor to the Bank of any kind, direct or indirect, absolute or contingent, now or hereafter existing (the "Debt"); and

WHEREAS, the Assignor has leased or will lease all or portions of the Property to tenants (together with tenants to whom Assignor will lease in the future, the "Tenants") pursuant to leases (together with the leases, tenancies and occupancies that Assignor will enter into with future Tenants, the "Leases"), and

THE Agency obtained a leasehold interest in the Land and improvements pursuant to the Company Lease and sublease the Land and improvements back to the Assignor pursuant the Agency Lease.

**DEFINITIONS.** For the purpose of this Assignment, the following definitions shall apply:

**Agency Lease:** means the Agency Lease Agreement dated as of November 1, 2017 by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**Company Lease:** means the Company Lease Agreement dated as of November 1, 2017 by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**PILOT Agreement:** means the payment in lieu of taxes agreement dated as of November 1, 2017 between the Agency and the Company with respect to the Property.

NOW, THEREFORE, in consideration of the Mortgage, the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **THE ASSIGNOR DOES HEREBY ASSIGN, TRANSFER AND SET OVER UNTO THE BANK AND ITS SUCCESSORS AND ASSIGNS FOREVER**, all of the right, title and interest of the Assignor in and to the Leases (excepting therefrom the Company Lease and the Agency Lease) now or hereafter affecting the Property or any part thereof and all amendments, modifications, extensions and renewals thereof

(collectively, the "Assigned Leases"), together with (a) all of the rents, issues and profits which may be or may become due, or to which the Assignor may now or hereafter become entitled, arising or issuing out of the Assigned Leases or from or out of the Property or any part thereof, (b) all insurance proceeds heretofore and hereafter paid by reason of any use or occupancy loss, business interruption or interruption of rental payments under the Assigned Leases or any part thereof, and (c) all condemnation proceeds hereafter paid by reason of any taking related to the Assigned Leases, which rents, issues, profits, condemnation proceeds, and insurance proceeds, together with any and all claims of the Assignor with respect thereto, are hereby assigned to and pledged with the Bank.

\* \* \* \* \*

This Assignment is delivered and accepted upon the following terms and conditions:

1. **Status of Leases:** Assignor represents and warrants that (a) each of the Assigned Leases is a valid and subsisting lease of the Property therein described and purported to be demised thereby for the term therein set forth and is in full force and effect on the date hereof in accordance with its terms and, except as may otherwise be indicated on said Schedule, has not been modified or amended from the date of its execution to the date hereof, (b) the Assignor has duly and punctually performed and observed all of its covenants and obligations under each of said Assigned Leases, (c) neither the Assignor nor any of the Tenants has been declared to be in default with respect to the performance or observance of any of their respective covenants or obligations under said Assigned Leases, (d) there are no rights of off-set, abatement or reduction of rent presently accruing to any Tenant under any of said Assigned Leases by virtue of any provision of any of said Assigned Leases or otherwise, (e) the Assignor has not sold, assigned, transferred, mortgaged, pledged or otherwise encumbered any of the rents, issues or profits which may be or become due, or to which the Assignor may now or hereafter become entitled, arising or issuing out of said Assigned Leases or from or out of the Property or any part thereof except for this Assignment, (f) no rents, issues or profits from any of said Assigned Leases becoming due subsequent to the date hereof have been collected, nor has payment of the same been anticipated, waived, released, discounted or otherwise discharged or compromised and (g) all of said Assigned Leases contain (and any Assigned Leases hereafter entered into will contain) a provision (or will be amended to contain a provision) whereby the Tenant agrees that said Assigned Lease and any and all modifications, amendments, renewals and extensions thereof is, shall be and shall remain in all respects subject and subordinate to any mortgage held at any time by the Bank and all disbursements to be made under any building loan contract between Assignor and the Bank, and to all modifications, amendments, consolidations, extensions, renewals and increases of any such mortgages, and that it will attorn to any purchaser of the fee and/or leasehold estates in and to the Property pursuant to a judicial sale in any action, suit or proceeding brought to foreclose any such mortgage or by deed and/or assignment in lieu of foreclosure, including the Bank, recognize such purchaser as landlord for all purposes of the Assigned Lease and continue to perform and observe all of its covenants and obligations as Tenant under the Assigned Lease for the remainder of the term thereof, all upon the same terms and conditions and with the same force and effect as if such purchaser were originally names as the landlord therein.

2. **Assignor's Covenants:** The Assignor covenants and agrees to (a) duly and punctually perform and observe all of its covenants and obligations under the Assigned Leases; (b) enforce or secure the performance and observance of all of the covenants and obligations of each Tenant under the Assigned Leases; (c) promptly deliver to the Bank (i) all notices of default which the Assignor sends to any Tenant under any Assigned Leases, (ii) all notices of the commencement of summary proceedings which the Assignor brings against any Tenant under any Assigned Leases and (iii) all notices of default which any Tenant under any Assigned Leases sends to the Assignor; and (d) promptly obtain and deliver to the Bank, upon its request, a certificate of estoppel of any Tenant under any Assigned Lease.

3. **Actions Requiring Prior Written Consent:** Without the prior written consent of the Bank in each instance, the Assignor agrees not to (a) modify or amend any Assigned Leases so as to (i) shorten the term, (ii) decrease the rent, (iii) accelerate the payment of installments of rent to become due thereunder or (iv) change the terms of any renewal option contained therein; (b) terminate any of the Assigned Leases except in accordance with their terms; (c) consent to the cancellation or surrender of any of the Assigned Leases; (d) accept any prepayment of installments of rent to become due thereunder; (e) further sell, assign, transfer, mortgage, pledge or otherwise encumber any of the rents due or to become due under any of the Assigned Leases or any part thereof; or (f) subordinate or permit the subordination of any of the Assigned Leases to any lien subordinate to the lien of the Mortgage.

4. **Section 291-f Provisions:** Notwithstanding the license to collect rents and otherwise granted to it hereunder, the Assignor agrees that it shall not have the right or power, without the Bank's consent, to cancel, abridge or otherwise modify, or to accept prepayments of installments of rent to become due under, any of the Assigned Leases which have an unexpired term of not less than five (5) years from the date of the execution and delivery of this Assignment. The agreement contained in the preceding sentence is made with reference to and shall be enforceable in accordance with the provisions of Section 291-f of the Real Property Law of the State of New York. The Assignor shall, upon request, enter into an agreement with the Bank pursuant to said Section with respect to any Assigned Leases hereafter entered into, and the Assignor hereby irrevocably appoints the Bank its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to execute, deliver and record on its behalf any such agreement which the Assignor has failed or refused to execute and deliver within ten (10) days after notice and request therefor is given by the Bank. If the Debt (as defined herein) or any portion thereof is secured by a mortgage then this agreement is and shall be construed as an instrument relating to such mortgage.

5. **Default By Assignor Under Any Assigned Sublease:** In the event of any default by the Assignor in the performance or observance of any of its covenants or obligations under any Assigned Lease, the Bank shall have the right, but not the obligation, to enter the Property or any part thereof at any time and from time to time for the purpose of curing such default, in which event the cost thereof, together with interest thereon at a rate then in effect on the Debt, but in no event in excess of the maximum rate permitted by law, shall be paid by the Assignor to the Bank on demand. Until so paid, such costs, together with interest thereon, shall be secured by any mortgage of the Property held by the Bank and, if not paid, may be added to the judgment in any action, suit or proceeding brought by the Bank against the Assignor thereon.

6. **Expiration or Termination of Assigned Leases:** In the event of the expiration or other termination of any Assigned Leases prior to termination of the licenses given hereunder to Assignor by the Bank, the Assignor will use its best efforts to promptly relet the portion of the Property affected thereby and not being used by the Assignor at the highest rental then obtainable and will use its best efforts to keep the Property fully rented at all times during which this Assignment is in effect.

7. **Maintenance of Property/Insurance:** The Assignor will maintain the Property in reasonably good and tenantable condition and, in default of so doing within a reasonable period not exceeding thirty (30) days after demand, the Bank may put the Property in such condition and all sums paid by the Bank for such purpose shall, together with interest thereon at the rate then borne by the Debt but never exceeding the maximum rate allowed by law, constitute an advance of monies hereunder and be secured hereby. Assignor will at all times carry hazard and liability insurance covering the Property satisfactory to the Bank, with such policies endorsed to the Bank as its interests may appear, and will promptly upon request deliver such policies to the Bank together with evidence of payment of all premiums thereon.

8. **Assignor's License to Collect Rents:** So long as no event of default has occurred with respect to the Debt, the Mortgage, or under any obligation of any kind of Assignor to the Bank, the Assignor shall have a revocable license to manage and operate the Property, to collect, receive and apply for its own account all rents, issues, profits and insurance proceeds accruing by virtue of the Assigned Leases or from or out of the Property, or any part thereof and to execute and deliver proper receipts and acquittances therefor. This license shall be deemed to be automatically revoked, without the necessity of notice or other action by the Bank both of which are expressly waived, upon the occurrence of any event of default with respect to the Debt or any obligation of any kind of Assignor to the Bank. In such event, the right of the Bank (which runs with the absolute assignment contained in this agreement) to enter upon and take possession of the Property without further notice, by force, ejectment, the appointment of a receiver of the rents and profits of the Property or otherwise as the Bank may elect is hereby expressly and irrevocably reconfirmed, and no further authorization shall be required. It is further reconfirmed that the Bank shall have the right, but not the obligation, to:

- (a) manage and operate the Property or any part thereof;
- (b) let the Property or any part thereof for such periods of time and upon such terms and conditions as it may, in the exercise of its discretion, deem proper;
- (c) amend, notify, extend or renew any Assigned Lease or any other lease then or thereafter entered into affecting the Property, or any part thereof;
- (d) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust, and make, execute and deliver receipts and releases for, (i) all rents, issues and profits which may then be or thereafter become due, owing or payable under any Assigned Lease and any other lease then or thereafter entered into affecting the Property or any part thereof or from or out of the Property or any part thereof and (ii) all insurance proceeds paid or thereafter to be paid by reason of any use or occupancy loss, business interruption or interruption of rental payments under or related to the Assigned Leases or any lease thereafter entered into affecting the Property, or any part thereof;
- (e) institute, prosecute to completion or compromise and settle all summary proceedings, actions for rent or for removing any and all Tenants or occupants of the Property or any part thereof;
- (f) enforce or enjoin or restrain the violation of any of the terms, provisions or conditions of any Assigned Lease or any other lease then or thereafter entered into affecting the Property or any part thereof;
- (g) make such repairs and alterations to the Property as it may, in the exercise of its reasonable discretion, deem proper;
- (h) pay, from and out of the rents, issues, profits or insurance proceeds collected by the Bank hereunder, or from or out of any other funds, (i) taxes, assessments, water charges, sewer rents or other governmental charges levied, assessed or imposed against the Property or any part thereof, (ii) premiums for fire, public liability and other insurance coverage affecting the Property or any part thereof and (iii) any and all other charges, costs and expenses which it may be necessary or advisable to pay in the management, operation and maintenance of the Property or any part thereof, including, but not limited to, costs of making repairs and alterations, commissions for renting the Property or any part thereof, and reasonable legal expenses incurred in enforcing claims, preparing papers or any other services that may be required; and

(i) generally do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Property or any part thereof, all as fully and to the same extent as the Assignor might do.

In the event that the Bank, in any action, suit or proceeding brought to foreclose any mortgage on the Property or otherwise, elects to have a receiver of the rents and profits of the Property appointed, such receiver shall have and may enforce all of the rights and remedies of such party under this Section to the maximum extent permitted by law. The Bank or such receiver shall apply the net amount of rents, issues, profits and insurance proceeds collected by it hereunder, after payment or reimbursement of all proper costs, charges and expenses (including any liability, loss, damage or expense covered by the indemnification provisions of paragraph 11 hereof), to the reduction and payment of the Debt, any indebtedness secured by a mortgage on the Property or otherwise as a court of competent jurisdiction may direct. The Bank shall be accountable to the Assignor only for the rents, issues, profits, insurance proceeds and other funds actually collected by it hereunder.

9. **Direction to Pay Rent Upon Revocation of License:** The Assignor hereby irrevocably directs each Tenant under the Assigned Leases, upon demand and notice from the Bank of the revocation of the licenses to Assignor contained herein, to pay to the Bank or to a receiver of the rents and profits of the Property appointed in any action, suit or proceeding brought to foreclose any mortgage covering the Property or otherwise, all rents accruing or due under the Assigned Leases from and after the receipt of such demand and notice. The Assignor agrees that any Tenant making such payment to the Bank or such receiver shall be under no obligation to inquire or determine the actual existence of any default claimed by the Bank to have caused a revocation of the license to collect rents contained herein.

10. **No Obligation to Perform Assignor's Obligations:** Nothing contained herein shall operate or be construed to obligate the Bank to perform or observe any of the covenants or obligations of the Assignor contained in any Assigned Lease, or otherwise to impose any obligation upon the Bank with respect to any Assigned Lease, including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained in the event that the estate of any Tenant or occupant of the Property or any part thereof is terminated in any action, suit or proceeding except that, by its acceptance of this Assignment, the Bank agrees not to name or join as a party defendant in such action, suit or proceeding any Tenant under any Assigned Lease to whom the Bank has previously granted non-disturbance rights, and such Tenant's possession or right to possession shall not be otherwise disturbed or affected by reason of any such action, suit or proceeding; provided that said Tenant is not then in default under any of the terms or provisions of its Assigned Lease beyond any applicable grace period contained therein. This Assignment shall not operate to place upon the Bank any responsibility for the management, operation or maintenance of the Property or any part thereof; and the execution of this Assignment by the Assignor shall constitute conclusive evidence that all responsibility for the management, operation and maintenance of the Property is, shall be and shall remain solely that of the Assignor.

11. **Indemnification:** The Assignor hereby agrees to indemnify and hold the Bank harmless from and against any and all liability, loss, damage and expense, including reasonable attorneys' fees, which the Bank may or shall incur under any Assigned Lease or by reason of this Assignment, or by reason of any action taken by the Bank hereunder, and from and against any and all claims and demands whatsoever which may be asserted against the Bank by reason of any alleged undertaking on its part to perform or observe any of the covenants or obligations contained in any Assigned Lease. Should the Bank incur any such liability, loss, damage or expense, the amount thereof, together with interest thereon at the rate then in effect on the Debt, but in no event in excess of the maximum rate permitted by law, shall be paid by the Assignor to the Bank on demand and shall be secured by any mortgage on the Property held by the Bank, or, at its option, the Bank may reimburse itself therefor out of any rents, issues, profits, insurance proceeds or other funds collected by it hereunder.

12. **Exercise of Rights and Remedies:** No delay by the Bank in exercising any of its respective rights or remedies hereunder for any period of time, or at any time or times, shall be deemed to constitute a waiver or to preclude the exercise of any of such rights or remedies. The rights and remedies of the Bank hereunder are cumulative and are not in lieu of but are in addition to any other rights and remedies which the Bank shall have under or by virtue of any instrument evidencing the Debt or any related documents or otherwise provided by law and may be exercised from time to time and as often as such exercise is deemed expedient.

13. **Assignment:** The Bank, if a holder of a mortgage on the Property, shall have the right to assign to any subsequent holder of such mortgage, or to any person who may hereafter acquire its interest in the Property or the Debt, the right, title and interest of the Assignor in and to any and all Assigned Leases, subject, however, to the provisions of this Assignment. If the Assignor shall hereafter become barred and foreclosed of all right, title and interest and equity of redemption with respect to the leasehold estate in and to the Property, no assignee of the interest of the Assignor in any Assigned Lease shall be liable to account to the Assignor for any rents, issues, profits or insurance proceeds thereafter paid or accruing.

14. **Reassignment:** The Bank agrees that at such time as the Debt has been paid in full, and the Assignor has performed and observed all of its covenants and obligations under any and all documents, instruments, or agreements between Assignor and the Bank, the Bank will reassign the interests assigned hereunder to the Assignor. Nothing contained in this Section shall be construed to mean that the Bank has received by the Assignment less than an immediate, absolute, and full assignment of the leases, rents, and other interests assigned hereby.

As to any Tenant or occupant under any Assigned Lease, any affidavit, certificate or other written statement of any officer of the Bank stating that any part of said Debt remains unpaid shall be and constitute conclusive evidence of the then validity, effectiveness and continuing force of this Assignment, and any Tenant or occupant, firm or corporation receiving any such affidavit, certificate or statement may, and is hereby authorized to, rely thereon.

15. **Further Assurances:** The Assignor agrees to execute and deliver to the Bank, at any time or times during which this Assignment is in effect, such further instruments as the Bank may deem necessary to make effective this Assignment and the various covenants, obligations and agreements of the Assignor contained herein.

16. **Notices:** All notices to be given hereunder shall be in writing, shall be sent by registered or certified mail, or by courier, return receipt requested, postage or charges prepaid, addressed as first shown above in this Assignment, or to such other address as either party shall have furnished to the other party in writing. Any such notice shall be deemed to have been given upon receipt of the party being notified or upon such party's refusal to accept delivery of such notice.

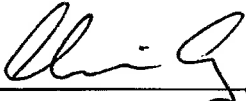
17. **Modification:** No modification, amendment, cancellation, release or discharge hereof, or of any part hereof, shall be valid unless the Bank shall have consented thereto in writing.

18. **Successors and Assigns:** The terms, covenants and conditions contained herein shall be binding upon the Assignor, its heirs, representatives, successors and assigns and all subsequent owners, encumbrances, Tenants and occupants of the Property and shall inure to the benefit of the Bank and its successors and assigns and all subsequent holders of any mortgage of the Property given by Assignor to the Bank and any subsequent holder of the Debt.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Assignor and Agency have caused this Assignment to be duly executed as of the day and year first above written.

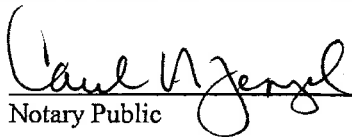
Assignor Name: 900 EAST FAYETTE GROUP, LLC

Signature: 

Print Name and Title: Christopher Geiger, Managing Member

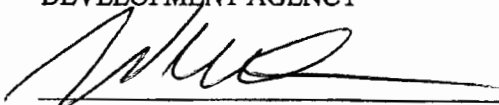
STATE OF NEW YORK )  
COUNTY OF Onondaga ) ss.:

On the 2nd day of November, in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **Christopher Geiger**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

CAROL A. ZENZEL  
Notary Public, State Of New York  
Qualified In Onondaga County, No. 4947349  
Commission Expires Feb. 21, 2019

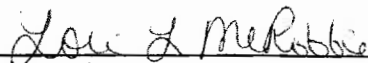
Agency: CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

Signature: 

Print Name and Title: William M. Ryan, Chairman

STATE OF NEW YORK     )  
COUNTY OF Onondaga    )     ss.:

On the 2<sup>nd</sup> day of November, in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared William M. Ryan, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2018



## ASSIGNMENT OF LEASES, RENTS AND PROFITS RIDER

\* \* \* \* \*

**Assignor's Obligations to Comply with the Agency Leases and the Payment in Lieu of Taxes Agreement.** Assignor shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Agency Lease, the Company Lease and the PILOT Agreement, as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Agency Lease, the Company Lease and the PILOT Agreement for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Lease, the Company Lease and the PILOT Agreement to be performed, observed or complied with by Assignor as lessor under the Company Lease and lessee under the Agency Lease and as a party under the PILOT Agreement. If the Agency Lease, Company Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Assignor shall make the payment on or before the date on which the payment becomes due and payable. Assignor shall deliver evidence of the payment to Bank within ten (10) days after receipt of a written request from Bank for evidence of the payment.

**Agency Executing at the Direction of Company.** The Company directs the Agency to execute and deliver this Assignment of Leases, Rents and Profits to the Bank, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Assignment of Leases, Rents and Profits, including but not limited to reasonable attorney's fees.

**Hold Harmless Provisions.** The Company acknowledges that the terms of the Agency Lease, as amended and restated from time to time, are in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

### **No Recourse; Special Obligation.**

(1) The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith, and any instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights (as those terms are defined in the Agency Lease). No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply

with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section shall not alter the full force and effect of any Event of Default under the Agency Lease.

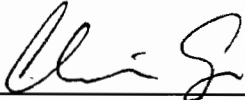
(d) For purposes of this Section, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(2) Notwithstanding anything else herein to the contrary, the Bank acknowledges and agrees that the Agency has agreed to participate herein solely to subject its interests, if any, in the Property to this Assignment of Leases, Rents and Profits and that any recourse or remedies the Bank may have as against the Agency hereunder shall be sought solely against the Agency's interest in the Property and not against any other assets of the Agency.

**Miscellaneous Provision.** The Assignor and the Bank hereto, by accepting this Assignment of Leases, Rents and Profits, acknowledge that the Agency is executing this Assignment of Leases, Rents and Profits solely to subject its interest in the Mortgaged Property, if any, to this Assignment of Leases, Rents and Profits. Notwithstanding anything herein to the contrary, the Bank acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be with respect to the Agency's interest in the Property.

[SIGNATURE PAGE FOLLOWS]

Assignor Name: 900 EAST FAYETTE GROUP, LLC

Signature: 

Print Name and Title: Christopher Geiger, Managing Member


STATE OF NEW YORK )  
COUNTY OF Onondaga ) ss.:

On the 2nd day of November, in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared **Christopher Geiger**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

CAROL A. ZENZEL  
Notary Public, State Of New York  
Qualified In Onondaga County, No. 4947349  
Commission Expires Feb. 21, 2019

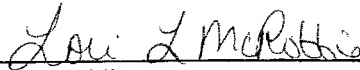
Agency: CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

Signature: 

Print Name and Title: William M. Ryan, Chairman

STATE OF NEW YORK     )  
COUNTY OF Onondaga    )     ss.:

On the 2nd day of November, in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared William M. Ryan, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2018

## SCHEDULE "A"

### Description of Premises

#### (A) 922-24 East Fayette Street

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, described as follows: Beginning in the north line of Block Number two hundred forty (240) of the City of Syracuse, according to a map of said City made by J.M. Trowbridge, on the south line of East Fayette Street, ninety feet (90) west of the northeast corner of said block; thence west along the north line of said block forty (40) feet; thence south parallel to the east line of said block one hundred (100) feet; thence east parallel to East Fayette Street forty (40) feet, to a point ninety (90) feet from the east line of said block; thence north parallel with the east line of said block to the place of beginning.

#### (B) 900-16 East Fayette Street

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, New York, known and distinguished on a map made by J.M. Trowbridge as part of Lot No. 17 in Block No. 240 described as follows: Beginning at a point in the south line of E. Fayette Street 77.01 feet east of the northwest corner of said block which is 5 feet east of the east wall of the Sylvester Flats; thence west on the south line of E. Fayette Street to the northwest corner of said block; thence south on the west line of said block 66 feet; thence east on the south line of said Lot No. 1776.86 feet; thence north 66 feet to the place of beginning.

ALSO ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as the north half of Lot No. Twenty (20), Block No. Two Hundred Forty (240), according to a survey and map by Calvin Guiteau for Baldwin, Burt & Teall, subject to all unpaid taxes and monthly tenancies.

#### (C) 918 E.Fayette Street

ALL THAT TRACT OR PARCEL OF LAND, located in the City of Syracuse, County of Onondaga and State of New York commonly known as 918 E. Fayette Street, and being further described as being Lot Part 17 and 18, and 19, in Block 240, designated as Tax Map Book 1, Plate 116, Parcel 146, Property No. 1527009300; 48 X 66L2 x 34 feet, vacant lot also being described as:

ALL OF THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, New York, being part of Block NO. 240 according to a map of said city made by J.M. Trowbridge, described as follows: Beginning in the south line of East Fayette Street 130 feet west of the northeast corner of said block; thence west along the north line of said block 48 feet to a point which is 77.01 feet east from the northwest corner of said block and is 5 feet east of the east wall of the Sylvester Flats; thence south 66 feet to a point in the south line of Lot No. 17 in said block which is 76.86 feet east of the west line of said block; thence east about 48.16 feet to a point 130 feet west of the east line of said block; thence north parallel with the east line of said block 66 feet to the place of beginning; Also a strip of land about 2 feet in width extending southerly from the south line of the above described premises for a distance of 34 feet, the east line of which strip is an extension southerly of the east line of the above described parcel of land.

**(D) 305-07 Irving Avenue**

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, being north one-half of Lot No. 21 in Block 240 in said city, being 33 feet front on the east side of Irving Avenue, and 122.4 feet more or less deep.

ALSO ALL THAT TACT OR PARCEL OF LAND, situate in the City of Syracuse, in the county of Onondaga and State of New York, known and distinguished as the south half of Lot Number Twenty (20) of Block Number Two Hundred Forty (240) Syracuse, according to a survey and map made by Calvin Guiteau Baldwin, Burt & Teall of a certain larger tract; said lot lying on the east side of Irving Avenue fronting two (2) rods on said Avenue and Eight (8) rods deep, or thereabouts.

**Above Property Having been formally resubdivided into one lot that is now described as follows:**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York being part of Block Number 240 in said City being more particularly bounded and described as follows:

Beginning at the intersection of the southerly line of East Fayette Street with the east line of Irving Avenue;

Thence S 89° 30' 50" E, along the southerly line of East Fayette Street, a distance of 165.01 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 100.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the south line of East Fayette Street, a distance of 42.00 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 65.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the southerly line of East Fayette Street, a distance of 123.01 feet to a point in the easterly line of Irving Avenue;

Thence N 00° 29' 40" E, along the easterly line of Irving Avenue, a distance of 165.00 feet to the point and place of beginning.

**Property Address:** 900 - 916 East Fayette Street, City of Syracuse, County of Onondaga and State of New York

**Tax Account No.:** 48-4-1; 48-4-2; 48-4-3 and 48-4-14

**17**

Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2226

## Onondaga County Clerk Recording Cover Sheet

Received From :  
FITCH-SARAH ACCT: 1931 - Address:

Method Returned : FILE CABINET

First DEBTOR

900 EAST FAYETTE GROUP LLC

First SECURED PARTY

FIVE STAR BANK

Index Type : Ucc

File Num : 2017-00000909

Type of Instrument : Ucc1

Type of Transaction : Ucc Liens

Recording Fee: \$40.00

Recording Pages : 1

### Recorded Information

State of New York

County of Onondaga

I hereby certify that the within and foregoing was  
recorded in the Clerk's office for Onondaga  
County, New York

On (Recorded Date) : 11/09/2017

At (Recorded Time) : 11:49:39 AM



Doc ID - 0256212300001

Lisa Dell, County Clerk



This sheet constitutes the Clerks endorsement required by Section 319 of Real Property Law of the State of New York

Entered By: RSWEENIE Printed On: 11/09/2017 At: 11:50:20AM



UCC FINANCING STATEMENT

302314

2017 NOV -9 AM 11:30

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)  
**Raymond L. Ruff, Esq.**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Phillips Lytle LLP  
 28 East Main Street, Suite 1400  
 Rochester, New York 14614

*L 3D Drawdown Acct.*

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME  
**900 East Fayette Group, LLC**

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**1221 East Genesee Street, Suite 1 Syracuse, NY 13210 USA**

ADDL INFO RE ORGANIZATION DEBTOR 1d. TYPE OF ORGANIZATION 1e. JURISDICTION OF ORGANIZATION 1f. ORGANIZATIONAL ID #, if any  
 [REDACTED] **LLC** **New York**  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

ADDL INFO RE ORGANIZATION DEBTOR 2d. TYPE OF ORGANIZATION 2e. JURISDICTION OF ORGANIZATION 2f. ORGANIZATIONAL ID #, if any  
 [REDACTED]  NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE or ASSIGNOR or SP) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME  
**Five Star Bank**

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**55 North Main Street Warsaw NY 14569 USA**

4. This FINANCING STATEMENT covers the following collateral:

All assets of Debtor, including without limitation, all equipment, inventory, documents, accounts, chattel paper, investment property, instruments, general intangibles, commercial tort claims and letter-of-credit rights, now owned or hereafter acquired, wherever located, and any and all such items which are or become fixtures, and all proceeds and products of all of the foregoing, as more fully described on Exhibit "A" attached hereto and made a part hereof.

5. ALTERNATIVE DESIGNATION (if applicable):  LESSOR/LESSOR  CONSIGNEE/CONSIGNOR  BAILEY/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed (for reasons set forth in the REAL PROPERTY RECORDS - Attach Addendum)  Check to REQUEST SEARCH REPORT (S) on Debtor(s) (Additional Fee)  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA  
Doc #561203.1 Five Star Bank to 900 East Fayette Group, LLC - NYS DOS

FILING OFFICE COPY - UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

FILING NUMBER: 201711090551346

EXHIBIT "A"

...302314

2017 NOV -9 AM 11:30

*General*

Any and all personal property, including, but not limited to:

All equipment of Debtor, whether now owned or hereafter acquired, wherever located, including, but not limited to all present and future machinery, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts and tools, and the goods described in any equipment schedule or list herewith or hereafter furnished to secured party by Debtor (but no such schedule or list need be furnished in order for the security interest granted herein to be valid as to all of Debtor's equipment) together with all substitutions and replacements for and products of, any of the foregoing property not constituting consumer goods, and together with all insurance and/or other proceeds of any type of the foregoing property and in the case of all tangible collateral, together with all accessions and, except in the case of consumer goods, together with (i) all accessories, attachments, parts, equipment, and repairs now or hereafter attached or affixed to, or used in connection with, any such goods, and (ii) all warehouse receipts, bills of lading and other documents of title now or hereafter covering such goods, and all now and hereafter existing books and records (in whatever form maintained) relating to the foregoing.

All accounts receivable, contract rights, and each and every right of the Debtor to the payment of money, whether such right to payment now exists or hereafter arises, whether such right to payment arises out of a sale, lease, or other disposition of goods or other property by Debtor, out of a rendering of services by Debtor, out of a loan by Debtor, out of the overpayment of taxes or other liabilities of the Debtor, or otherwise arises under any contract or agreement, whether such right to payment is or is not already earned by performance, and howsoever such right to payment may be evidenced, together with all other rights and interests (including all liens and security interests) which Debtor may at any time have by law or agreement against any account Debtor or other obligor obligated to make any such payment or against any of the property of such Debtor or other obligor, all, including, but not limited to all present and future debt instruments, chattel paper, including all electronic chattel paper, accounts, loans, and obligations receivable and tax refunds, together with the proceeds of any and all of the foregoing property, and all now and hereafter existing books and records (in whatever form maintained) relating to the foregoing.

All inventory in all of its forms, wherever located, now or hereafter existing (including, but not limited to, (i) all raw materials and work in process, finished goods, and materials used or consumed in the manufacture or production of inventory, (ii) goods in which the Debtor has an interest in mass or a joint or other interest or right of any kind, and (iii) goods which are returned to or repossessed by the Debtor), and all accessions thereto, proceeds and products thereof and documents therefore (any and all such inventory, accessions, products and documents being the "inventory"), and all books and records (in whatever form maintained) relating to any of the foregoing described collateral.

All general intangibles of Debtor, whether now owned or hereafter acquired, including, but not limited to, applications for patents, copyrights, trademarks, trade secrets, good will, tradenames, customer lists, permits and franchises, the right to use Debtor's name, and tax refunds.

All chattel paper related to any personal property and any and all replacements, substitutions and proceeds related to any personal property.

Please Initial

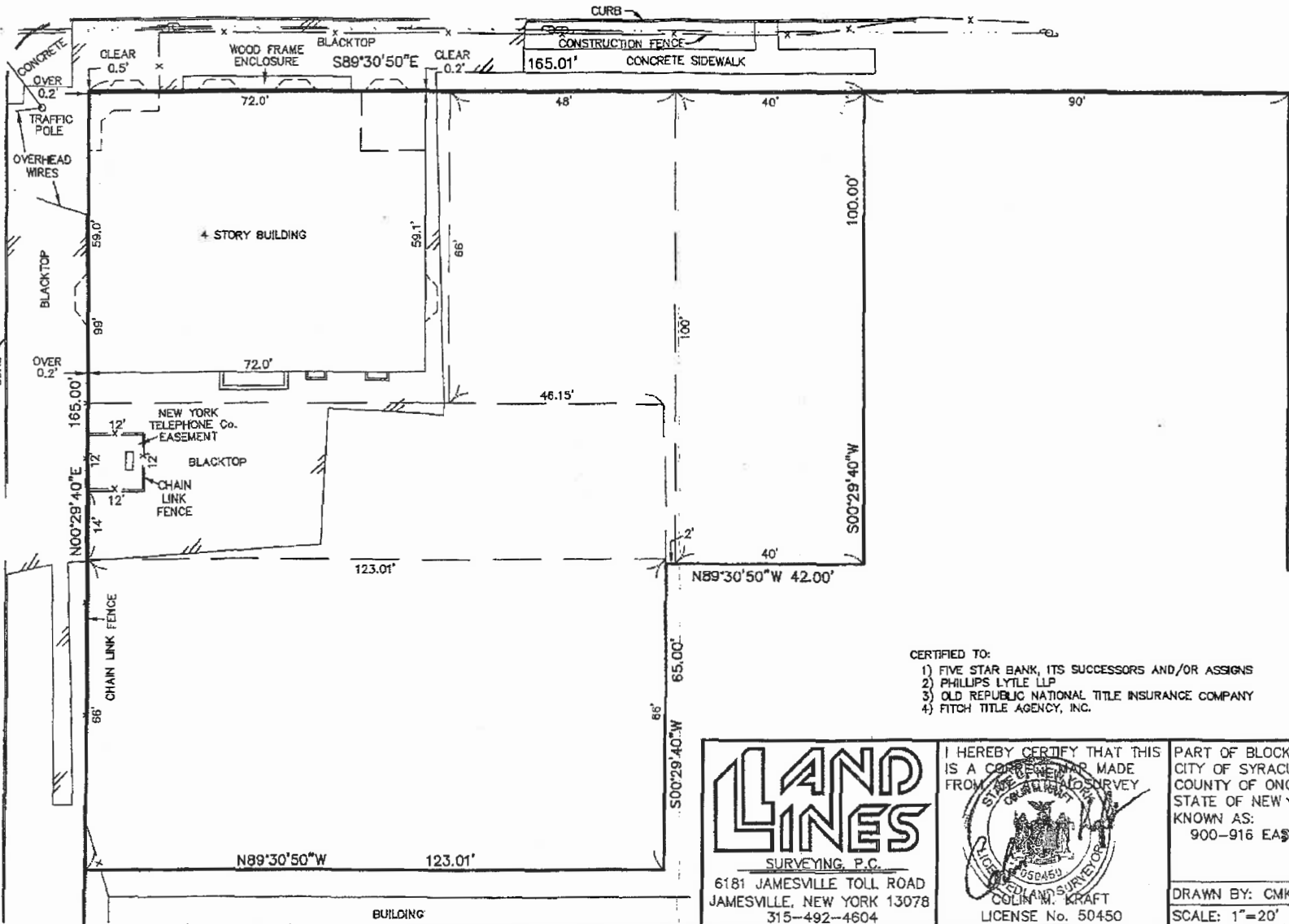


**18**

EAST FAYETTE STREET

IRVING AVENUE

SOUTH CROUSE AVENUE



- CERTIFIED TO:
- 1) FIVE STAR BANK, ITS SUCCESSORS AND/OR ASSIGNS
  - 2) PHILLIPS LYTLE LLP
  - 3) OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
  - 4) FITCH TITLE AGENCY, INC.

**LAND LINES**  
 SURVEYING, P.C.  
 6181 JAMESVILLE TOLL ROAD  
 JAMESVILLE, NEW YORK 13078  
 315-492-4604

HEREBY CERTIFY THAT THIS IS A CORRECTION MADE FROM THE ORIGINAL SURVEY

COLIN M. KRAFT  
 LICENSE No. 50450

PART OF BLOCK No. 240  
 CITY OF SYRACUSE  
 COUNTY OF ONONDAGA  
 STATE OF NEW YORK  
 KNOWN AS:  
 900-916 EAST FAYETTE STREET

DRAWN BY: CMK	DATE: 10/18/2017
SCALE: 1"=20'	DWG.No.: 171005

19

**GENERAL CERTIFICATE OF THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

This certificate is made in connection with the execution by the City of Syracuse Industrial Development Agency (the “**Agency**”) of the Project Agreement, the Company Lease, the Agency Lease, the Mortgage and any other document now or hereafter executed by the Agency (collectively, the “**Agency Documents**”) with respect to a project (the “**Project**”) undertaken at the request of 900 East Fayette Group, LLC (the “**Company**”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of November 1, 2017 (the “**Agency Lease**”), between the Agency and the Company, and shall have the meanings ascribed to such terms in the Agency Lease except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

I, the undersigned Chairman of the Agency, Do Hereby Certify:

1. I am an officer of the Agency and am duly authorized to execute and deliver this certificate in the name of the Agency.

2. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended (the "*Enabling Act*") and Chapter 641 of the Laws of 1979 of the State (said Chapter with the Enabling Act, the "*Act*") (a certified copy of Chapter 641 of the Laws of 1979 of the State is attached hereto as **Exhibit "A"**), and it is a corporate governmental agency constituting a public benefit corporation of the State.

3. The Act empowers the Agency, among other things, to acquire, construct reconstruct, lease, improve, maintain, equip, sell and dispose of land and any building or other improvement, and all real and personal property, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the City of Syracuse and the State and to improve their standard of living. The Act further authorizes the Agency to lease any and all of its facilities on such terms and conditions as it deems advisable, to acquire, construct, lease, improve, and equip one or more projects as defined in the Act, to mortgage any or all of its facilities and to pledge the revenues and receipts from the sale or transfer of its facilities.

4. The Agency has full legal power and authority to own its property, conduct its business and execute, deliver, and perform its obligations under the Agency Documents and has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations, and no legislation has been enacted affecting the powers or authority of the Agency to execute and deliver the Agency Documents, affecting the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the members and officers of the Agency to their respective offices.

5. Pursuant to the Act, the governing body of the City of Syracuse, New York, for whose benefit the Agency was established, duly filed or caused to be filed within six (6) months after the effective date of Chapter 641 of the Laws of 1979 of the State in the office of the Secretary of State of the State the Certificate of Establishment of the Agency pursuant to Section 926 of the New York General Municipal Law. The Certificate of Establishment of the Agency described in the preceding sentence also named the members and officers of the Agency as appointed by the Mayor of the City of Syracuse. Attached hereto as **Exhibit "B"** are certified copies of said Certificates of Establishment and copies of the Certificates of Appointment relating to all of the current members of the Agency, who are:

William M. Ryan	Chairman
M. Catherine Richardson	Vice Chairman
Steven P. Thompson	Secretary
Donald Schoenwald	Treasurer
Kenneth Kinsey	Member

6. Attached hereto as **Exhibit "C"** is a true, correct and complete copy of the by-laws of the Agency, together with all amendments thereto or modifications thereof; and said by-laws as so amended and modified are in full force and effect in accordance with their terms as of the date of this certificate.

7. That a resolution determining that the acquisition, construction and equipping of the Project constitutes a Project and describing the financial assistance in connection therewith and authorizing a public hearing (the "**Public Hearing Resolution**") was adopted by the Agency on January 26, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Public Hearing Resolution is attached hereto at **Exhibit "D."**

8. Attached hereto as **Exhibit "E"** is proof of publication of a notice of the public hearing with respect to the Project (the "**Public Hearing Notice**"), required pursuant to Section 859-a of the Act and held on March 9, 2016, and proof of mailing of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on February 18, 2016.

9. That a resolution classifying the Project as an Unlisted Action pursuant to SEQRA, declaring the Agency lead agency for purposes of an uncoordinated review thereunder and determining that the Project will not have a significant effect on the environment (the "**SEQRA Resolution**") was adopted by the Agency on March 9, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Resolution is attached hereto at **Exhibit "F."**

10. That a resolution approving the undertaking of the acquisition, construction and equipping of the Project, appointing the Company as agent of the Agency for the purpose of the acquisition, construction and equipping of the Project, and authorizing the execution and delivery of an agreement between the Agency and the Company (the "**Inducement Resolution**") was adopted by the Agency on March 9, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Inducement Resolution is attached hereto at **Exhibit "G."**

11. That a resolution approving a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on March 9, 2016 (the "**PILOT Resolution**") and remained in full force and effect and has not been rescinded, repealed or modified. A copy of the PILOT Inducement Resolution is attached hereto to **Exhibit "H"**.

12. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on March 9, 2016 (the "**Final Approving Resolution**") and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit "I"**.

13. That a resolution authorizing a public hearing in connecting with the Company's request for an increase in financial assistance was adopted by the Agency on September 20, 2016



(the “*Second Public Hearing Resolution*”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Second Public Hearing Resolution is attached hereto at **Exhibit “J”**.

14. Attached hereto as **Exhibit “K”** is proof of publication of a notice of the second public hearing with respect to the Project (the “*Second Public Hearing Notice*”), required pursuant to Section 859-a of the Act and held on October 18, 2016, and proof of mailing of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on September 26, 2016.

15. That a resolution approving additional financial assistance and authorizing the execution and delivery of certain documents by the Agency in connection with a PILOT Agreement was adopted by the Agency on October 18, 2016 (the “*Amended Financial Assistance Resolution*”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Amended Financial Assistance Resolution is attached hereto at **Exhibit “L”**.

16. The execution, delivery and performance of all Agency Documents, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency, and the Agency Documents have been duly authorized, executed and delivered. The Agency Documents are in full force and effect on and as of the date hereof, and no authority or proceeding for the execution, delivery or performance of the Agency Documents has been materially amended, repealed, revoked or rescinded; and no event or circumstance has occurred or exists which constitutes, or with the giving of notice or the passage of time would constitute, a default on the part of the Agency under the Agency Documents.

17. The execution, delivery, and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each do not and will not: (a) violate the Act or the by-laws of the Agency; (b) require consent (which has not heretofore been received) under or result in a breach or default of any credit agreement, purchase agreement, indenture, deed of trust, commitment, guaranty, lease, or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected; or (c) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any government, governmental instrumentality, or court, domestic or foreign, having jurisdiction over the Agency or any of its Property.

18. The Agency has not received written notice that any event of default has occurred and is continuing, or that any event has occurred which with the lapse of time or the giving of notice or both would constitute an event of default by any party to the Agency Documents.

19. There is no action, suit, proceeding or investigation at law or in equity, before or by any court, public board or body of the United States of America or the State of New York, pending or, to the best of my knowledge, threatened against or affecting the Agency (or to my knowledge any basis therefor): (a) wherein an unfavorable decision or finding would adversely affect (i) the Inducement Resolution, the Final Approving Resolution, the Company Lease, the

Agency Lease or the other Agency Documents; or (ii) the existence or organization of the Agency; or (iii) restrain or enjoin the financing, acquisition or construction of the Project or the performance by the Agency of the Agency Documents; or (b) in any manner questioning the proceedings or authority of the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the directors and officers of the Agency to their respective offices.

20. November 3, 2017 has been duly designated as the date for the Closing.

21. The Agency has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date.

22. In accordance with the Act, the Agency has determined:

(a) to assist the Company's acquisition, construction, renovation, equipping and completion of the Project Facility;

(b) to grant the Financial Assistance to the Company;

(c) to designate the Company as the Agency's agent for the acquisition, construction, renovation, equipping and completion of the Project Facility and to authorize the Company to appoint additional agents;

(d) that the Project will promote employment opportunities and prevent economic deterioration in the City by the preservation and/or the creation of both full and part-time jobs; and

(e) to pledge its interest in the Company Lease and the Agency Lease (except the Agency's Unassigned Rights) to the Mortgagee and grant the Mortgagee a security interest in the Agency's leasehold interest in the Project Facility.

23. That I did officially cause all certificates necessary for the financing and included in the official transcript of closing, to be executed, as required, in the name of the Agency by the signing of each of such certificates with the signature of the (Vice) Chairman of the Agency.

24. That I did officially cause the following Agency Documents to be executed in the name of the Agency by the signing of each of such Agency Documents with the signature of the William M. Ryan, Chairman of the Agency:

(a) a Project Agreement between the Agency and the Company;

(b) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

(c) an Agency Lease from the Agency to the Company pursuant to which the Agency agrees to sublease the Project Facility to the Company; and

(d) the Mortgage pursuant to which the Mortgagee has been granted a security interest in the Project Facility.

25. No member, officer or employee of the Agency having power to: (i) negotiate, prepare, authorize or approve any of the Agency Documents; (ii) audit bills or claims under any of the Agency Documents; or (iii) appoint an officer or employee who has any of the powers or duties set forth in (i) or (ii):

(a) directly or indirectly owns any stock of the Company;

(b) is a partner, director or employee of the Company;

(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

No member, officer, or employee of the Agency has publicly disclosed, in a writing included as part of the official minutes of the Agency, any Interest (as defined in Section 800.3 of the New York General Municipal Law), direct or indirect, in the Developer.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS, as of the 1<sup>st</sup> day of November, 2017.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
\_\_\_\_\_  
William M. Ryan, Chairman

**EXHIBIT "A"**

**CHAPTER 641 OF THE LAWS OF 1979  
OF THE STATE OF NEW YORK**

LAWS OF NEW YORK, 1979

CHAPTER 641

AN ACT to amend the general municipal law, in relation to creating and establishing for the city of Syracuse industrial development agency and, providing for its functions and duties

Became a law July 11, 1979, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2 (b) (2) of the Constitution, by a majority vote, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The general municipal law is amended by adding a new section nine hundred twenty-six to read as follows:

§ 926. *City of Syracuse industrial development agency. (a) For the benefit of the city of Syracuse and the inhabitants thereof, an industrial development agency, to be known as the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall consist of five members who shall be appointed by the mayor of the city of Syracuse and its chairman shall be designated by such mayor. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.*

*(b) The city shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the city and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.*

§ 2. This act shall take effect immediately.

**EXHIBIT "B"**

**AGENCY'S CERTIFICATE OF ESTABLISHMENT  
AND  
CERTIFICATES OF APPOINTMENT OF CURRENT MEMBERS**

CERTIFICATE OF THE CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law, Lee Alexander, Mayor of the City of Syracuse, certifies as follows:

- 1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.
- 2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 18, 1979.
- 3) The names of the Chairman and the Members, respectively, of the City of Syracuse Industrial Development Agency and their terms of office are as follows:

(a)	Frank L. Canino	Chairman
	David M. Garber	Member
	David S. Michel	Member
	Erwin G. Schultz	Member
	Irwin L. Davis	Member

- (b) The term of office of the Chairman and of the Members of the City of Syracuse Industrial Development Agency is at the pleasure of the Mayor and continues until a successor is appointed and has qualified.

- 4) The facts establishing the need for the creation of a City of Syracuse Industrial Development Agency are as follows:

Expansion of its industrial-commercial base is essential to the City of Syracuse, especially in a time of mounting economic pressures. To achieve this goal of expansion, the City has designed a comprehensive economic development program, requiring an Industrial Development Agency.

The existing potential for economic development will be augmented by the financial incentives of an Industrial Development Agency. Various City agencies and departments, such as the Department of Community Development and the Office of Federal and State Aid Coordination will interface with the Syracuse Industrial Development Agency to strengthen the business and industrial climate of the community.

Access to the Department of Community Development will make available to the Syracuse Industrial Development Agency an array of staff assistance, technical expertise, and various other development services. The City's Office of Federal and State Aid Coordination will provide assistance to it in locating, analyzing, and obtaining various forms of federal and state assistance and participation.

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

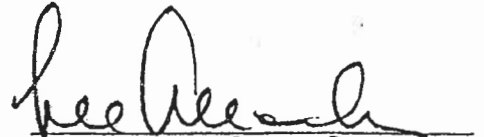
*Carl P. Peterson*

Governor of State




The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract, the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979

  
Lee Alexander  
Mayor

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

  
Secretary of State

RECEIVED

2010 JAN 25 AM 11:04

CITY OF SYRACUSE  
DEPARTMENT OF LAW



RECEIVED  
MISC. RECORDS

JAN 21 2010

DEPARTMENT OF STATE

OFFICE OF THE MAYOR

**Stephanie A. Miner, Mayor**

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member and officer of the City of Syracuse Industrial Development Agency:

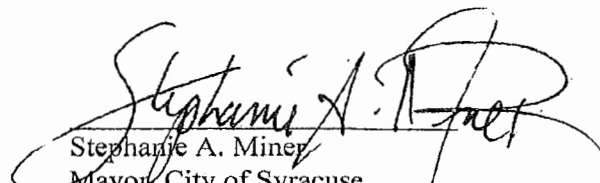
Mr. William Ryan - Member/Chairman

The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. Irwin Davis -Member/Chairman

No Member or Officer of the City of Syracuse Industrial development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 15, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse



OFFICE OF THE MAYOR

Stephanie A. Miner

RECEIVED  
MISC. RECORDS

FEB 16 2010

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

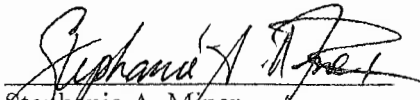
Pursuant to Article 18-A of the General Municipal Law of the State of New York,  
Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of  
the following person as a ~~Member~~ <sup>AN OFFICER</sup> of the City of Syracuse Industrial Development  
Agency:

M. Catherine Richardson

- Member/Vice Chair

No Member or Officer of the City of Syracuse Industrial development Agency shall  
receive any compensation for the discharge of their duties as Member or Officer of the  
Agency, but shall be entitled to necessary expenses incurred in the discharge of their  
duties as such Member or Officer.

The appointment herein set forth shall be effective as of February 12, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse



OFFICE OF THE MAYOR

Stephanie A. Miner, Mayor

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member of the City of Syracuse Industrial Development Agency:

Mr. Donald Schoenwald

- Member

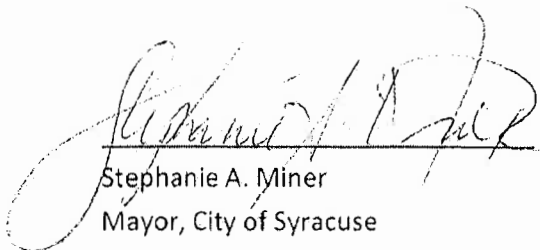
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. Kenneth Mokrzycki

- Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of March 1, 2011.



Stephanie A. Miner  
Mayor, City of Syracuse



**OFFICE OF THE MAYOR**

**Stephanie A. Miner, Mayor**

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member of the City of Syracuse Industrial Development Agency:

Mr. Steve Thompson

- Member/Secretary

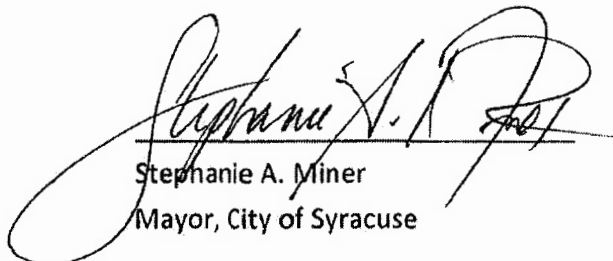
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. John Gamage

- Member/Secretary

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 6, 2014.

  
Stephanie A. Miner  
Mayor, City of Syracuse



**OFFICE OF THE MAYOR**

**Stephanie A. Miner, Mayor**

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member of the City of Syracuse Industrial Development Agency:

Mr. Kenneth Kinsey

- Member

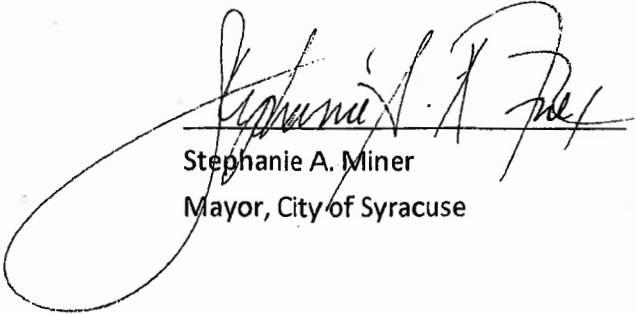
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Ms. Pamela Hunter

- Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 13, 2016.

  
Stephanie A. Miner  
Mayor, City of Syracuse

**EXHIBIT "C"**

**AGENCY'S BY-LAWS**

**BY-LAWS OF  
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
(as amended August 18, 2009)**

**Article I**

**THE AGENCY**

Section 1. Name

The name of the agency shall be "City of Syracuse Industrial Development Agency", and it shall be referred to in these by-laws as the Agency.

Section 2. Seal

The seal of the Agency shall be in such form as may be determined by the members of the Agency.

Section 3. Office

The principal office of the Agency shall be located in the City of Syracuse, New York, County of Onondaga, and State of New York. The Agency may have such other offices at such other places as the members of the Agency may, from time to time, designate by resolution.

**Article II**

**MEMBERS**

Section 1. Members

(a) There shall be five members of the Agency. All references in these by-laws to members shall be references to Members of the Agency. The persons designated in the certificates of appointment filed in the office of the Secretary of State as members of the Agency and their successors in office and such other persons as may, from time to time, be appointed as



Members of the Agency by the Mayor of the City of Syracuse, or by special act of the Legislature, shall constitute all the members.

(b) Members shall hold office at the pleasure of the Mayor and shall continue to hold office until his or her successor is appointed and has qualified. The Mayor may remove any Member at his discretion, with or without cause.

(c) Upon the resignation or removal of a Member, a successor shall be selected by the Mayor.

(d) Members may resign at any time by giving written notice to the Mayor and to the Chairman of the Agency. Unless otherwise specified in the notice the resignation shall take effect upon receipt of the notice by the Chairman or the Mayor. Acceptance of the resignation shall not be necessary to make it effective.

## Section 2. Meeting of the Members

(a) The Annual Meeting of the members shall be held on such date or dates as shall be fixed, from time to time, by the Members of the Agency. The first Annual Meeting of Members shall be held on a date within twelve (12) months after the filing of the Certificate of the Agency with the Secretary of State as required by General Municipal Law §856 (1) (a). Each successive Annual Meeting of Members shall be held on a date not more than twelve (12) months following the preceding Annual Meeting of Members.

(b) Regular meetings of the Agency may be held at such time and place as, from time to time, may be determined by the Members.

(c) Upon the written request of the Mayor, the Chairman or two (2) Members of the Agency, the Chairman of the Agency shall call a special meeting of the Members. Special meetings may be held on such date or dates as may be fixed in the call for such special meetings.

The call for a special meeting may be personally delivered to each Member of the Agency or may be mailed to the business or home address of such Member. A waiver of notice may be signed by any Member failing to receive a proper notice.

Section 3. Procedure at Meetings of Members

(a) The Chairman shall preside over the meetings of the Agency. In the absence of the Chairman, the Vice-Chairman shall preside. In the absence of both the Chairman and Vice-Chairman, any Member directed by the Chairman may preside.

(b) At all meetings of Members, a majority of the Members of the Agency shall constitute a quorum for the purpose of transacting business. If less than a quorum is present for any meeting, the Members then present may adjourn the meeting to such other time or until a quorum is present. Except to the extent provided for by law, all actions shall be by a majority of the votes cast, provided that the majority of the votes cast shall be at least equal to a quorum.

(c) When determined by the Agency that a matter pending before it is confidential in nature, it may, upon motion, establish an executive session and exclude any non-member from such session.

(d) Order of business

At all meetings of the Agency, the following shall be the order of business:

- (1) Roll Call;
- (2) Proof of Notice of Meeting;
- (3) Reading and approval of the minutes of the previous meeting;
- (4) bills and communications;
- (5) Report of the Treasurer;
- (6) Reports of Committees;

- (7) Unfinished business;
- (8) New business;
- (9) Adjournment.

The order of business may be altered or suspended at any meeting by the Members of the Agency.

(e) All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

### Article III

#### OFFICERS AND PERSONNEL

##### Section 1. Officers

The officers of the Agency shall be Chairman or Co-Chairman, Vice-Chairman, Secretary and Treasurer and such other offices as may be prescribed, from time to time, by the Agency. The Chairman or Co-Chairman and other officers shall be appointed by the Mayor of the City of Syracuse and may be removed with or without cause at his discretion. Each officer shall be a Member of the Agency during his or her term of office.

##### Section 2. Chairman or Co-Chairmen

The Chairman shall be chief executive officer of the Agency, and shall serve as an ex officio member of all duly constituted committees, shall supervise the general management and the affairs of the Agency, and shall carry out the orders and resolutions of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall execute (manually and by facsimile signature) all agreements, contracts, deeds, bonds, notes or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency. The Mayor may from time to time appoint two Co-Chairmen in place of the Chairman. During their term of office the Co-

Chairmen shall share equally the duties, rights, powers and responsibilities of the Chairman. The action of either Co-Chairman or execution (manually or by facsimile signature) by either Co-Chairman of any agreement, contract, deed, bond, note or other evidence of indebtedness or any other instrument of the Agency on behalf of the Agency shall have the same force and effect as such action or execution by the Chairman.

Section 3. Vice-Chairman

The Vice-Chairman shall have all the powers and functions of the Chairman or Co-Chairmen in the absence or disability of the Chairman or Co-Chairmen, as the case may be. The Vice-Chairman shall perform such other duties as the Members of the Agency shall prescribe or as delegated by the Chairman or Co-Chairmen.

Section 4. Secretary

The Secretary shall keep the minutes of the Agency, shall have the custody of the seal of the Agency and shall affix and attest the same to documents when duly authorized by the Agency, shall attest to the giving or serving of all notices of the Agency, shall have charge of such books and papers as the Members of the Agency may order, shall attest to such correspondence as may be assigned, and shall perform all the duties incidental to his office.

Section 5. Treasurer

The Treasurer shall have the care and custody of all the funds and securities of the Agency, shall deposit such funds in the name of the Agency, in such bank or trust company as the members of the Agency may elect, shall sign such instrument as may require the Treasurer's signature, but only with the approval of the Chairman or Co-Chairman, as the case may be, shall at all reasonable times exhibit the books and accounts of the Agency to the Mayor or any Member of

the Agency, and at the end of each fiscal year shall present an annual report setting forth in full the financial condition of the Agency.

Section 6. Additional Personnel

The Agency, with the consent of the Mayor, may appoint an Administrative or Executive Director to supervise the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Agency may, from time to time, employ such other personnel as it deems necessary to execute its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act (General Municipal Law, Article 18-A), as amended, and all other laws of the State of New York applicable thereto.

Section 7. Compensation of Chairman, Co-Chairmen, Members, Officers, and Other Personnel

The Chairman, Co-Chairmen, Members and Officers shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The compensation of other personnel, including the Administrative Director, shall be determined by the Members of the Agency.

**Article IV**

**AMENDMENTS**

Section 1. Amendments to By-Laws

These by-laws may be amended or revised, from time to time, by a two-third (2/3) vote of the Agency, but no such amendment or revision shall be adopted unless written notice of the proposed action shall have been given by mail to each Member and the Mayor at least ten (10) days prior to the date of the meeting at which it is proposed that such action be taken; provided, however,

that this provision and other provisions relating to the appointment, renewal and terms of office of Members and officers may be amended only with the prior written approval of the Mayor.

## Article V

### MISCELLANEOUS

#### Section 1. Sureties and Bonds

In case the Agency shall so require, any officer, employee or agent of the Agency shall execute to the Agency a bond in such sum and with such surety or sureties as the Agency may direct, conditioned upon the faithful performance of his or her duties to the Agency and including responsibility for negligence and for the accounting for all property, funds or securities of the Agency which may come into the hands of the officer, employee or agent.

#### Section 2. Indemnification

(a) Upon compliance by a Member or Officer of the Agency (including a former Member or Officer, the estate of a Member or Officer or a judicially appointed personal representative thereof) (referred to in this Section 2 collectively as "Member") with the provisions of subdivision (i) of this Section 2, the Agency shall provide for the defense of the Member in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Member was acting within the scope of the public employment or duties of such Member. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Agency.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the Member shall be entitled to be represented by private counsel of the Member's choice in any civil action or proceeding whenever the chief legal officer of the Agency or other counsel designated by the

Agency determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the Member is entitled to be represented by counsel of the Member's choice, provided, however, that the chief legal officer or other counsel designated by the Agency may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Members be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of a majority of the Members of the Agency eligible to vote thereon.

(c) Any dispute with respect to representation of multiple Members by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the Member delivers process and a written request for a defense to the Agency under subdivision (i) of this Section 2, the Agency shall take the necessary steps on behalf of the Member to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The Agency shall indemnify and save harmless its Members in the amount of any judgment obtained against such Members in a State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the Member was acting within the scope of the Member's public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by a majority of the Members of the Agency eligible to vote thereon.

(f) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this Section 2 shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Member seeking indemnification.

(g) Nothing in this subdivision shall authorize the Agency to indemnify or save harmless any Member with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Agency shall indemnify and save harmless its Members in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that the Member, acting within the scope of the Member's public employment or duties, has, without willfulness or intent on the Member's part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State or of the United States.

(h) Upon entry of a final judgment against the Member, or upon the settlement of the claim, the Member shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Chairman and the chief administrative officer of the Agency; and if not inconsistent with the provisions of this Section 2, the amount of such judgment or settlement shall be paid by the Agency.

(i) The duty to defend or indemnify and save harmless prescribed by this Section 2 shall be conditioned upon: (i) delivery by the Member to the Chairman of the Agency and the chief legal officer of the Agency or to its chief administrative officer of a written request to provide for such Member's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Member is served with such document, and (ii) the full cooperation of the Member in the defense of such action or



proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

(j) The benefits of this Section shall inure only to Members as defined in subdivision (a) of this Section 2 and shall not enlarge or diminish the rights of any other party.

(k) This Section 2 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section 10 of the Court of Claims Act, Section 880 of the General Municipal Law, or any other provision of law.

(l) The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State, or authorized by law to transact business in the State, against any liability imposed by the provisions of this Section 2, or to act as a self-insurer with respect thereto. The provisions of this Section 2 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) All payments made under the terms of this Section 2, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

(n) Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any Member of the Agency by, in accordance with, or by reason of, any other provision of State or Federal statutory or common law. The benefits under this Section 2 shall supplement, and be available in addition to, defense or indemnification protection conferred by any law or enactment. This Section 2 is intended to confer upon Members of the Agency all of the benefits of Section 18 of the Public Officers Law

and to impose upon the Agency liability for costs incurred under the provisions hereof and thereof.

Section 3. Fiscal Year

The fiscal year of the Agency shall be fixed by the Members, subject to the applicable law.

Section 4. Powers of the Agency

The Agency shall have all the powers of an Industrial Development Agency authorized by Article 18-A of the General Municipal Law and shall have the power to do all things necessary or convenient to carry out its purposes and exercise the powers authorized herein.

**EXHIBIT "D"**

**PUBLIC HEARING RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on January 26, 2016, at 9:00 o'clock a.m. in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Donald Schoenwald, Esq., Steven Thompson, Kenneth Kinsey

The following persons were **ALSO PRESENT:** **Staff present:** Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; **Others Present:** Sharon Owens, Larry Losty, Matthew Paulus, Timothy Lynn, Esq., Richard Puchalski, Aggie Lane, James Trasher, Walter Dixie, Dennis Bachman, Scott Smith, Barry Lentz, Clifford Ryan, Lionel Hoga, Joanne Stevens, Virginia DoLin, Richard Breland, Eddie Brown, Gwen Chaffin, Delores Perry, Anna Morris, Reggie Seigler, Ken Boy, Twiggy Billue

The following resolution was offered by Donald Schoenwald and seconded by Steven Thompson:

**RESOLUTION DETERMINING THAT THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF A COMMERCIAL FACILITY AT THE REQUEST OF THE COMPANY CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE IN CONNECTION THEREWITH; AND AUTHORIZING A PUBLIC HEARING**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant "financial assistance" (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more "projects" (as defined in the Act); and

**WHEREAS**, by application dated January 19, 2016 (the "**Application**"), 900 East

Fayette Group, LLC, or an entity to be formed, (the “**Company**”), requested the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as said quoted term is defined in SEQRA) to be taken by the Agency and the approval of the Project constitutes such an action; and

**WHEREAS**, the Agency has not yet made a determination under SEQRA; and

**WHEREAS**, the Agency has not approved undertaking the Project or granting the Financial Assistance; and

**WHEREAS**, the grant of Financial Assistance to the Project is subject to, among other things, the Agency finding after a public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency makes the following findings and determinations:

(A) The Project constitutes a “project” within the meaning of the Act; and

(B) The Financial Assistance contemplated with respect to the Project consists of assistance in the form of exemptions from State and local sales and use taxation and mortgage recording tax.

(2) The Agency hereby directs that pursuant to Section 859-a of the Act, a public hearing with respect to the Project and Financial Assistance shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

(3) The Secretary or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Donald Shoenwald	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

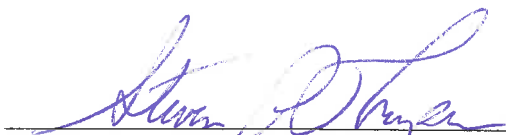
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on January 26, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 24<sup>TH</sup> day of March 2016.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "E"**

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES  
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS  
859-a OF THE ACT**



## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 9<sup>th</sup> day of March, 2016, at 9:00 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

900 East Fayette Group, LLC, or an entity to be formed (the "Company"), has requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "Existing Building") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "Land"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "New Building" and together with the Existing Building, the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: February 18, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

# The Post-Standard

LEGAL AFFIDAVIT

INV#: 0007578242

**syracuse.**

MEDIA GROUP

syracuse.com | THE POST-STANDARD

BARCLAY DAMON LLP  
ONE PARK PL  
330 S STATE ST  
SYRACUSE, NY 13202

Name: BARCLAY DAMON LLP

Sales Rep: Pamela Gallagher

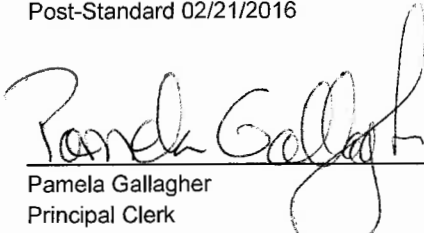
Account Number: 1056027

INV#: 0007578242

Date	Position	Description	P.O. Number	Ad Size
02/21/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	matter #3078968	1 x 139.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 02/21/2016



Pamela Gallagher  
Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 22th day of February  
2016



NOTARY PUBLIC

KAREN M. MILLER BIALCZAK  
Notary Public- State of New York  
No. 01M16334505  
Qualified in Onondaga County  
My Commission Expires: 12/21/19

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT

Date	Position	Description	P.O. Number	Ad Size
02/21/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	matter #3078968	1 x 139.00 CL

**NOTICE** OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 9th day of March, 2016, at 9:00 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: 900 East Fayette Group, LLC, or an entity to be formed (the "Company"), has requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "Existing Building") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "Land"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "New Building" and together with the Existing Building, the "Facility"); (iii) the

acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. The Company shall be the initial owner or operator of the Project Facility. The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York. Dated: February 18, 2016 CITY OF

SYRACUSE INDUSTRIAL  
DEVELOPMENT AGEN-  
CY

BARCLAY DAMON<sup>LLP</sup>

Susan R. Katzoff  
Partner

February 18, 2016

VIA CERTIFIED MAIL  
7014 0510 0001 0187 1039

Honorable Stephanie A. Miner  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

VIA CERTIFIED MAIL  
7014 0510 0001 0187 1015

Honorable Joanne M. Mahoney  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency (the "**Agency**")  
900 East Fayette Group, LLC (the "**Company**")  
900 East Fayette Group, LLC Project

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the "**Project**") consists of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "**Existing Building**") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "**Land**"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "**New Building**") and together with the Existing Building, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain

One Park Place – 300 South State Street – Syracuse, New York 13202 barclaydamon.com  
skatzoff@barclaydamon.com Direct: 315.425.2880 Fax: 315.425.8597

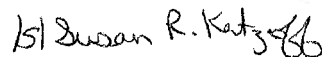
Honorable Stephanie A. Miner  
Honorable Joanne M. Mahoney  
February 18, 2016  
Page 3

financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **March 9, 2016** at 9:00 a.m. in the Common Council Chambers at City Hall.

Very truly yours,



Susan R. Katzoff

SRK/llm  
Enclosure

cc: Thomas Babilon, Esq., City of Syracuse, via email (w/Enclosure)  
Ben Walsh, City of Syracuse Industrial Development Agency, via email (w/Enclosure)  
Judy DeLaney, City of Syracuse Industrial Development Agency, via email (w/Enclosure)

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 9<sup>th</sup> day of March, 2016, at 9:00 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

900 East Fayette Group, LLC, or an entity to be formed (the "Company"), has requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "Existing Building") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "Land"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "New Building" and together with the Existing Building, the "Facility"); (ii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: February 18, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1.

Honorable Stephanie A. Miner  
Mayor, City of Syracuse  
233 East Washington Street  
Syracuse, New York 13202



9590 9403 0673 5196 5135 84

2. Article Number (Transfer from service label)

7014 0510 0001 0187 1039

PS Form 3811, April 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*X M. Robinson*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

2-22-14

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Honorable Joanne M. Mahoney  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202



9590 9403 0673 5196 5135 77

2. Article Number (Transfer from service label)

7014 0510 0001 0187 1015

PS Form 3811, April 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*Dana Pompa*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

*Dana Pompa*

2-22-14

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

7014 0510 0001 0187 1015

7014 0510 0001 0187 1039

PS Form 3800, August 2006

Street, Apt. No., or PO Box No.  
City, State, ZIP+4

Sent to: *County Executive*

See Reverse for Instructions

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Postmark Here

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only. No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

PS Form 3800, August 2006

Street, Apt. No., or PO Box No.  
City, State, ZIP+4

Sent to: *Mayor*

See Reverse for Instructions

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Postmark Here

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only. No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

**EXHIBIT "F"**

**SEQRA RESOLUTION**



## SEQRA RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on March 9, 2016 at 9:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Steven Thompson, Kenneth Kinsey

**EXCUSED:** Donald Schoenwald

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Ben Walsh, Judith DeLaney, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; Others Present: Aggie Lane, Barry Lentz, Christopher Geiger, David Nutting, Joseph Hucko, Christopher Lloyd, Nagib, Mark Roney, Melissa Zell, John Bartolella.

The following resolution was offered by Steven Thompson and seconded by M. Catherine Richardson:

**RESOLUTION CLASSIFYING A CERTAIN PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, 900 East Fayette Group, LLC, or an entity to be formed, (collectively the "**Company**"), by applications dated January 19, 2016 (collectively, the "**Application**"), requested

that the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as defined by SEQRA) to be taken by the Agency and the Project constitutes such an action; and

**WHEREAS**, to aid the Agency in determining whether the action described above may have a significant adverse impact upon the environment, the Company prepared an Environmental Assessment Form (the “**EAF**”), a copy of which is on file at the office of the Agency; and

**WHEREAS**, the Agency has examined and reviewed the EAF in order to classify the action and make a determination as to the potential significance of the action pursuant to SEQRA; and

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon an examination of the EAF, the criteria contained in 6 NYCRR §617.7(c), and based further upon the Agency’s knowledge of the action and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations pursuant to SEQRA:

(a) The action constitutes an “Unlisted Action” (as said quoted term is defined in SEQRA);

(b) The Agency declares itself “Lead Agency” (as said quoted term is defined in SEQRA) with respect to an uncoordinated review pursuant to SEQRA;

(c) The action will not have a significant effect on the environment, and the Agency hereby issues a negative declaration pursuant to SEQRA, attached hereto as *Exhibit A*, which shall be filed in the office of the Agency in a file that is readily accessible to the public.

(2) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(3) This Resolution shall take effect immediately. The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) The Agency hereby authorizes Agency staff to take all further actions deemed necessary and appropriate to fulfill the Agency’s responsibilities under SEQRA.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on March 9, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 24<sup>th</sup> day of March, 2016.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "A"**

## Appendix C

### Short Environmental Assessment Form

(go back)


#### Instructions for Completing

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>			
900 EAST FAYETTE GROUP, LLC			
Name of Action or Project: 900 EAST FAYETTE HISTORICAL APARTMENTS RENOVATION & ADDITION			
Project Location (describe, and attach a location map): 900 EAST FAYETTE STREET, SYRACUSE, NY 13210			
Brief Description of Proposed Action: TO RESTORE A HISTORIC MIXED-USE BUILDING FROM ITS CURRENT DILAPIDATED STATUS TO ITS ORIGINAL STATE FROM THE LATE 19TH CENTURY. WHEN COMPLETED, ALONG WITH THE ADDITION TO THE SOUTH, THE DEVELOPMENT WILL HOUSE 42 1-BEDROOM MARKET RATE APARTMENTS AND APPROXIMATELY 13,000 SQUARE FEET OF RETAIL SPACE.			
Name of Applicant or Sponsor: CHRISTOPHER GEIGER		Telephone: 516-413-6689	
		E-Mail: CGEIGER44@GMAIL.COM	
Address: 1221 EAST GENESEE STREET, SUITE 1			
City/PO: SYRACUSE		State: NY	Zip Code: 13210
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(ies) name and permit or approval: SYRACUSE CPC /LPB, SHPO, NPS			NO <input type="checkbox"/> YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ 0.5 acres	
b. Total acreage to be physically disturbed?		_____ 0.2 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 0.5 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
b. Is the proposed action located in an archeological sensitive area?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: <u>Christopher Geiger</u> Date: <u>1/19/18</u>		
Signature: <u></u>		

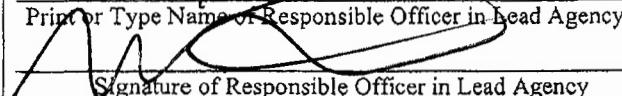
**Part 2 - Impact Assessment.** The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>



	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Part 3 - Determination of significance.** The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input checked="" type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
<u>Syracuse Industrial Development Agency</u>	<u>3/9/16</u>
Name of Lead Agency	Date
<u>William Ryan</u>	<u>Chairman</u>
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
	Signature of Preparer (if different from Responsible Officer)
Signature of Responsible Officer in Lead Agency	

**PRINT**

**EXHIBIT "G"**

**INDUCEMENT RESOLUTION**

## INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on March 9, 2016 at 9:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Steven Thompson, Kenneth Kinsey

**EXCUSED:** Donald Schoenwald

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Ben Walsh, Judith DeLaney, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; Others Present: Aggie Lane, Barry Lentz, Christopher Geiger, David Nutting, Joseph Hucko, Christopher Lloyd, Nagib, Mark Roney, Melissa Zell, John Bartolella

The following resolution was offered by Steven Thompson and seconded by M. Catherine Richardson:

**RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic

deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

**WHEREAS**, 900 East Fayette Group, LLC, or an entity to be formed, a New York limited liability company, or an entity to be formed (the “**Company**”), by application dated January 19, 2016 (the “**Application**”), requested the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency adopted a resolution on January 26, 2016, describing the Project and the proposed financial assistance and authorizing a public hearing (“**Public Hearing Resolution**”); and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on March 9, 2016 pursuant to Section 859-a of the Act, notice of which was originally published on February 21, 2016, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated February 18, 2016; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the preliminary agreement of the

Agency to undertake of the Project constitutes such an action; and

**WHEREAS**, to aid the Agency in determining whether the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the “*EAF*”), a copy of which is on file at the office of the Agency; and

**WHEREAS**, the Agency examined the EAF in order to classify the Project and determined that the Project constitutes an “Unlisted Action” as defined under SEQRA; and

**WHEREAS**, by resolution adopted March 9, 2016 (the “*SEQRA Resolution*”), the Agency determined that the Project will not have a significant adverse effect on the environment and issued a negative declaration; and

**WHEREAS**, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse; (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and improve their standard of living.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

(A) Ratifies the findings in its Public Hearing Resolution and SEQRA Resolution;

(B) The Project constitutes a “*project*” within the meaning of the Act;

(C) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to construct, renovate and equip the Project Facility in the City of Syracuse, and will serve the purposes of the Act by, among other things, advancing job opportunities, the standard of living and economic welfare of the inhabitants of the City of Syracuse;

(D) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(E) The Project is not primarily used in making retail sales to customers who personally visit the Facility.

**Section 3.** Subject to the terms of this Resolution and the conditions set forth in the Agreement (hereinafter defined), the Agency will: (i) acquire an interest in the Land and Facility pursuant to a lease agreement (the “*Lease*”) to be entered into between the Company and the Agency; and accept an interest in the Equipment pursuant to a bill of sale from the Company (the “*Bill of Sale*”); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the “*Sublease*” and with the Lease and the Bill of Sale, the “*Lease Documents*”) to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance; and (iv) provided that no default shall have occurred and be continuing under the Agreement (as defined herein) and provided the Company has executed and delivered all documents and certificates required by the Agency in conjunction with the Agency’s undertaking of the Project, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance or requested by the Agency, in form and substance acceptable to the Agency. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$316,800**.

**Section 4.** The Company may utilize, and is hereby authorized to appoint<sup>[1]</sup>, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such

---

<sup>[1]</sup> Additional Agents must be specifically appointed as an agent of the Agency in order to avail themselves of the IDA sales and use tax exemption for any and all purchases or rentals of construction materials, equipment, tools and supplies that do not become part of the Project Facility. Additional Agents who purchase construction materials, equipment and/or supplies that become part of the Project Facility need not, and will not, be specifically appointed as an agent of the Agency.

agents and subagents (collectively, “**Additional Agents**”) to proceed with the construction, renovation and equipping of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Company execute, deliver and comply with the Lease Documents. The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the “**Commissioner**”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project’s receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. for purposes of exemption from New York State (the “**State**”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**Section 5.** As a condition to the extension of State and local sales and use tax exemption benefits, and the Company’s appointment as provided herein, the Company agrees to execute an agreement with the Agency setting forth the preliminary undertakings of the Agency and the Company with respect to the Project. The form and substance of the proposed agreement (as set forth as on **Exhibit “A”** attached hereto and presented at this meeting) (the “**Agreement**”) are hereby approved. The Chairman or Vice Chairman of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, in substantially the same form as presented at this meeting and attached hereto as **Exhibit “A”**, with changes in terms and form as shall be consistent with this Resolution and as the Chairman or Vice Chairman shall approve. The execution thereof by the Chairman or Vice Chairman shall constitute conclusive evidence of such approval.

**Section 6.** Subject to the due execution and delivery by the Company of the Agreement, the satisfaction of the conditions of this Resolution and the Agreement, and the payment by the Company of any attendant fees, the Company and its designees, are appointed the true and lawful agent of the Agency to proceed with the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment made by this Section 6 shall not be effective until the Agreement referred to in Section 5 hereof is duly executed and delivered by the Company and all conditions therein and herein satisfied.

**Section 7.** The Chairman and/or Vice Chairman of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the

documents referred herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution and the Agreement.

**Section 8.** The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Agency's approval of the Financial Assistance and the Company's execution and delivery of, among other things, an Environmental Compliance and Indemnification Agreement in favor of the Agency in form and substance acceptable to the Agency and its counsel, in the discretion of the Chairman and/or Vice Chairman of the Agency.

**Section 9.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 10.** Should the Agency's participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 11.** Counsel to the Agency is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

**Section 12.** The Secretary and/or the Executive Director of the Agency are hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 13.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.



The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

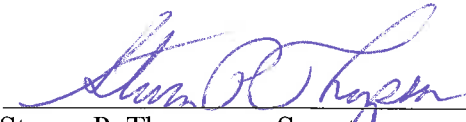
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on March 9, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 2<sup>YTH</sup> day of March, 2016.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

## EXHIBIT “A”

### AGENCY/COMPANY AGREEMENT

**THIS AGREEMENT** is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the “*Agency*”), with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 and **900 EAST FAYETTE GROUP, LLC** (the “*Company*”), with a mailing address of 1221 East Genesee Street, Suite 1, Syracuse, New York 13210.

**Article 1. Preliminary Statement.** Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the “*Act*”) to designate an agent for constructing, renovating and equipping “projects” (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. The Company, by application dated January 19, 2016 (the “*Application*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “*Existing Building*”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the “*Land*”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and

the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

1.03(a). All documents necessary to effectuate the Agency’s undertaking of the Project and the granting of the Financial Assistance between the Agency and the Company, including but not limited to, a company lease, an agency lease, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the “**Lease Documents**”.

1.04. The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency’s agent for the construction, renovation and equipping of the Project Facility, and the use and appointment, as necessary, by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, “**Additional Agents**”): (i) will be an inducement to it to construct, renovate and equip the Project Facility in the City of Syracuse (the “**City**”); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project Facility will promote, create and/or preserve private sector jobs in the State. The Company hereby further represents to the Agency that the Project Facility is not primarily used in making retail sales to customers who personally visit the Facility.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the construction, renovation and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.06. On January 26, 2016, the Agency adopted a resolution (the “**Inducement Resolution**”) agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency’s agent for the acquisition, construction, renovation and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not exceed **\$316,800**.

1.07. In the Resolution, subject to the execution of, and compliance with, this

Agreement by the Company, and other conditions set forth in the Resolution and herein, the Agency appointed the Company as its agent for the purposes of construction, renovation and equipping the Project Facility, entering into contracts and doing all things requisite and proper for construction, renovation and equipping the Project Facility.

**Article 2. Undertakings on the Part of the Agency.** Based upon the statement, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated, pursuant to the terms hereof, the Company as the Agency's agent for constructing, renovating and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) designation by the Company of Additional Agents for construction, renovation and equipping of the Project Facility subject to the terms hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in the Sections 2.05, 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the construction, renovation and equipping of the Project Facility and the utilization of and, as necessary the appointment of, Additional Agents.

2.05. Subject to the execution of the Lease Documents and Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the construction, renovation and equipping of the Project Facility; and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the construction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "*SEORA*"), undertake supplemental review of

the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency's review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

**Article 3. Undertakings on the Part of the Company.** Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and construction, renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, construction, renovation and equipping of the Project Facility.

(c) The Company shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) The Company shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Company in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Company shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates and/or policies of insurance in form satisfactory to the Agency evidencing such insurance.

(g) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City, the City Planning Commission and any other governmental authority which approvals, permits and consents are required under applicable law for the development, construction, renovation and equipping of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(h) The Company shall complete the Local Access Agreement contained at Appendix I of the City of Syracuse Industrial Development Agency Financial Assistance Application and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the construction, renovation and equipping of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term "**Local**" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, construction, renovation and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond

that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental or machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company shall proceed with the acquisition, construction, renovation and equipping of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may utilize, and was authorized to appoint<sup>1</sup>, Additional Agents as agents of the Agency, in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each appointed Additional Agent which provides for the assumption by the Additional Agent, for itself, certain of the obligations under this Agreement relative to the appointment, work and purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the construction, renovation and equipping of the Project (“local” being defined in Section 3.01(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the Agency and the New York State Department of Taxation and Finance on “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

(2) A completed “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (Form ST-60) for each Additional Agent appointed within fifteen (15) days of the

---

<sup>1</sup> Additional Agents must be specifically appointed as an agent of the Agency in order to avail themselves of the Agency’s sales and use tax exemption for any and all purchases or rentals of construction materials, equipment, tools and supplies that do not become part of the Project Facility. Additional Agents who purchase construction materials, equipment and/or supplies that become part of the Project Facility need not, and will not, be specifically appointed as an agent of the Agency.



appointment of each Additional Agent such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment of each such Additional Agent.

Failure of the Company to comply with the foregoing shall nullify the appointment of any Additional Agent and may result in the loss of the Company's exemption with respect to the Project at the sole discretion of the Agency.

The Company acknowledges that the assumption by the Additional Agent in accordance with Section 3.06(1) above, does not relieve the Company of its obligations under those provisions or any other provisions of this Agreement with respect to the Project.

3.07 The Company ratifies and confirms its obligations to pay an annual administrative reporting fee in accordance with the Agency's fee schedule to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects.

#### Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Company and, subject to Section 4.04 hereof, shall remain in effect until the Lease Documents become effective. It is the intent of the Agency and the Company that, except as to those provisions that survive, this Agreement be superseded in its entirety by the Lease Documents.

4.02. (a) It is understood and agreed by the Agency and the Company that the grant of Financial Assistance and the execution of the Lease Documents and related documents are subject to: (i) payment by the Company of the Agency's fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; (b) the Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents, whether appointed as an agent of the Agency in accordance with Section 3.06 hereof or not, to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request, including but not limited to the Form ST-340 for itself and each Additional Agent; (c) the Company, by executing this Agreement, acknowledges and agrees to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agrees to cause all of its Additional Agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Company acknowledges that pursuant to Section 875(3) of the Act and in accordance with the Agency's policy and/or position, the Agency shall recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "**Recapture Amount**") consisting of: (1) (a) that portion of the State

and local sales tax exemption to which the Company was not entitled, which is in excess of the amount of the State and local sales tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State and local sales tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) The failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the “*State*”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims or actions taken by the Agency against the Company, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder, including but not limited to, any obligations related to Additional Agents.

4.04. If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **March 9, 2017**, the provisions of this Agreement (other than the provisions of Articles 1.04, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for the construction or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project Facility; and

(c) The Company will pay the out-of-pocket expenses of members of

the Agency and counsel for the Agency incurred in connection with the Project Facility and will pay the fees of counsel for the Agency for legal services relating to the Project Facility, Additional Agents or the proposed financing thereof.

**4.05. The Company acknowledges that Section 875(7) of the New York General Municipal Law (“GML”) requires the Agency to post on its website all resolutions and agreements relating to the Company’s appointment as an agent of the Agency or otherwise related to the Project, including this Agreement; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency’s possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company’s competitive position, the Company must identify such elements in writing, supply same to the Agency: (i) with respect to this Agreement, prior to or contemporaneously with the execution hereof; and (ii) with respect to all other agreements executed in connection with the Project, on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.**

4.06 That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflict-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Company irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the 9<sup>th</sup> day of March, 2016.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
William M. Ryan, Chairman

**900 EAST FAYETTE GROUP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "H"**  
**PILOT RESOLUTION**

## PILOT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on March 9, 2016 at 9:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon roll being called, the following members of the Agency were:

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Steven Thompson, Kenneth Kinsey

**EXCUSED:** Donald Schoenwald

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Ben Walsh, Judith DeLaney, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; Others Present: Aggie Lane, Barry Lentz, Christopher Geiger, David Nutting, Joseph Hucko, Christopher Lloyd, Nagib, Mark Roney, Melissa Zell, John Bartolella.

The following resolution was offered by Steven Thompson and seconded by M. Catherine Richardson:

### **RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PILOT AGREEMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

**WHEREAS**, 900 East Fayette Group, LLC, or an entity to be formed, (collectively the “**Company**”), has requested the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, to aid the Agency in determining whether the preliminary agreement of the Agency to undertake the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the “**EAF**”), a copy of which is on file at the office of the Agency; and

**WHEREAS**, on March 9, 2016 the Agency adopted a resolution classifying the Project as an “Unlisted Action”, determining that the Project will not have a significant effect on the environment and preparation of an Environmental Impact Statement is not required, and authorizing the execution of a negative declaration (the “**SEQRA Resolution**”); and

**WHEREAS**, on March 9, 2016 the Agency also resolved to take official action toward the acquisition, construction and equipping of the Project (the “**Inducement Resolution**”); and

**WHEREAS**, as part of the Financial Assistance, the Company requested the Agency consider a payment in lieu of tax schedule, (the “**PILOT**”), as more fully described on **Exhibit “A”** attached hereto, which schedule conforms with the Agency’s Uniform Tax Exemption Policy (“**UTEF**”) established pursuant to General Municipal Law Section 874(4); and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the proposed PILOT, as part of the Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse; and (ii) will not

result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) undertaking the Project will advance job opportunities in the State and promote the general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act;

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, and the reasons presented by the Company in support of its request for the PILOT schedule, the Agency hereby approves and the (Vice) Chairman and Secretary, acting individually, are each authorized to execute and deliver a PILOT agreement (the "**PILOT Agreement**") providing for the payment schedule attached as **Exhibit "A"** hereto, all in such form and substance as shall be substantially the same as approved by the Agency for other similar transactions and consistent with this Resolution and as approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency.

(2) The Chairman, Vice Chairman and any authorized representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any and all such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

(3) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(4) The Secretary and/or the Executive Director of the Agency are hereby authorized to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(5) This Resolution shall take effect immediately, but is subject to execution by the Company of a PILOT Agreement and the Agreement (as defined in the Inducement Resolution) and all other resolutions and other related documents adopted and/or approved by the Agency and/or as set forth herein.



(6) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

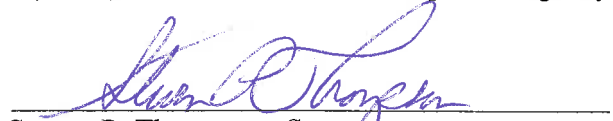
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on March 9, 2016, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 27<sup>th</sup> day of March, 2016.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "A"**  
**PROPOSED PILOT SCHEDULE**

900 East Fayette Group, LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$405,000 \times \text{tax rate}^*$	-
2	$\$405,000 \times \text{tax rate}$	-
3	$\$405,000 \times \text{tax rate}$	-
4	$\$405,000 \times \text{tax rate}$	-
5	$\$405,000 \times \text{tax rate}$	-
6	$\$405,000 \times \text{tax rate}$	-
7	$\$405,000 \times \text{tax rate}$	-
8	$[(\text{full assessment} - \$405,000) \times .25] + (\$405,000 \times \text{tax rate})$	-
9	$[(\text{full assessment} - \$405,000) \times .50] + (\$405,000 \times \text{tax rate})$	-
10	$[(\text{full assessment} - \$405,000) \times .75] + (\$405,000 \times \text{tax rate})$	-

\*tax rate = Combined Syracuse City, County, School District and Water District Real Property Tax Rate in effect for each year, or portion thereof, covered by the Agreement

**EXHIBIT "I"**

**FINAL APPROVING RESOLUTION**

## FINAL APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on March 9, 2016 at 9:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Steven Thompson, Kenneth Kinsey

**EXCUSED:** Donald Schoenwald

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Ben Walsh, Judith DeLaney, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; Others Present: Aggie Lane, Barry Lentz, Christopher Geiger, David Nutting, Joseph Hucko, Christopher Lloyd, Nagib, Mark Roney, Melissa Zell, John Bartolella

The following resolution was offered by Steven Thompson and seconded by Kenneth Kinsey:

### **RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, 900 East Fayette Group, LLC, or an entity to be formed, (collectively the "**Company**"), by applications dated January 19, 2016 (collectively, the "**Application**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "**Existing Building**") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "**Land**"); the renovation of the Existing Building for use as a mixed-use complex including

approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on March 9, 2016 pursuant to Section 859-a of the Act, notice of which was originally published on February 21, 2016, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated February 18, 2016; and

**WHEREAS**, pursuant to Article 8 of the State Environmental Conservation Law, as amended and the regulations promulgated thereunder (collectively “*SEQRA*”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as defined by SEQRA) to be taken by the Agency and the approval of the Project and grant of Financial Assistance constitute such an action; and

**WHEREAS**, the Agency adopted a resolution on March 9, 2016 (the “*SEQRA Resolution*”) entitled:

**RESOLUTION CLASSIFYING THE PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

which resolution is in full force and effect and has not been amended or modified; and

**WHEREAS**, the Agency adopted a resolution on March 9, 2016 (the “*Inducement Resolution*”) entitled:

**RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

which resolution is in full force and effect and has not been amended or modified; and

WHEREAS, the Agency adopted a resolution on March 9, 2016 (the “*PILOT Resolution*”) entitled:

**RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PILOT AGREEMENT**

which resolution is in full force and effect and has not been amended or modified; and

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

**Section 1.** Based upon the representations made by the Company to the Agency and after consideration of the comments received at the public hearing, if any, the Agency hereby ratifies all of its prior resolutions adopted in conjunction with the Project, including but not limited to the SEQRA Resolution, the Inducement Resolution, the PILOT Resolution and all other action with respect to the Project and Financial Assistance taken by the Agency, and makes the following findings and determinations:

(a) The acquisition of a controlling interest in the Project Facility by the Agency, the granting of the Financial Assistance and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to, and permit, the Company to develop and operate the Project Facility in the City of Syracuse, thus serving the public purposes of Article 18-A of the General Municipal Law of New York State by promoting and preserving the job opportunities, general prosperity, health and economic welfare of the inhabitants of the City of Syracuse (the “*City*”) in furtherance of the purposes of the Act.

(b) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of



one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

(c) The commitment of the Agency to provide Financial Assistance to the Company will enable and induce the Company to construct, renovate and equip the Project Facility.

(d) The acquisition, construction, renovation and equipping of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the City and State and the granting of the Financial Assistance is a necessary component to the financing of the Project.

(e) The Project Facility constitutes a “project” within the meaning of the Act.

(f) The Project is not primarily used in making retail sales to customers who personally visit the Facility; and

(g) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

**Section 2.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by advancing job opportunities, prosperity and promoting economic welfare.

**Section 3.** It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 4.** Subject to the conditions set forth in this and prior resolutions adopted by the Agency and the Agreement (as defined in the Inducement Resolution), the Agency will: (A) acquire a controlling interest in the Project Facility; (B) lease the Land and Facility from the Company pursuant to a lease agreement between the Agency and the Company (the “*Company Lease*”); acquire an interest in the Equipment pursuant to a bill of sale from the Company (the “*Bill of Sale*”); and sublease the Project Facility to the Company pursuant to a sublease agreement (the “*Agency Lease*”); (C) secure the Company’s borrowings with respect to the Project Facility by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Company’s lenders(s); (D) provide the approved Financial Assistance; and (E) execute and deliver any other documents necessary to effectuate the actions contemplated by and consistent with this Resolution upon the advice of counsel to the Agency.

**Section 5.** The Chairman, Vice Chairman and any authorized representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified in Section 4 of this resolution and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Section 4 of this resolution and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

**Section 6.** The Agency's participation in any of the documents referenced herein, or the granting of the approved Financial Assistance, is contingent upon counsel for the Agency's review and the Chairman or Vice Chairman's approval of, all documents requested or required by the Agency in connection with the Project Facility, as well as the Company's execution of the Agreement (as defined in the Inducement Resolution) and all other documents required by the Agency to effectuate the intent of this Resolution and as required in similar transactions.

**Section 7.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 8.** Counsel to the Agency is hereby authorized to work with the Company and others to prepare, for submission to the Chairman and/or Vice Chairman, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

**Section 9.** The approvals provided for herein are contingent upon the Company's payment of all of the Agency's fees and costs, including but not limited to attorneys fees.

**Section 10.** The Secretary and/or the Executive Director of the Agency are hereby authorized to distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 11.** Counsel to the Agency is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and to consummate the transactions contemplated by this Resolution.

**Section 12.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on March 9, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 21<sup>st</sup> day of March, 2016.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "J"**  
**SECOND PUBLIC HEARING RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on September 20, 2016, at 8:30 o'clock a.m. in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

**PRESENT:** William Ryan, Catherine Richardson, Esq., Steven Thompson, Donald Schoenwald, Esq., Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others: Aggie Lane, Joe Porter, Fred Swayze, Matthew Paulus, Larry Losty, Derek Persse; Media Present: Rick Moriarty

The following resolution was offered by Kenneth Kinsey and seconded by Steven Thompson:

### RESOLUTION DESCRIBING THE REQUEST FOR ADDITIONAL FINANCIAL ASSISTANCE IN CONNECTION WITH A PROJECT AND AUTHORIZING A PUBLIC HEARING

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant "financial assistance" (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more "projects" (as defined in the Act); and

**WHEREAS**, by application dated January 19, 2016 (the "**Application**"), 900 East Fayette Group, LLC, or an entity to be formed, (the "**Company**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "**Existing Building**") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "**Land**"); the renovation of the Existing Building for use as a mixed-use complex including approximately

4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency adopted SEQRA, Inducement and Final Approving Resolutions authorizing the Project at its March 9, 2016 meeting; and

**WHEREAS**, on March 9, 2016 the Agency adopted a SEQRA, Inducement, PILOT and Final Approving Resolution; and

**WHEREAS**, the Agency and the Company have not yet closed on the lease transaction associated with the Project; and

**WHEREAS**, in light of changes in the Agency’s Uniform Tax Exemption Policy (“*UTEP*”), which became effective in June, 2016, the Company has now requested the Agency approve a request for additional financial assistance in the form of an amended payment in lieu of tax schedule which comports to the Agency’s current UTEP (the “*Additional Financial Assistance*”); and

**WHEREAS**, the grant of Additional Financial Assistance to the Project is subject to, among other things, the Agency finding after a public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency makes the following findings and determinations:

(A) The Additional Financial Assistance contemplated with respect to the Project consists of assistance in the form of exemptions from real property taxes.

(2) The Agency hereby directs that pursuant to Section 859-a of the Act, a public hearing with respect to the Additional Financial Assistance shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

(3) The Secretary or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Donald Schoenwald	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.



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

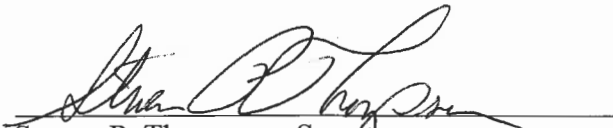
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on September 20, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 21<sup>st</sup> day of November, 2016.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "K"**

**NOTICE OF SECOND PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND  
COPIES OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO  
SECTIONS  
859-a OF THE ACT**

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 18<sup>th</sup> day of October, 2016, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

900 East Fayette Group, LLC, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "Existing Building") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "Land"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "New Building" and together with the Existing Building, the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

In addition to the Financial Assistance originally requested in its application, in light of changes in the Agency's Uniform Tax Exemption Policy ("UTEP"), which became effective in June, 2016, the Company has requested the Agency approve a request for additional financial assistance in the form of an amended payment in lieu of tax schedule which comports to the Agency's current UTEP (the "Additional Financial Assistance").

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Additional Financial Assistance to the Company.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: September 29, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

BARCLAY DAMON <sup>LLP</sup>

Susan R. Katzoff  
Partner

September 29, 2016

VIA CERTIFIED MAIL  
7008 1300 0000 1722 3961

Honorable Stephanie A. Miner  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

VIA CERTIFIED MAIL  
7015 0640 0003 3483 0642

Honorable Joanne M. Mahoney  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency (the “*Agency*”)  
900 East Fayette Group, LLC (the “*Company*”)  
900 East Fayette Group, LLC Project

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the “*Project*”) consists of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “*Existing Building*”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the “*Land*”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*”

One Park Place – 300 South State Street – Syracuse, New York 13202 barclaydamon.com  
skatzoff@barclaydamon.com Direct: 315.425.2880 Fax: 315.425.8597

Honorable Stephanie A. Miner  
Honorable Joanne M. Mahoney  
September 29, 2016  
Page 3

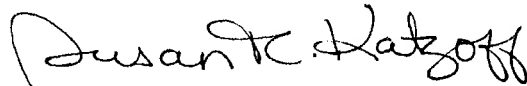
and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

In addition to the Financial Assistance originally requested in its application, in light of changes in the Agency's Uniform Tax Exemption Policy ("**UTEP**"), which became effective in June, 2016, the Company has requested the Agency approve a request for additional financial assistance in the form of an amended payment in lieu of tax schedule which comports to the Agency's current UTEP (the "**Additional Financial Assistance**").

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **October 18, 2016** at 8:30 a.m. in the Common Council Chambers at City Hall.

Very truly yours,



Susan R. Katzoff

SRK/llm  
Enclosure

cc: Meghan Ryan, Esq., City of Syracuse, via email (w/Enclosure)  
Honora Spillane, City of Syracuse Industrial Development Agency, via email (w/Enclosure)  
Judy DeLaney, City of Syracuse Industrial Development Agency, via email (w/Enclosure)

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 18<sup>th</sup> day of October, 2016, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

900 East Fayette Group, LLC, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "Existing Building") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "Land"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "New Building" and together with the Existing Building, the "Facility"); (ii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

In addition to the Financial Assistance originally requested in its application, in light of changes in the Agency's Uniform Tax Exemption Policy ("UTEP"), which became effective in June, 2016, the Company has requested the Agency approve a request for additional financial assistance in the form of an amended payment in lieu of tax schedule which comports to the Agency's current UTEP (the "Additional Financial Assistance").

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Additional Financial Assistance to the Company.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: September 29, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Honorable Stephanie A. Miner  
 Mayor, City of Syracuse  
 233 East Washington Street  
 Syracuse, New York 13202



9590 9402 2113 6132 5471 59

Article Number (Transfer from service label)

7008 1300 0000 1722 3961

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *[Signature]*

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

9-30-16

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

7015 0640 0003 3483 0642

U.S. Postal Service™  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Certified Mail Fee \$ \_\_\_\_\_

Extra Services & Fees (check box, and fee as appropriate)

- Return Receipt (hardcopy) \$ \_\_\_\_\_
- Return Receipt (electronic) \$ \_\_\_\_\_
- Certified Mail Restricted Delivery \$ \_\_\_\_\_
- Adult Signature Required \$ \_\_\_\_\_
- Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage \$ \_\_\_\_\_

Total Postage and Fees \$ \_\_\_\_\_

Sent To *Stephanie Miner*

Street and Apt. No., or PO Box No. \_\_\_\_\_

City, State, ZIP+4® \_\_\_\_\_

Postmark Here

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7008 1300 0000 1722 3961

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
 Domestic Mail Only. No Insurance Coverage Provided

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage \$ \_\_\_\_\_

Certified Fee \$ \_\_\_\_\_

Return Receipt Fee (Endorsement Required) \$ \_\_\_\_\_

Restricted Delivery Fee (Endorsement Required) \$ \_\_\_\_\_

Total Postage & Fees \$ \_\_\_\_\_

Postmark Here

Sent To *Mayor*

Street, Apt. No., or PO Box No. \_\_\_\_\_

City, State, ZIP+4 \_\_\_\_\_

PS Form 3800, August 2006 See Reverse for Instructions

# The Post-Standard

LEGAL AFFIDAVIT

INV#: 0007847996

**syracuse.**

MEDIA GROUP

syracuse.com | THE POST-STANDARD

BARCLAY DAMON LLP  
ONE PARK PLACE  
300 S STATE ST  
SYRACUSE, NY 13202

Name: BARCLAY DAMON LLP

Sales Rep: Pamela Gallagher

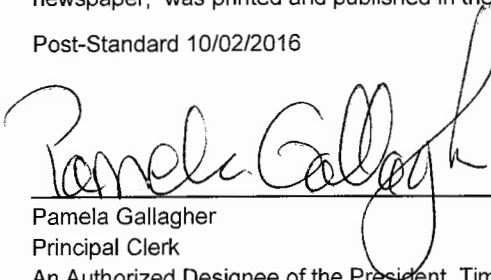
Account Number: 1056027

INV#: 0007847996

Date	Position	Description	P.O. Number	Ad Size
10/02/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	matter #3078968	1 x 157.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 10/02/2016

  
\_\_\_\_\_  
Pamela Gallagher  
Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 3rd day of October 2016

  
\_\_\_\_\_  
NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR Legals@Syracuse.com

HEIDI A. STEPHENS  
Notary Public - State of New York  
No. 01ST6290718  
Qualified in Onondaga County  
My Commission Expires: 10/17/2017



Date	Position	Description	P.O. Number	Ad Size
10/02/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	matter #3078968	1 x 157.00 CL

**NOTICE** OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 18th day of October, 2016, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: 900 East Fayette Group, LLC, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "Existing Building") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the "Land"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "New Building") and together with the Existing Building

the Existing Building, the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency, and the sublease of the Project Facility back to the Company pursuant to a sublease agreement. In addition to the Financial Assistance originally requested in its application, in light of changes in the Agency's Uniform Tax Exemption Policy ("UTEP"), which became effective in June, 2016, the Company has requested the Agency approve a request for additional financial assistance in the form of an amended payment in lieu of tax schedule which comports to the Agency's current UTEP (the "Additional Financial Assistance"). The Company shall be the initial owner or operator of the Project Facility. The Agency will at the above-stated time and place hear all persons with views with re-

spect to the proposed Additional Financial Assistance to the Company. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York. Dated: September 29, 2016 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**EXHIBIT "L"**

**AMENDED FINANCIAL ASSISTANCE RESOLUTION**

## AMENDED PILOT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on October 18, 2016 at 8:30 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon roll being called, the following members of the Agency were:

**PRESENT:** William Ryan, Catherine Richardson, Esq., Steven Thompson, Donald Schoenwald, Esq., Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others: Tim Lynn, Larry Losty, Matt Paulus, Joe Hucko, Alexander Marion, Elnore Davis; Media Present: Rick Moriarty

The following resolution was offered by M. Catherine Richardson and seconded by Steven Thompson:

### **RESOLUTION APPROVING AN AMENDED PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PILOT AGREEMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

**WHEREAS**, by application dated January 19, 2016 (the "**Application**"), 900 East Fayette Group, LLC, or an entity to be formed, (the "**Company**"), requested the Agency

undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to the State Environmental Quality Review Act (“**SEQRA**”) the Agency adopted a SEQRA Resolution on March 9, 2016; and

**WHEREAS**, the Agency adopted an Inducement and Final Approving Resolution authorizing the Project at its March 9, 2016 meeting; and

**WHEREAS**, the Agency and the Company have not yet closed on the lease transaction associated with the Project; and

**WHEREAS**, in light of changes in the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which became effective in June, 2016, the Company requested the Agency approve a request for an amended payment in lieu of tax schedule (the “**PILOT**”), as more fully described on **Exhibit “A”** attached hereto, which schedule conforms with the Agency’s Uniform Tax Exemption Policy (“**UTEP**”) established pursuant to General Municipal Law Section 874(4) (the “**Additional Financial Assistance**”); and

**WHEREAS**, the Agency conducted a public hearing with respect to the proposed Additional Financial Assistance on October 18, 2016 pursuant to Section 859-a of the Act, notice of which was originally published on October 2, 2016, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated September 29, 2016; and

**WHEREAS**, the Agency has given due consideration to the request for Additional Financial Assistance and to representations by the Company that the proposed amended PILOT, as the Additional Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse; and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) undertaking the Project will advance job opportunities in the State and promote the general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act; and

**WHEREAS**, approval of and participation in the Additional Financial Assistance is in furtherance of the Project, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act ("**SEQRA**"), and the requested Additional Financial Assistance and does not require reconsideration or further review by the Agency under SEQRA.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Approval of and participation in the Additional Financial Assistance is in furtherance of the Project that was previously approved, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act ("**SEQRA**"), and the requested Additional Financial Assistance is insubstantial and does not require reconsideration or further review by the Agency under SEQRA.

(2) Based upon the representations made by the Company to the Agency, and the reasons presented by the Company in support of its request for the PILOT schedule, the Agency hereby approves the Additional Financial Assistance and the (Vice) Chairman and Secretary, acting individually, are each authorized to execute and deliver a PILOT agreement (the "**PILOT Agreement**") providing for the amended payment schedule attached as **Exhibit "A"** hereto, all in such form and substance as shall be substantially the same as approved by the Agency for other similar transactions and consistent with this Resolution and as approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency.

(3) The Chairman, Vice Chairman and any authorized representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any and all such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

(4) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(5) The Secretary and/or the Executive Director of the Agency are hereby authorized to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(6) This Resolution shall take effect immediately, but is subject to execution by the Company of a PILOT Agreement and the Agreement (as defined in the Inducement Resolution) and all other resolutions and other related documents adopted and/or approved by the Agency and/or as set forth herein.

(7) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson, Esq.	X	
Donald Schoenwald, Esq.	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

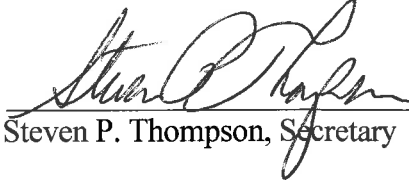
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on October 18, 2016, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 21<sup>st</sup> day of November, 2016.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "A"**

**PROPOSED PILOT SCHEDULE**

<i>Year</i>	<i>Payment</i>
1	\$15,854.16
2	\$16,012.71
3	\$16,172.83
4	\$16,334.56
5	\$16,497.91
6	\$16,662.89
7	\$16,829.52
8	\$16,997.81
9	\$17,167.79
10	\$17,339.47
11	\$42,549.77
12	\$68,262.54
13	\$94,485.31
14	\$121,225.71
15	\$148,491.47
Total	\$640,884.43



**20**

**AFFIDAVIT RE: MORTGAGE TAX EXEMPTION**

STATE OF NEW YORK            )  
  )        SS.  
COUNTY OF ONONDAGA        )

WILLIAM M. RYAN, being duly sworn, deposes and says:

He is Chairman of the City of Syracuse Industrial Development Agency (the “*Agency*”).

The Agency is an industrial development agency duly established under Title I of Article 18-A of the General Municipal Law of the State of New York (the “*State*”), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the “*Act*”), and it is a corporate governmental agency constituting a public benefit corporation of the State.

On or about March 9, 2016 the Agency adopted a resolution at the request of 900 East Fayette Group, LLC (the “*Applicant*” and/or “*Company*”) agreeing to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “*Existing Building*”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “*Land*”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company and the Agency are mortgaging their respective interests in the improved real property described on **Exhibit “A”** to: Five Star Bank (the “*Mortgagee*”), pursuant to a certain Construction Loan and Permanent Loan Mortgage dated November 3, 2017 in the amount of \$7,150,888.00 (the “*Mortgage*”) and an Assignment of Leases, Rents and Profits dated November 3, 2017 (“*Assignment*”). The Mortgage is pledged to secure a note given by the Company to the Mortgagee.

Pursuant to Article 18-A of the New York General Municipal Law, as amended from time to time (the “*Act*”), the Agency is regarded as performing a governmental function and is generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction, control or supervision or upon its activities.

Deponent submits that no mortgage tax, other than as may be required in Section 874(1) of the Act and Section 252(2) of the Tax Law of the State of New York with respect to the portion of the tax allocable to the Central New York Regional Transportation District, should be imposed upon the Mortgage and the Assignment, inasmuch as the Mortgage and the Assignment are being executed and delivered under the State authority creating the Agency, inasmuch as the use by the Agency of its powers to secure the payment of principal and interest on the loan is deemed by Article 18-A public purpose essential to the public interest, and inasmuch as both the New York State Department of Taxation and Finance and Counsel to the New York State Department of Taxation and Finance have expressed their opinion that the recording of similar documents by similar agencies organized under Article 18-A of the New York General Municipal Law are operations of said agencies entitled to exemption from the mortgage recording tax.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:

  
\_\_\_\_\_  
William M. Ryan, Chairman

Subscribed and sworn to before me  
this 2<sup>nd</sup> day of November, 2017.



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

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2018

## EXHIBIT "A"

### LEGAL DESCRIPTION

#### **(A) 922-24 East Fayette Street**

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, described as follows: Beginning in the north line of Block Number two hundred forty (240) of the City of Syracuse, according to a map of said City made by J.M. Trowbridge, on the south line of East Fayette Street, ninety feet (90) west of the northeast corner of said block; thence west along the north line of said block forty (40) feet; thence south parallel to the east line of said block one hundred (100) feet; thence east parallel to East Fayette Street forty (40) feet, to a point ninety (90) feet from the east line of said block; thence north parallel with the east line of said block to the place of beginning.

#### **(B) 900-16 East Fayette Street**

All that tract or parcel of land situate in the City of Syracuse, New York, known and distinguished on a map made by J.M. Trowbridge as part of Lot No. 17 in Block No. 240 described as follows: Beginning at a point in the south line of E. Fayette Street 77.01 feet east of the northwest corner of said block which is 5 feet east of the east wall of the Sylvester Flats; thence west on the south line of E. Fayette Street to the northwest corner of said block; thence south on the west line of said block 66 feet; thence east on the south line of said Lot No. 17 76.86 feet; thence north 66 feet to the place of beginning.

Also all that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as the north half of Lot No. Twenty (20), Block No. Two Hundred Forty (240), according to a survey and map by Calvin Guiteau for Baldwin, Burt & Teall, subject to all unpaid taxes and monthly tenancies.

#### **(C) 918 E. Fayette Street**

All that tract or parcel of land, located in the City of Syracuse, County of Onondaga and State of New York commonly known as 918 E. Fayette Street, and being further described as being Lot Part 17 and 18, and 19, in Block 240, designated as Tax Map Book 1, Plate 116, Parcel 146, Property No. 1527009300; 48 X 66L2 x 34 feet, vacant lot also being described as:

All of that tract or parcel of land situate in the City of Syracuse, New York, being part of Block NO. 240 according to a map of said city made by J.M. Trowbridge, described as follows: Beginning in the south line of East Fayette Street 130 feet west of the northeast corner of said block; thence west along the north line of said block 48 feet to a point which is 77.01 feet east from the northwest corner of said block and is 5 feet east of the east wall of the Sylvester Flats; thence south 66 feet to a point in the south line of Lot No. 17 in said block which is 76.86 feet east of the west line of said block; thence east about 48.16 feet to a point 130 feet west of the east line of said block; thence north parallel with the east line of said block 66 feet to the place of beginning; Also a

strip of land about 2 feet in width extending southerly from the south line of the above described premises for a distance of 34 feet, the east line of which strip is an extension southerly of the east line of the above described parcel of land.

**(D) 305-07 Irving Avenue**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being north one-half of Lot No. 21 in Block 240 in said city, being 33 feet front on the east side of Irving Avenue, and 122.4 feet more or less deep.

Also all that tract or parcel of land situate in the City of Syracuse, in the county of Onondaga and State of New York, known and distinguished as the south half of Lot Number Twenty (20) of Block Number Two Hundred Forty (240) Syracuse, according to a survey and map made by Calvin Guiteau Baldwin, Burt & Teall of a certain larger tract; said lot lying on the east side of Irving Avenue fronting two (2) rods on said Avenue and Eight (8) rods deep, or thereabouts.

**Above Property Having been formally resubdivided into one lot that is now described as follows:**

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York being part of Block Number 240 in said City being more particularly bounded and described as follows:

Beginning at the intersection of the southerly line of East Fayette Street with the east line of Irving Avenue;

Thence S 89° 30' 50" E, along the southerly line of East Fayette Street, a distance of 165.01 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 100.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the south line of East Fayette Street, a distance of 42.00 feet to a point;

Thence S 00° 29' 40" W, along a line parallel with the east line of Irving Avenue, a distance of 65.00 feet to a point;

Thence N 89° 30' 50" W, along a line parallel with the southerly line of East Fayette Street, a distance of 123.01 feet to a point in the easterly line of Irving Avenue;

Thence N 00° 29' 40" E, along the easterly line of Irving Avenue, a distance of 165.00 feet to the point and place of beginning.

**21**

**GENERAL CERTIFICATE OF**  
**900 EAST FAYETTE GROUP, LLC**

This certificate is made in connection with the execution by 900 East Fayette Group, LLC, a New York State limited liability company (the “**Company**”) of the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by the Company in connection with the City of Syracuse Industrial Development Agency (the “**Agency**”) agreeing, at the Company’s request, to undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1. The Project Facility is owned by the Company. The Company will lease the Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of November 1, 2017 (the “**Company Lease**”) and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of November 1, 2017 (the “**Bill of Sale**”) and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of November 1, 2017 (the “**Agency Lease**”).

2. Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Agency Lease, except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this Certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.



The undersigned does hereby certify as follows:

3. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the Articles of Organization of the Company and any amendments thereto filed with the New York State Secretary of State with proof of publication thereof attached thereto, which Articles (including any amendments) are in full force and effect on the date hereof.

4. Attached hereto as **Exhibit "B"** is a true, correct and complete copy of the Company's Operating Agreement, and any amendments thereto, and such Operating Agreement, as may have been amended, is in full force and effect on the date hereof.

5. The Company is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of New York State and authorized and licensed under the laws of New York State to transact business as a business corporation for the purpose of owning and operating the Project Facility in New York. Attached hereto as **Exhibit "C"** is a true and correct copy of a Certificate of Good Standing of the Company issued by the New York State Secretary of State.

6. The Company has full legal right, power and authority to execute and deliver the Company Documents and to consummate the transactions on the part of the Company contemplated by the Company Documents. The Company Documents have been duly authorized, executed, and delivered by the Managing Member on behalf of the Company and are in full force and effect as of the date hereof. Attached hereto as **Exhibit "D"** is a true, correct and complete copy of the authorizing resolution of the Managing Member of the Company (the "**Resolution**") in respect of the execution, delivery and performance of the Company Documents.

7. The Company understands and agrees that, unless a written waiver is first obtained from the Agency, the Company and its Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term "**local**" shall mean Onondaga, Oswego, Madison, Cayuga, Oneida and Cortland Counties. The Company further understands and agrees that failure to comply with these local labor requirements may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, Appendix I to the Agency's Application entitled "Local Access Agreement" has been completed and is attached hereto as **Exhibit "E"**.

8. The Company understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. The Company further understands and acknowledges that consideration will be given by the Agency to the Company's efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by the Company.

9. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency,

commission or body having jurisdiction which are required on behalf of the Company or for the execution and delivery by the Company of the Company Documents or the consummation on the part of the Company of the transactions contemplated thereby have been obtained.

10. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting the Company or, to the knowledge of the Company, any basis therefor: (i) in any way affecting the organization, existence or good standing of the Company; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of the Company or its authority with respect to the Company Documents; (iv) contesting the authority of the Company to act on behalf of the Company or the authority of the representatives of the Company to act on behalf of the Company; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of the Company; or (B) the consummation on the part of the Company of the transactions contemplated by any Company Documents.

11. The execution and delivery by the Company of the Company Documents and the consummation by the Company of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the organizational documents of the Company; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Company is subject; or (iii) any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which the Company is a party or by which the Company or its properties is bound.

12. All information concerning the Project Facility and the Company submitted to the Agency and any Mortgagee by the Company is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

13. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents are the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by the Company or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. The Company has duly authorized the taking of and has taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

14. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction,

ownership and operation will not, to the best knowledge of the Company, conflict with any zoning or similar ordinance applicable to the Project. To the best of the Company's knowledge, the Project conforms to all material environmental regulations.


15. There is no Event of Default or default on the part of the Company under the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement or any other Company Document, and no event has occurred and is continuing which, after notice or passage of time or both, would give rise to a default under any thereof.

16. The Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and the other Company Documents are in full force and effect and the Company has not assigned or pledged any of its rights under these documents.

17. The Company acknowledges and restates all of the obligations, representations and covenants in Sections 2.2, 8.12, 11.12 and 11.14 of the Agency Lease and incorporates same herein by reference as if fully set forth herein.

18. The Company further acknowledges its obligation under Section 8.5 of the Agency Lease to provide the additional information as set forth therein and agrees to same.


19. The authorized representatives of the Company who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
<u>Christopher Geiger</u>		<u>Managing Member</u>

20. The Company represents and warrants that it has no employees and therefore is not now required to carry worker's compensation insurance. The Company represents and acknowledges that in the event it hires any employees in the future, it has an obligation pursuant to the Agency Lease, dated as of November 1, 2017 by and between the Company and the Agency, to obtain worker's compensation insurance and provide proof of same to the Agency.

IN WITNESS WHEREOF, I have set my hand and signature as officer of the Company as of November 1, 2017.

900 EAST FAYETTE GROUP, LLC

By:   
Christopher Geiger, Managing Member

**EXHIBIT "A"**  
**ARTICLES OF ORGANIZATION**

FILING RECEIPT

=====

ENTITY NAME: 900 EAST FAYETTE GROUP, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM LLC)

COUNTY: ONON

=====

FILED:09/16/2013 DURATION:\*\*\*\*\* CASH#:130916000607 FILM #:130916000545  
DOS ID:4459420

FILER:

EXIST DATE

-----  
CAROL A ZENZEL PLLC  
2507 JAMES ST STE 210

-----  
09/16/2013

SYRACUSE, NY 13206

ADDRESS FOR PROCESS:

-----  
THE LLC  
1221 E. GENESEE ST.,  
SYRACUSE, NY 13210

SUITE #2

REGISTERED AGENT:  
-----



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

=====

SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37 \*

FEEES            260.00  
-----  
FILING           200.00  
TAX               0.00  
CERT             0.00  
COPIES           10.00  
HANDLING        50.00

PAYMENTS       260.00  
-----  
CASH             0.00  
CHECK            0.00  
CHARGE           0.00  
DRAWDOWN        260.00  
OPAL             0.00  
REFUND           0.00

900E199294

=====

DOS-1025 (04/2007)

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 17, 2013.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

New York State Department of State  
Division of Corporations, State Records  
and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12231  
www.dos.ny.gov

130916000545

*(This form must be printed or typed in black ink)*

ARTICLES OF ORGANIZATION  
OF

900 East Fayette Group, LLC

*(Insert name of Limited Liability Company)*

Under Section 203 of the Limited Liability Company Law

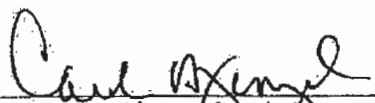
FIRST: The name of the limited liability company is: 900 East Fayette Group, LLC

SECOND: The county within this state in which the office of the limited liability company is to be located is: Onondaga

THIRD: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is:

1221 E. Genesee St., Suite #2, Syracuse, NY 13210

FOURTH: The Company shall be managed by managers.

  
(signature of organizer)

Carol A. Zenzel

(print or type name of organizer)

UNI-37

130916000

545

ARTICLES OF ORGANIZATION  
OF

900 East Fayette Group, LLC

(Insert name of Limited Liability Company)

Under Section 203 of the Limited Liability Company Law

Filed by: Carol A. Zenzel, PLLC  
(Name)  
2507 James St. Suite 210  
(Mailing address)  
Syracuse, NY 13206  
(City, State and ZIP code)  
Cost Ref 900EFA92941

NOTE: This form was prepared by the New York State Department of State for filing articles of organization for a domestic limited liability company. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that legal documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$200 filing fee made payable to the Department of State.

RECEIVED

2013 SEP 16 PM 12:05

ICC  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP 16 2013

TAX \$ \_\_\_\_\_  
BY: ICC

2013 SEP 16 PM 1:48

FILED

DRAWDOWN

607



FILING RECEIPT

=====

ENTITY NAME: 900 EAST FAYETTE GROUP, LLC

DOCUMENT TYPE: CERTIFICATE OF PUBLICATION (DOM LLC)

COUNTY: ONON

=====

FILED:11/21/2013 DURATION:\*\*\*\*\* CASH#:131121000855 FILM #:131121000799

FILER:

-----  
CAROL A. ZENZEL, ESQ.  
2507 JAMES ST. SUITE 210

SYRACUSE, NY 13206

ADDRESS FOR PROCESS:  
-----

REGISTERED AGENT:  
-----



=====

SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37

FEEs	60.00
-----	
FILING	50.00
TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	0.00

PAYMENTS	60.00
-----	
CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	60.00
OPAL	0.00
REFUND	0.00

=====

900EA92942

DOS-1025 (04/2007)

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on November 22, 2013.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

131121000 799

**CERTIFICATE OF PUBLICATION**

**OF**

**900 East Fayette Group, LLC**

**Under and Pursuant to Section 206 of the Limited Liability Company Law  
of the State of New York**

The undersigned is the Authorized Person of 900 East Fayette Group,  
LLC.

The articles of organization were filed by the Department of State on:  
September 16, 2013.

The published notices described in the annexed affidavits of publication  
contain all of the information required by Section 206 of the Limited Liability Company  
Law.

The newspapers described in such affidavits of publication satisfy the  
requirements set forth in the Limited Liability Company Law and the designation made  
by the county clerk.

I certify the foregoing statements to be true under penalties of perjury.

Dated: 11-18-13

/s/ Chris Geiger  
Chris Geiger, Authorized Person

PROOF OF PUBLICATION

*The Syracuse New Times*

Affidavit of Publication Under Section 206 LLC law of the Limited Liability Company Law State of New York, County of Onondaga, The undersigned is the printer (or publisher) of *The Syracuse New Times*, a weekly newspaper published in Syracuse, New York. Notice of Formation of 900 East Fayette Group, LLC was published in said newspaper once in each week for six successive weeks, commencing on September 25, 2013 and ending on October 30, 2013. The text of the notice was published in said newspaper is as set forth below, or in the annexed exhibit. This newspaper has been designated by the Clerk of Onondaga County for this purpose.

*Lynn Spoor*

Classified Advertising Manager

Subscribed and sworn to before me, this 15<sup>th</sup>  
Day of November } 2013.

*Stephanie L. Schimpff*

Notary Public, Onondaga County, N.Y.

JUNE 16, 2016

Commission Expires

Notice of Formation of 900 East Fayette Group, LLC. Arts. of Org. filed with Secy. of State of NY (SSNY) on 9/16/13. Office location: Onondaga County. SSNY designated as agent of LLC upon whom process against it may be served. SSNY shall mail process to: 1221 E. Genesee St., Ste. 2, Syracuse, NY 13210. Purpose: any lawful activity.

STEPHANIE L. SCHIMPPF  
Lic. #018C616888  
Notary Public-State of New York  
Qualified in Onondaga County  
My Commission Expires June 16, 2016

# The Post-Standard

## PROOF OF PUBLICATION

Under Section 206 of the Limited Liability Company Law of New York, County of Onondaga, ss: The undersigned is publisher of The Post-Standard, a daily newspaper published in Syracuse, New York.

A notice regarding: 900 East Fayette Group, LLC was published in said newspaper once in each week for six successive weeks, commencing on 09/24/2013 and ending on 10/29/2013. The text of the notice as published in said newspaper is as set forth below or in the annexed exhibit.

This newspaper has been designated by the Clerk of Onondaga County for this purpose.

Advertiser: HUDSON ADVERTISING CO

Reference #: 0000465935

PO #: Ref #15435

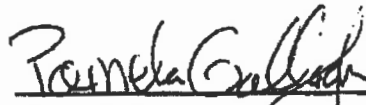
Product: Post-Standard-Full Run

Start Date: 09/24/2013

End Date: 10/29/2013

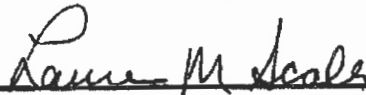
Insertions: 6

Run Dates: 09/24/2013, 10/01/2013, 10/08/2013, 10/15/2013,  
10/22/2013, 10/29/2013



Pamela Gallagher  
Principal Clerk  
an Authorized Designee of the Publisher, Stephen A. Rogers.  
Subscribed and Sworn to before me, this 10/29/2013

LAURA M. SCALES  
Notary Public, State of New York  
No. 01SC6210783  
Qualified in Onondaga County  
My Commission Expires: 7/31/17



NOTARY PUBLIC, ONONDAGA COUNTY, NY Commission Expires

Problems of Formation of  
FOUO LLC. Filing  
of Form LLC-400, of  
Office of NY SSV, on  
9/16/12. Office In-  
form Organized Coun-  
ty, SSV registered as  
agent of LLC upon  
whom process against  
it may be served. SSV  
918 E. Genesee St.,  
1221 E. Genesee St.,  
St. 2, Syracuse, NY  
13216. Purpose: NY  
lawful activity.

799

**UNI-37**

**CERTIFICATE OF PUBLICATION  
OF**

**900 East Fayette Group, LLC**

**Under and Pursuant to Section 206 of the Limited Liability Company Law  
of the State of New York**

Carol A. Zenzel, Esq.  
2507 James St. Suite 210  
Syracuse, NY 13206

*1cc*  
**STATE OF NEW YORK  
DEPARTMENT OF STATE**  
**FILED NOV 21 2013**  
TAXS \_\_\_\_\_  
BY: *mbn*

Customer Ref. #: 900EA92942

**DRAWDOWN**

5

855

**New York State Department of State*****Division of Corporations Biennial Statement e-Filing System*****SUBMISSION CONFIRMATION  
PLEASE PRINT FOR YOUR RECORDS**

Thank you for submitting your biennial statement online. The biennial statement submitted through the Biennial Statement e-Filing System has been transmitted to the Department of State.

**Transmittal Informational:**

**DOS ID:** 4459420  
**BUSINESS NAME:** 900 EAST FAYETTE GROUP, LLC  
**Filing Period:** 09/2017  
**Transmittal Date:** 10/26/2017 03:38 PM  
**Credit Card Auth Code:** 04200G  
**Credit Card Trans Id:** 261017A15-8BC3A421-F03E-4F7F-892F-9AE7142533C4  
**Last 4 Digits of Credit Card:** 8012  
**Record Number:** 20171026000272

**The Credit/Debit Card has been charged \$ 9.00 on: 10/26/2017 03:38 PM**

Upon successful filing of the electronic biennial statement in the records of the Department of State a filing acknowledgment will be sent to you at the e-Mail address provided:  
CAROL@ZENZELAW.COM.

Please note that modifications made through the e-Statement Filing System may not be reflected in the records of the Department for 1 to 3 business days.

If you have questions regarding your electronic filing please contact us at [corporations@dos.ny.gov](mailto:corporations@dos.ny.gov)

---

NYS Division of Corporations, State Records & Uniform Commercial Code  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12231-0001  
(518) 473-2492

[PRINT THIS PAGE](#)  
[CLOSE APPLICATION](#)  
[Return to Main Page](#)



**EXHIBIT "B"**  
**OPERATING AGREEMENT**

**OPERATING AGREEMENT**  
**of**  
**900 EAST FAYETTE GROUP, LLC**

## TABLE OF CONTENTS

Section 1 Defined Terms .....	1
1.1 Definitions .....	1
Section 2 The Company.....	1
2.1 Formation.....	1
2.2 Name.....	1
2.3 Purpose.....	1
2.4 Principal Place Of Business.....	2
2.5 Term.....	2
2.6 Filings .....	2
Section 3 Members; Capital Contributions.....	2
3.1 Membership Units.....	2
3.2 Classes .....	2
3.3 Members .....	2
3.4 Capital Contributions.....	2
3.5 Return Of Capital.....	2
3.6 Interest .....	3
3.7 Limited Liability .....	3
3.8 Loans.....	3
<b>3.9 Additional Capital Contributions.....</b>	<b>3</b>
Section 4 Allocations .....	4
<b>4.1 Profits.....</b>	<b>4</b>
<b>4.2 Losses .....</b>	<b>4</b>
Section 5 Distributions.....	4
5.1 Net Available Cash .....	4
5.2 Amounts Withheld.....	5
5.3 Tax Distributions .....	5
Section 6 Management.....	5
6.1 Management Committee.....	5
6.2 Authority of the Managers .....	6
6.3 Right To Rely On Manager .....	7
6.4 Prohibited Transactions .....	8
6.5 Duties And Obligations Of The Managers .....	8
6.6 Indemnification.....	8
6.7 Compensation And Expenses Of Managers .....	9
6.8 Operating Restrictions .....	9
6.9 Officers .....	10
6.10 Meetings of the Management Committee.....	10
Section 7 Role of Members; Voting Rights; Meetings; Covenants.....	10
7.1 Rights Or Powers .....	10
7.2 Votes .....	10
7.3 Meetings Of The Members .....	11
7.4 Withdrawal.....	11
7.5 Partition.....	11
7.6 Other Instruments .....	11

7.7 Independent Activities .....	12
7.8 Insurance .....	12
Section 8 Books and Records .....	12
8.1 Books And Records .....	12
Section 9 Amendments .....	12
9.1 Amendments .....	12
Section 10 Transfers of Membership Units .....	13
10.1 Restriction On Transfers .....	13
10.2 Permitted Transfers .....	14
10.3 Conditions To Permitted Transfers .....	14
10.4 Rights Of First Refusal. ....	14
10.5 Transfer Documents .....	16
10.6 Rights Of Unadmitted Assignees .....	16
10.7 Admission Of Assignees As Members .....	17
10.8 Legend .....	17
10.11 Distributions And Allocations In Respect To Transferred Membership Units .....	18
Section 11 Dissolution and Winding Up .....	18
11.1 Dissolution .....	18
11.2 Winding Up .....	18
11.3 Compliance With Timing Requirements Of Regulations .....	18
11.4 Establishment Of Trust .....	19
11.5 Rights Of Unit Holders .....	19
11.6 Deemed Distribution and Recontribution .....	19
Section 12 Representations and Warranties .....	19
12.1 Representations And Warranties Of The Members .....	19
Section 13 Miscellaneous .....	21
13.1 Notices .....	21
13.2 Binding Effect .....	21
13.3 Construction .....	21
13.4 Headings .....	21
13.5 Severability .....	21
13.6 Incorporation By Reference .....	21
13.7 Additional Documents .....	22
13.8 Variation Of Pronouns .....	22
13.9 New York Law .....	22
13.10 Counterpart Execution; Signatures .....	22
13.11 Specific Performance .....	22
13.12 Waiver of Jury Trial .....	22
13.13 Entire Agreement .....	23
APPENDIX "A" .....	30
APPENDIX "B" .....	34

**OPERATING AGREEMENT**  
**of**  
**900 EAST FAYETTE GROUP, LLC**

**THIS OPERATING AGREEMENT** is entered into and shall be effective as of the 22nd day of May, 2015 by and among **CHRISTOPHER GEIGER**, an individual with an address at 1221 E Genesee St., Syracuse, NY 13210 (“**Geiger**”), **ANDREW K. CHARLES**, an individual with an address at 7 Carriage Dr., Old Westbury, NY 11568 (“**Charles**”), **SCOTT SMITH**, an individual with an address at 20 Canterbury Lane, Roslyn Heights NY 11577 and **EF INVESTORS GROUP, LLC**, a New York limited liability company with offices for the transaction of business located at 1221 E Genesee St., Syracuse, NY 13210 (Geiger, Charles and Smith being each hereinafter sometimes referred to as an “**Initial Manager**” and collectively, the “**Initial Managers**”), and each and all of the individuals and entities listed on **Exhibit “A”** annexed hereto (each individually a “**Member**” and collectively, the “**Members**”) with respect to **900 EAST FAYETTE GROUP, LLC**, a New York limited liability company (the “**Company**”).

**WHEREAS**, the Members desire to form a limited liability company pursuant to the Act and on the terms and conditions herein contained; and

**WHEREAS**, the Members desire to adopt this Agreement as the Operating Agreement of the Company.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions herein contained and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**SECTION 1**  
**DEFINED TERMS**

**1.1 DEFINITIONS.** The defined terms used in this Agreement (as indicated by the first letter of each word in the term being capitalized) shall, unless the context clearly requires otherwise, have the meanings specified in **Appendix “A”** and **Appendix “B”** at the end of this Agreement.

**SECTION 2**  
**THE COMPANY**

**2.1 FORMATION.** The parties hereby agree to form a limited liability company pursuant to the provisions of the Act and upon the terms and conditions of this Agreement.

**2.2 NAME.** The name of the Company is “**900 EAST FAYETTE GROUP, LLC**”, a New York limited liability company. The Management Committee may change the name of the Company upon ten (10) days notice to the Members. The Company shall hold all of its assets and Property in the name of the Company and not in the name of any Member. The Company may conduct business under an assumed name by filing an assumed name certificate where required, in the manner prescribed by applicable law.

**2.3 PURPOSE.** The purpose of the Company shall be limited to acquiring, owning, developing, leasing, operating and disposing of the Project. Without the Super Majority Vote of the Members, the Company shall not engage in any other business. The Company shall have the power and authority to enter into all transactions which are provided for in this Agreement and as

may be necessary or incidental to accomplish or implement the purposes of the Company including such powers as may be authorized by this Agreement or permitted under the Act but in all events consistent with the terms, conditions and restrictions set forth in this Agreement.

**2.4 PRINCIPAL PLACE OF BUSINESS.** The principal place of business of the Company shall be 1221 East Genesee Street, Syracuse, New York 13210. The Management Committee may change the principal place of business of the Company upon ten (10) days notice to the Members.

**2.5 TERM.** The term of the Company shall be perpetual unless the Company is dissolved earlier as set forth in this Agreement.

**2.6 FILINGS.**

(a) The Articles of the Company have been filed in the office of the Secretary of State of the State of New York in accordance with the provisions of the Act. The Management Committee shall take any and all other actions reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the laws of the State of New York. The Management Committee shall cause amendments to the Articles to be filed whenever required by the Act. Such amendments may be executed by any Manager or by any Person duly authorized by the Management Committee to authorize such amendments.

(b) The Management Committee shall execute and cause to be filed original or amended certificates and shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Company as a limited liability company or similar type of entity under the laws of any other states or jurisdictions in which the Company engages in business.

**SECTION 3**

**MEMBERS; CAPITAL CONTRIBUTIONS**

**3.1 MEMBERSHIP UNITS.** The ownership of the Company shall be represented by Membership Units. The initial number of Membership Units the Company is authorized to issue is thirty (30), consisting of twenty (20) Class B Units and ten (10) Class A Units. The Management Committee may, at any time and from time to time, increase the number of authorized Membership Units.

**3.2 CLASSES.** The Company shall consist of two (2) classes of Members (each a "Class" and collectively, the "Classes"): Class A Members and Class B Members. The Classes and the Members: (i) shall have equal rights, powers, privileges and obligations per Membership Unit in all respects, except as otherwise provided for herein, and (ii) shall have one vote per Unit and vote as a single Class on all matters properly submitted to a vote of the Members.

**3.3 MEMBERS.** The names and addresses of the Members, and the Class to which each is assigned, are set forth on **Exhibit "A"** hereto. Each such Person is hereby admitted as a Member of the Company as of the effective date of this Agreement.

**3.4 CAPITAL CONTRIBUTIONS.** Simultaneously with the execution of this Agreement, each Member shall contribute to the Company the property set forth opposite such Member's name on **Exhibit "B"** hereof. As consideration for such Capital Contribution, each Member shall receive the number of Membership Units set forth opposite such Member's name on **Exhibit "C"**.

**3.5 RETURN OF CAPITAL.** Except as otherwise provided in this Agreement, no Unit Holder shall be entitled to have his Capital Contribution returned to him. Under circumstances requiring

a return of any Capital Contributions, no Unit Holder shall have the right to receive Property other than cash except as may be specifically provided herein.

**3.6 INTEREST.** No Unit Holder shall receive any interest, salary or drawing with respect to his Capital Contribution or his Capital Account or for services rendered on behalf of the Company or otherwise in his capacity as a Unit Holder, except as otherwise provided in this Agreement.

**3.7 LIMITED LIABILITY.** The Members shall not be liable for the debts, liabilities, contracts or any other obligations of the Company. Except as otherwise provided by applicable state law or this Agreement (including, but not limited to, **Section 3.9** hereof), a Unit Holder shall not be required to lend any funds to the Company or to make any additional Capital Contributions to the Company. No Manager shall have any personal liability for the repayment of any Capital Contributions of the Unit Holders; provided, however, nothing in this **Section 3.7** shall be deemed to relieve any Manager of any liability resulting from such Manager's bad faith, intentional misconduct, knowing violation of law or breach of any fiduciary duty.

**3.8 LOANS.** Any Unit Holder or Manager or any Affiliate of a Unit Holder or Manager may, with the approval of the Management Committee, lend or advance money to the Company. If any Unit Holder, Manager or Affiliate thereof shall make any loan to the Company or advance money on its behalf, the amount of any such loan or advance shall not be treated as a Capital Contribution but shall instead be a debt due from the Company. The amount of any such loan or advance shall be repayable out of the Company's cash and shall have priority over any distributions made pursuant to **Section 5** hereof. All such loans or advances shall bear interest at the same rate the Company could have borrowed such funds from the Institutional Lender that the Company normally does business with or if there is no such Institutional Lender or if such Institutional Lender would decline to advance such funds, at the Prime Rate *plus* two (2) percentage points. No Unit Holder shall be obligated to make any loan or advance to the Company.

**3.9 ADDITIONAL CAPITAL CONTRIBUTIONS.** The Members shall not be required to make any additional Capital Contributions to the Company. In the event the Managers determine that additional capital is required by the Company, the Managers may raise the required funds by offering new interests in the Company (the "**New Interests**") on such terms and conditions, and at such prices as the Managers may determine. It is specifically recognized and agreed that the New Interests may be entitled to a priority distribution over the existing interests held by the Unit Holders. The Managers shall first offer the New Interests (an "**Equity Offering**") on a pro-rata basis to the then existing Unit Holders. The Managers, in their sole and absolute discretion, may allow an Affiliate of an existing Unit Holder to be a purchaser of a New Interest. If the Equity Offering is over-subscribed by the existing Unit Holders, the Managers shall allocate the New Interests pro-rata among the Unit Holders who indicated a desire to purchase New Interests based on a ratio of that amount a Unit Holder indicated a desire to purchase over the amount that all Unit Holders indicated a desire to purchase. In the event that the Equity Offering is not fully subscribed, the Managers may offer any New Interests not so purchased to a non-member but only on the same terms and conditions as those offered to the Members. In the event of a sale of an interest pursuant to this **Section 3.9**, the Membership Percentages of the existing Unit Holders shall be diluted on a pro-rata basis. In connection with the sale of a New Interest, the Managers shall have the authority, without the consent of the Members, to admit to the Company as Members those Persons to whom such New Interests are issued and to make any amendments to this Agreement which the Managers determine are necessary or desirable in connection with the sale of the New Interests. Any Manager shall have the authority to execute any such amendments on behalf of the Company.

**SECTION 4  
ALLOCATIONS**

**4.1 PROFITS.** After giving effect to the special allocations set forth in **Appendix "B"** hereto, Profits for any fiscal year shall be allocated to the Members (and their Assignees) in the following order and priority:

(a) First to the Unit Holders, pro rata, in an amount equal to the excess, if any, of (i) the Losses allocated to the Unit Holders pursuant to **Section 4.2** hereof for all prior fiscal years, over (ii) the cumulative Profits allocated to the Unit Holders pursuant to this **Section 4.1(a)** for all prior fiscal years;

(b) The balance, if any, to the Unit Holders in accordance with their Membership Percentages.

**4.2 LOSSES.** After giving effect to the special allocations set forth in **Appendix "B"** hereto, Losses for any fiscal year shall be allocated to the Unit Holders in proportion to their Membership Percentages.

**SECTION 5  
DISTRIBUTIONS**

**5.1 NET AVAILABLE CASH.** Except as otherwise provided in **Section 11.2** hereof relating to the liquidation of the Company, Net Available Cash shall be distributed at such times and in such amounts as the Management Committee shall determine to the Unit Holders in the following order and priority:

(a) Before the point in time (the "**Completion Event**") when 90% of the units at the Project are rented and the initial construction loan is replaced with permanent financing, the Management Committee shall make no distributions of Net Available Cash.

(b) After the Completion Event, Net Available Cash shall be distributed solely to Class B Members until each Class B Member shall have received distributions of Net Available Cash equal to 10% of the amount of his Initial Capital Contribution (the "**Minimum Return**"). Class B Members' Capital Contributions shall accrue interest at a rate of 6% per annum from the date of investment through the date of repayment or refinancing of the construction loan.

(c) Once the Minimum Return has been achieved, distributions of Net Available Cash shall be distributed exclusively to Class A Members until a total of \$80,000 (5% of the amount of the Initial Capital Contribution) has been distributed to Class A Members.

(d) In the event that more than 15% of the Initial Capital Contribution is to be distributed upon repayment or refinancing, the Class B members shall receive 2/3 of the monies distributed and the Class A members shall receive 1/3 (the "**Preferred Distribution**").

(e) Thereafter, all distributions of Net Available Cash shall be made to the Unit Holders in proportion to their Membership Percentages.

(f) Upon a refinancing or sale of the Project, Class B Members shall be entitled to a return of their Initial Capital Contribution before further distribution of funds. Once all Class B Members have received a full return of their Initial Capital Contribution, the Preferred Distribution will be eliminated and all Members will receive distributions on a pro rata basis according to their percentage ownership interest in the Company.



**5.2 AMOUNTS WITHHELD.** All amounts withheld pursuant to the Code or any provision of state or local law with respect to any payment or distributions by the Company to the Unit Holders shall be treated as amounts distributed to the Unit Holders pursuant to this **Section 5** for all purposes under this Agreement. The Management Committee may allocate any such amounts among the Unit Holders in any manner that is in accordance with applicable law.

**5.3 TAX DISTRIBUTIONS.** Except as set forth in the last sentence of this **Section 5.3**, once the Completion Event has been achieved, the Company shall distribute Net Available Cash to each Unit Holder on or before April 15 (or the next business day if such day falls on a Saturday, Sunday or legal holiday) of each year an amount equal to the lesser of (i) the Company's Net Available Cash on such day multiplied by the Unit Holder's Membership Percentage and (ii) the aggregate state and federal income tax liability such Unit Holder would have incurred for the immediately preceding calendar year as a result of such Unit Holder's ownership of Membership Units in the Company, calculated: (A) as if such Unit Holder were a natural resident of the State of New York taxable at the maximum rates provided for under applicable federal and New York state income laws (as determined from time to time by the Management Committee after consulting with the accountants to the Company and calculated with respect to the character of items of income, gain, loss, deduction and credit at the Company level); (B) as if allocations from the Company were, for such year, the sole source of income and loss for the Unit Holder; (C) without regard to the carryover of any losses previously allocated by the Company to the Unit Holder; and (D) reduced by the sum of all previous distributions of Net Available Cash to the Unit Holder attributable to such preceding calendar year. Notwithstanding the above, in no event shall the Company make any distributions of Net Available Cash to the Unit Holders if such distribution would violate the provisions of the Act or any agreement to which the Company may be bound.

## SECTION 6 MANAGEMENT

### 6.1 MANAGEMENT COMMITTEE.

(a) The management of the Company shall be vested in a committee of Managers (the "**Management Committee**") designated by the Class A Members. The number of Managers shall be three (3) unless otherwise provided herein. The initial members of the Management Committee (the "**Initial Managers**") are set forth on **Exhibit "D"** hereof. Such individuals are hereby appointed as the Initial Managers. Each Initial Manager shall serve as a Manager until he resigns, is removed, dies, or is otherwise unable or unwilling to serve. The Management Committee may increase the number of the members of the Management Committee at any time and from time to time. In the event of any such increase, the Manager(s) shall fill such vacancy. In such event, **Exhibit "D"** shall be amended to reflect such Person's name and address.

(b) A Manager may be removed at any time, with or without cause, by Majority Vote of the Class A Members. Such removal shall be effective upon delivery of written notice thereof to the Company.

(c) In the event a Manager is removed, resigns, dies or is unwilling or unable to serve as such for any reason, the Class A Members shall, by Majority Vote thereof, either (i) promptly designate a successor or (ii) if there is at least one (1) other Manager then serving, determine that such position shall not be filled. In the event the Members determine not to fill a vacancy, the number of members of the Management Committee shall be reduced to the then

current number of members. In the event a successor Manager is duly appointed, Exhibit "D" shall be amended to set forth such Person's name and address.

(d) All actions of the Management Committee may be taken by any member of the Management Committee and there shall be no requirement that the Management Committee hold any meetings to authorize any action taken.

(e) The Managers shall not be required to devote full time to the management of the Company but rather shall devote such time to the Company's affairs as each Manager shall in his discretion determine is reasonably necessary for the conduct of such affairs.

**6.2 AUTHORITY OF THE MANAGERS.** Except to the extent otherwise provided herein, the Management Committee shall have the sole and exclusive right to manage the business of the Company and shall have all of the rights and powers which may be possessed by managers under the Act including, without limitation, the right and power to:

(a) acquire by purchase, lease or otherwise any real or personal property which may be necessary, convenient or incidental to the accomplishment of the purposes of the Company;

(b) operate, maintain, finance, improve, construct, own, grant options with respect to, sell, convey, assign, mortgage and lease any real estate and any personal property necessarily convenient or incidental to the accomplishment of the purposes of the Company;

(c) execute any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the management, maintenance and operation of the assets and Property of the Company;

(d) borrow money and issue evidences of indebtedness necessary, convenient or incidental to the accomplishment of the purposes of the Company, and secure the same by pledge or other lien on any Property;

(e) execute, in furtherance of any or all of the purposes of the Company, any deed, lease, mortgage, deed of trust, mortgage note, promissory note, bill of sale, contract or other instrument purporting to convey or encumber any or all of the assets or Property of the Company;

(f) prepay in whole or in part, refinance, recast, increase, modify or extend any liabilities affecting the assets or Property of the Company and, in connection therewith, execute any extensions or renewals of encumbrances on any or all of the assets or Property of the Company;

(g) care for and distribute funds to the Members by way of cash, income, return of capital, or otherwise, all in accordance with the provisions of this Agreement, and perform all matters in furtherance of the objectives of the Company or this Agreement;

(h) subject to the provisions of Section 6.8 hereof, contract on behalf of the Company for the employment and services of employees or independent contractors and delegate to such Persons the duty to manage or supervise any of the assets or operations of the Company;

(i) expend the capital and income of the Company to the extent permitted by this Agreement;

(j) ask for, collect and receive any rents, issues and profits or income from the assets or Property of the Company or any part or parts thereof and to disburse Company funds for Company purposes to those Persons entitled to receive the same;

(k) purchase from or through others, contracts of liability, casualty or other insurance for the protection of the Property or affairs of the Company or the Members or for any purpose convenient or beneficial to the Company;

(l) institute, prosecute, defend, settle, compromise and dismiss lawsuits or other judicial or administrative proceedings brought on or in behalf of, or against the Company or the Members or the Managers in connection with activities arising out of connected with or incidental to this Agreement and to engage counsel or others in connection therewith;

(m) engage in any kind of activity and perform and carry out contracts of any kind (including contracts of insurance covering risks to the Property and Manager liability) necessary or incidental to, or in connection with, the accomplishment of the purposes of the Company, as may be lawfully carried on or performed by a limited liability company under the laws of each state in which the Company is then formed or qualified;

(n) form, transfer assets of the Company to and manage the business and affairs of one or more subsidiary limited liability companies;

(o) invest assets of the Company, including liquid assets awaiting expenditure on the Project, in any type of investment; provided, however, that the Management Committee will make no investment of any type that limits Geiger and Charles as passive investors, unless such investment is approved by a Supermajority Vote or such investment consists of cash or marketable securities;

(p) make any and all elections for federal, state and local tax purposes including, without limitation, any election, if permitted by applicable law: (i) to adjust the basis of Company Property pursuant to Code Sections 754, 734(b) and 743(b) or the comparable provisions of state or local law, in connection with transfers of interests in the Company and Company distributions; (ii) to extend the statute of limitations for assessment of tax deficiencies against Unit Holders with respect to adjustments to the Company's federal, state or local tax returns; and (iii) to represent the Company and the Unit Holders before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company and the Unit Holders in their capacity as Unit Holders and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Unit Holders with respect to such tax matters or otherwise affect the rights of the Company or the Unit Holders. Christopher Geiger is specifically authorized to act as the "**Tax Matters Partner**" under the Code and in any similar capacity under state or local law until such time, if ever, that the Management Committee designates in writing a different individual to serve as the Tax Matters Partner; and

(q) sell, lease, and other dispose of the Project and any other assets of the Company, provided, however, that the Management Committee shall notify all Members at least 120 days in advance before committing to sell the Project.

**6.3 RIGHT TO RELY ON MANAGER.** Any Person dealing with the Company may rely upon a certificate signed by any Manager as to:

(a) the identity of any Manager or Unit Holder and/or the identity of any individual authorized to represent a Manager;

(b) the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by a Manager or which are in any other manner germane to the affairs of the Company;

(c) the Persons who are authorized to execute and deliver any instrument or document on behalf of the Company; or

(d) any act or failure to act by the Company or any other matter whatsoever involving the Company or any Unit Holder.

**6.4 PROHIBITED TRANSACTIONS.** Except as set forth in **Section 6.1** hereof, in no event shall the Members be entitled to take any action with respect to the Company, its business, assets or affairs, unless such action has first been approved by the Management Committee.

#### **6.5 DUTIES AND OBLIGATIONS OF THE MANAGERS.**

(a) The Managers shall cause the Company to conduct its business and operations separate and apart from that of any Unit Holder or Manager or any Affiliates thereof, including, without limitation: (i) segregating Company assets and not allowing funds or other assets of the Company to be commingled with the funds or other assets of, held by, or registered in the name of, any Unit Holder or Manager or any Affiliate thereof; (ii) maintaining books and financial records of the Company separate from the books and financial records of any Unit Holders or Manager or any Affiliates thereof, and observing all Company procedures and formalities, including, without limitation, maintaining minutes of Company meetings and acting on behalf of the Company only pursuant to due authorization of the Members; (iii) causing the Company to pay its liabilities from assets of the Company; and (iv) causing the Company to conduct its dealings with third parties in its own name and as a separate and independent entity.

(b) The Managers shall take all actions which may be necessary or appropriate: (i) for the continuation of the Company's valid existence as a limited liability company under the laws of the State of New York and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Members or to enable the Company to conduct the business of the Company; and (ii) for the accomplishment of the Company's purposes, in accordance with the provisions of this Agreement and applicable laws and regulations.

(c) The Managers shall have a fiduciary duty to conduct the affairs of the Company in the best interests of the Company and of the Members, including the safekeeping and use of all of the Company Property for the exclusive benefit of the Company whether or not in the immediate possession or control of the Managers and shall not employ or permit another to employ Company Property except for the benefit of the Company.

#### **6.6 INDEMNIFICATION.**

(a) No Manager of the Company shall be liable to the Company or its Members for monetary damages for any act or omission in such person's capacity as a Manager, except for (i) acts or omissions which the Manager knew at the time of the acts or omissions were clearly in conflict with the interests of the Company and (ii) any transaction from which the Manager derived an improper personal benefit. Any repeal or modification of the governing sections of the Act shall not adversely affect the right or protection of a Manager existing immediately before such repeal or modification.

(b) The Company shall indemnify each Manager and Member to the fullest extent permitted or required by the Act, as amended from time to time. The Company may advance expenses incurred by a Manager or Member upon the approval of the disinterested Managers and the receipt by the Company of an undertaking by such Manager or Member to reimburse the Company unless it shall ultimately be determined that such Manager or Member is entitled to be

indemnified by the Company against such expenses. The Company may also indemnify its employees and other representatives or agents up to the fullest extent permitted under the Act or other applicable law, provided that the indemnification in each such situation is first approved by the Management Committee.

(c) The indemnification provided by this Agreement shall: (i) not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, agreement, Majority Vote of the Members or disinterested Managers, or otherwise, both as to action in official capacities and as to action in another capacity while holding such office; (ii) continue as to a person who ceases to be a Manager or Member; (iii) inure to the benefit of the estate, heirs, executors, administrators or other successors of an indemnitee; and (iv) not be deemed to create any rights for the benefit of any other Person.

#### **6.7 COMPENSATION AND EXPENSES OF MANAGERS.**

(a) Each Manager may charge the Company for any reasonable expenses incurred in connection with the Company business provided such reimbursement has been approved by the Management Committee.

(b) Except as otherwise set forth in this Agreement, no Manager shall receive any fees or other compensation for serving as a Manager, unless such fees or other compensation are approved by Majority Vote of the Members. However, each Manager (if such Manager is also a Member) shall be entitled to the distributions and allocations provided for elsewhere in this Agreement.

#### **6.8 OPERATING RESTRICTIONS.**

(a) No rebates, kickbacks, or reciprocal arrangements may be received or entered into by any Manager, nor may any Manager participate in any business arrangement which would circumvent this Agreement.

(b) Subject to any approval requirements, the signature of any one (1) of the Managers shall be sufficient to convey title to any Property owned by the Company or to execute any promissory notes, trust deeds, mortgages or other instruments of hypothecation, and the Unit Holders agree that a copy of this Agreement may be shown to the appropriate parties in order to confirm the same. The Unit Holders further agree that, except as otherwise provided herein, the signature of any one (1) of the Managers shall be sufficient to execute any documents necessary to effectuate any provision of this Agreement.

(c) The Management Committee may at any time and from time to time enter into contracts and agreements with any Member or Manager or any Affiliate of a Member or Manager for the furnishing or leasing of goods or services, or the loaning of money to the Company. Any such contract or agreement shall be subject to the following conditions:

(i) Any such agreement or contract shall be fully and promptly disclosed to the Members and shall be embodied in written document which precisely describe the subject matter thereof and all compensation to be paid pursuant thereto; and

(ii) The compensation, fee, price, charge or other consideration to be paid pursuant thereto shall be comparable to and competitive with that which would reasonably be available to the Company from any other Person rendering comparable services, selling or leasing comparable goods, or lending funds.

**6.9 OFFICERS.** The Management Committee may, at any time and from time to time, designate one or more Persons as officers of the Company. Such Persons shall have such titles and responsibilities and shall be entitled to such compensation as the Management Committee shall, in its discretion, determine. Any such Person may be removed by the Management Committee at any time, with or without cause.

#### **6.10 MEETINGS OF THE MANAGEMENT COMMITTEE.**

(a) The Management Committee shall not be required to hold regular meetings. Special meetings of the Management Committee may be called by any Manager. Notice of each such special meeting shall be given to each Manager by telephone, telecopy, telegram, electronic means (*i.e.*, e-mail) or similar method (in each case, notice shall be given at least thirty-six (36) hours before the time of the meeting) or sent by first class mail (in which case, notice shall be given at least five (5) days before the meeting), unless a longer notice period is established by the Management Committee. Each such notice shall state: (i) the time, date, place (which shall be at the principal place of business of the Company unless otherwise agreed to by all Managers) or other means of conducting such meeting; and (ii) the purpose of the meeting to be so held. No actions, other than those specified in the notice, may be considered at any special meeting unless unanimously approved by the Managers. Any Manager may waive notice of any meeting in writing before, at, or after such meeting. The attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except when a Manager attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not properly called.

(b) Any action required to be taken at a meeting of the Managers, or any action that may be taken at a meeting of the Managers, may be taken at a meeting held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting.

(c) Notwithstanding anything to the contrary in this **Section 6.10**, the Managers may take without a meeting any action that may be taken by the Managers under this Agreement if such action is approved by the unanimous written consent of the Managers.

### **SECTION 7**

#### **ROLE OF MEMBERS; VOTING RIGHTS; MEETINGS; COVENANTS**

**7.1 RIGHTS OR POWERS.** No Member shall be entitled to vote on any matter affecting the management or control of the Company or its business and affairs except with respect to those matters specifically requiring a vote of the Members pursuant to this Agreement and except for those matters specifically reserved for a member vote in the Act and which cannot be waived by the Act.

**7.2 VOTES.** Each Member shall be entitled to cast one (1) vote (or fraction of a vote) for each Membership Unit (or fraction of a Membership Unit) then held by such Member on all matters properly submitted to a vote of the Members. Except as otherwise provided in this Agreement: (i) a matter shall not be submitted to a vote of the Members unless first approved by the Management Committee; and (ii) any action which requires the approval of the Members shall be deemed approved if the action receives a Majority Vote of the Members.

### **7.3 MEETINGS OF THE MEMBERS.**

(a) The Company shall not be required to hold an annual meeting of the Members. Special meetings of the Members may be called by any Manager and shall be called upon the written request of any Member or Members collectively owning more than ten percent (10%) of the then outstanding Membership Units. The call shall state the location of the meeting and the nature of the business to be transacted. Notice of any such meeting shall be given to all Members not less than three (3) business days nor more than thirty (30) days prior to the date of such meeting. Members may participate in such meeting either in person, by proxy or by means of conference telephone or similar communications equipment by means of which all Persons participating in such meeting can hear each other. Such participation shall constitute presence in person at such meeting. Members may waive advance notice of such meeting. Whenever the vote or consent of Members is permitted or required under the Agreement, such vote or consent may be given at a meeting of the Members or may be given in accordance with the procedure prescribed in this **Section 7.3.**

(b) For purposes of determining the Members entitled to vote on, or to vote at, any meeting of the Members or any adjournment thereof, the Management Committee may fix, in advance, a date as the record date for any such determination. Such date shall not be more than thirty (30) days nor less than ten (10) days before any such meeting.

(c) Each Member may authorize any Person or Persons to act for such Member by proxy on all matters in which such Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Member or his attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing the same.

(d) Each meeting of Members shall be conducted by the Managers or such other individual Person as the Managers deem appropriate.

(e) Notwithstanding the above, the Company may take any action contemplated under this Agreement without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken shall be signed by Members, holding not less than the minimum number of Membership Units that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote thereon were present and voted. Each such consent shall be dated, be in writing and be delivered to the office of the Company, its principal place of business or to a Manager. Delivery may be made by hand, or by certified or registered mail, return receipt requested.

**7.4 WITHDRAWAL.** Except as otherwise expressly permitted by this Agreement, each Unit Holder hereby covenants and agrees not to: (i) withdraw or attempt to withdraw from the Company; or (ii) exercise any power under the Act to dissolve the Company.

**7.5 PARTITION.** Each Unit Holder hereby irrevocably waives any right he may have to maintain any action for partition with respect to any Property of the Company.

**7.6 OTHER INSTRUMENTS.** Each Unit Holder hereby agrees to execute and deliver to the Company within five (5) days after receipt of a written request therefor, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Management Committee deems

necessary, useful or appropriate to comply with any laws, rules or regulations or as may be required by any Institutional Lender.

**7.7 INDEPENDENT ACTIVITIES.** Each Manager and each Unit Holder may engage in whatever activity he chooses, whether the same are competitive with the activities of the Company or otherwise, without having or incurring any obligation to offer any interest in such activities to the Company or to any Unit Holder. Neither this Agreement, nor any activity undertaken pursuant hereto, shall prevent any Manager or Unit Holder (or any Affiliate of a Manager or Unit Holder) from engaging in such activities, or require any Manager or Unit Holder (or any Affiliate of a Manager or Unit Holder) to permit the Company or any Unit Holder to participate in any such activities and, as a material part of the consideration for the execution of this Agreement by each Member and Manager, the Company and each Member, on behalf of such Member and any Assignee thereof, hereby waives, relinquishes and renounces any such right or claim of participation.

**7.8 INSURANCE.** The Members hereby acknowledge that the Company may obtain life insurance from time to time to assist the Company in meeting its obligations hereunder to purchase Membership Units. Each Unit Holder hereby agrees to submit to any physical examination reasonably requested by the Management Committee in connection with obtaining any such insurance.

## **SECTION 8 BOOKS AND RECORDS**

**8.1 BOOKS AND RECORDS.** The Company shall keep adequate books and records at its place of business, setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company and shall maintain all records required to be maintained by the Act. Any Member or any Member's designated representative shall have the right, at any reasonable time and at the Member's own expense, to have access to and inspect and copy the contents of such books or records for any purpose reasonably related to such Member's interest as a Member. Notwithstanding the above, the Management Committee shall have the right, exercisable in its sole discretion, to prevent the access of any Member to any information which the Management Committee reasonably believes contains information in the nature of trade secrets or other information the Management Committee reasonably believes is not in the best interest of the Company or its business to be disclosed or which the Company is required by law or agreement to keep confidential. Within a reasonable period after the end of each Company fiscal year, each Member shall be furnished with an annual report containing a balance sheet as of the end of such fiscal year, statements of income, Members' equity, changes in financial position and cash flow and any necessary tax information for the year then ended.

## **SECTION 9 AMENDMENTS**

### **9.1 AMENDMENTS.**

(a) (i) Amendments to this Agreement may only be proposed by a Manager. Following such proposal, the Management Committee shall submit to the Members a verbatim statement of any proposed amendment. The Management Committee shall seek the written vote of the Members on the proposed amendment or shall call a meeting in accordance with **Section 7.3** hereof to vote thereon and to transact any other business that the Management Committee may



deem appropriate. For purposes of obtaining a written vote, the Management Committee may require a response from each Member within a reasonable specified time, but not less than fifteen (15) days. Failure to respond in such time period shall constitute a vote in favor of such amendment.

(ii) Any amendment to this Agreement shall require, and may be made by, the approval of the Class A Members and approval by a Supermajority Vote of all Members.

(b) Notwithstanding **Section 9.1(a)** hereof:

(i) This Agreement shall not be amended without the consent of each Member adversely affected if such amendment would: (A) modify the limited liability of a Member; (B) increase the obligation of any Member to make contributions; (C) allow the obligation of a Member to make a contribution to be compromised by less than unanimous consent; (D) decrease the affirmative vote or consent required for any action set forth herein requiring the vote of the Members; or (E) alter the interest of a Member in Profits, Losses, other items or any Company distribution.

(ii) This Agreement may be amended by the Management Committee without the consent of any of the Members: (A) to add to the representations, duties or obligations of the Management Committee or surrender any right or power granted to the Management Committee herein for the benefit of the Members; (B) to cure any ambiguity, to correct or supplement any provision hereof which may be inconsistent with any other provisions hereof, or to make any other provision with respect to matters or questions arising under this Agreement not inconsistent with the intent of this Agreement; or (C) to change any provision of this Agreement required to be so changed by the staff of the Securities and Exchange Commission or other federal agency or by a state "Blue Sky" commissioner or similar official, which change is deemed by such agency or official to be for the benefit or protection of the Members, provided that no amendment shall be adopted pursuant to this **Section 9.1(b)(ii)** unless the adoption thereof (i) is for the benefit of or not adverse to the interests of the Members, and (ii) does not violate **Section 9.1(b)(i)** hereof.

## SECTION 10

### TRANSFERS OF MEMBERSHIP UNITS

**10.1 RESTRICTION ON TRANSFERS.** Except as otherwise permitted by this Agreement, no Class B Member shall Transfer all or any portion of his Class B Membership Units without the consent of the Management Committee (exclusive of any member of the Management Committee who is also a transferring Member). If the Class B Member desiring to Transfer his Membership Units is the sole member of the Management Committee, a Majority Vote of the Members shall be required for any Transfer. Any Transfer or attempted Transfer by a Class B Member in violation of the preceding sentence shall be null and void and of no effect whatsoever. Each Class B Member hereby acknowledges the reasonableness of the restrictions on Transfer imposed by this Agreement in view of the Company purposes and the relationship of all of the Members and agrees that the restrictions on Transfer contained herein shall be specifically enforceable. Each Class B Member hereby further agrees to hold the Company and each other Member (and each other Member's successors and assigns) wholly and completely harmless from any cost, liability, or damage (including, without limitation, any incremental tax liability and attorneys' fees and expenses and costs of enforcing this indemnity) incurred by any such indemnified Persons as a result of a Transfer or any attempted Transfer in violation of this Agreement.

**10.2 PERMITTED TRANSFERS.** Subject to the conditions and restrictions set forth in **Section 10.3** hereof, a Class A Member may Transfer all or any portion of his Class A Membership Units to any Person and a Class B Member may Transfer all or any portion of his Class B Membership Units to any one or more of the following (a **“Permitted Transferee”**): (a) any other Member; (b) any member of the transferor’s Family; or (c) any Affiliate of a Member (any such Transfer being referred to in this Agreement as a **“Permitted Transfer”**); (d) any Transfer unanimously approved by the Management Committee. A Permitted Transferee shall be admitted as a Member only in accordance with **Section 10.7** hereof.

**10.3 CONDITIONS TO PERMITTED TRANSFERS.** A Transfer shall not be treated as a Permitted Transfer under **Section 10.2** hereof unless and until the following conditions are satisfied:

(a) The transferor (or his personal representative, as the case may be) and the transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate, in the opinion of counsel to the Company, to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this **Section 10**.

(b) If requested by the Management Committee, the transferor (or his personal representative, as the case may be) shall furnish to the Company an opinion of counsel, which opinion shall be satisfactory to the Management Committee, that the Transfer will not cause the Company to terminate for federal income tax purposes.

(c) The transferor (or his personal representative, as the case may be) and the transferee shall furnish the Company with the transferee’s taxpayer identification number, sufficient information to determine the transferee’s initial tax basis in the Membership Units Transferred, and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns.

(d) Either: (i) the Membership Units being Transferred shall be registered under the Securities Act of 1933 and any applicable state securities laws; or (ii) the transferor (or his personal representative, as the case may be) shall, if requested by the Management Committee, provide an opinion of counsel, which opinion of counsel shall be satisfactory to the Management Committee, to the effect that such Transfer is exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the Transfer of securities.

(e) The transferor (or his personal representative, as the case may be) shall provide an opinion of counsel, which opinion shall be reasonably satisfactory to the Management Committee, to the effect that such Transfer will not cause the Company to be deemed to be an “investment company” under the Investment Company Act of 1940.

(f) The Company shall be reimbursed by the transferor for all reasonable costs and expenses incurred by the Company (including attorneys’ fees) in connection with the Transfer.

(g) At the time of the Transfer, the Transferring Unit Holder is not also an Adverse Unit Holder.

**10.4 RIGHTS OF FIRST REFUSAL.** In addition to the other limitations and restrictions set forth in this **Section 10**, except as permitted by clauses (a) through (c) of **Section 10.2** hereof, no Class B Member shall Transfer all or any portion of his Class B Membership Units (the **“Offered**

**Units**") unless such Class B Member (the **"Seller"**) first offers to sell the Offered Units pursuant to the terms of this **Section 10.4**.

(a) No Transfer may be made under this **Section 10.4** unless the Seller has received a bona fide written offer (the **"Purchase Offer"**) from a Person (the **"Purchaser"**) to purchase the Offered Units for a purchase price denominated and payable in United States dollars at closing or according to specified terms, with or without interest. The Purchase Offer shall be in writing signed by the Purchaser and shall be irrevocable for a period ending no sooner than the day following the end of the Offer Period, as hereinafter defined.

(b) Prior to making any Transfer that is subject to the terms of this **Section 10.4**, the Seller shall give to the Company and each other Member written notice (the **"Offer Notice"**) which shall include a copy of the Purchase Offer and an offer (the **"Firm Offer"**) to sell the Offered Units, first, to the Class A Members; second, to the Company; and third, to the remaining Class B Members, in each for the price equal to the price set forth in the Purchase Offer (the **"Offer Price"**), payable according to the same terms as those contained in the Purchase Offer, provided that the Firm Offer shall be made without regard to the requirement of any earnest money or similar deposit required of the Purchaser prior to closing, and without regard to any security (other than the Offered Units) to be provided for any deferred portion of the Offer Price (the **"Payment Terms"**).

(c) The Firm Offer shall be irrevocable for a period ending at 11:59 P.M., local time at the Company's principal place of business, on the later of: (i) the date the Purchase Offer expires; or (ii) the sixtieth (60th) day following the date all parties are notified of the determination of the Offer Price (the **"Offer Period"**).

(d) The Class A Members shall have twenty (20) days from the date the Members are first notified of the Offer Price during which to either accept or reject the Firm Offer (the **"Class A Offer Period"**). Each Class A Member may accept the Firm Offer as to all or any portion of the Offered Units, by giving written notice of such acceptance to the Seller, the Management Committee and each other Member, which notice shall indicate the maximum number of Offered Units such Class A Member is willing to purchase. In the event the Class A Member Offerees (the **"Accepting Class A Offerees"**), in the aggregate, accept the Firm Offer with respect to all of the Offered Units, the Firm Offer shall be deemed to be accepted and each such Accepting Class A Offeree shall be deemed to have accepted that portion of the Offered Units that corresponds to the ratio of the Offered Units such Accepting A Class Offeree indicated a willingness to purchase to the aggregate number of the Offered Units all Accepting Class Offerees indicated a willingness to purchase.

(e) If the Accepting Class A Offerees do not accept the Firm Offer as to all of the Offered Units during the Class A Offer Period, the unaccepted Offered Units shall be offered to the Company. The Company shall have fifteen (15) days from the expiration of the Class A Offer Period during which to either accept or reject the Firm Offer (the **"Company Offer Period"**). The Company, acting by the Management Committee (not including the Seller, if the Seller is a Manager) may accept the Firm Offer as to all or any portion of the previously unaccepted Offered Units, by giving written notice of such acceptance to the Seller and each Member.

(f) If any Offered Units remain unaccepted after the Company Offer Period, then the Firm Offer shall automatically be deemed made to all Class B Members (other than the Seller) (the **"Remaining Members"**) at the Offer Price and on the Payment Terms. The Remaining

Members shall have fifteen (15) days from the expiration of the Company Offer Period during which to either accept or reject the Firm Offer (the “**Remaining Offer Period**”). The Remaining Members may accept the Firm Offer as to all or any portion of the Offered Units by giving written notice of such acceptance to the Seller and the Management Committee, which notice shall indicate the maximum number of Offered Units such Remaining Member is willing to purchase. In the event the Remaining Members (the “**Accepting Remaining Members**”), in the aggregate, accept the Firm Offer with respect to all of the Offered Units, the Firm Offer shall be deemed accepted and each such Accepting Remaining Member shall be deemed to have accepted that portion of the Offered Units that corresponds to the ratio of the Offered Units such Accepting Remaining Member indicated a willingness to purchase to the aggregate portion of the Offered Units all Accepting Remaining Members indicated a willingness to purchase.

(g) In the event the Firm Offer is accepted in whole or in part by the Class A Members, the Company, or the Remaining Members, the closing of the sale of the Offered Units to them shall take place within thirty (30) days after the last Firm Offer is accepted.

(h) In the event the Firm Offer is not accepted as to all Offered Units, the Seller may sell the unaccepted Offered Units to the Purchaser at any time within sixty (60) days after the last day of the Offer Period, provided that such sale shall be made on terms no more favorable to the Purchaser than the terms contained in the Purchase Offer, and provided further, that such sale complies with all other terms, conditions, and restrictions of this Agreement that are applicable to sales of Membership Units and are not expressly made inapplicable to sales occurring under this **Section 10.4**. In the event the Offered Units are not sold within said sixty (60) days after the last day of the Offer Period, the Offered Units may not be sold until the terms and conditions contained in this **Section 10.4** have again been met.

**10.5 TRANSFER DOCUMENTS.** Whenever a Unit Holder shall sell all or any portion of his Membership Units to the Company or another Member, the selling Unit Holder and the purchaser shall each execute such documents and instruments as may be necessary or appropriate to confirm the Transfer of the Membership Units.

#### **10.6 RIGHTS OF UNADMITTED ASSIGNEES.**

(a) A Person who acquires one or more Membership Units, but who is not admitted as a Member with respect to such Membership Units in accordance with this Agreement, shall be entitled only to allocations and distributions with respect to such Membership Units in accordance with this Agreement (the “**Economic Rights**”), shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to participate in the management of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement (collectively, the “**Non-Economic Rights**”).

(b) In the event of a Transfer of Membership Units to a Person who is not admitted as a Member with respect to such Membership Units, the Transferring Member shall automatically be deemed to have sold, assigned and conveyed to the Company all of the Non-Economic Rights associated with the Transferred Membership Units.

(c) Any Person who is the Assignee of any Membership Units as herein permitted and who is not admitted as a Member with respect to such Membership Units and who desires or who shall be required to make a further assignment of any such Membership Units shall be subject

to all of the provisions of this **Section 10** to the same extent and in the same manner as any Member desiring to make a Transfer of any Membership Units.

**10.7 ADMISSION OF ASSIGNEES AS MEMBERS.** Subject to the other provisions of this **Section 10**, a Permitted Transferee of any Membership Units may be admitted to the Company as a Member with respect to such Membership Units only upon satisfaction of the conditions set forth below:

(a) All of the non-transferring Managers consent to such admission, which consent may be given or withheld in the sole and absolute discretion of such Managers. If there are no such Managers, the remaining Members, by Majority Vote thereof, must consent to such admission, which consent may be given or withheld in the sole and absolute discretion of the Members;

(b) The Membership Units with respect to which the transferee is being admitted were acquired by means of a Permitted Transfer;

(c) The transferee becomes a party to this Agreement as a Member and executes such documents and instruments as the Management Committee may reasonably request (including, without limitation, amendments to the Articles) as may be necessary or appropriate to confirm such transferee as a Member in the Company and such transferee's agreement to be bound by the terms and conditions of this Agreement;

(d) The transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the transferee as a Member with respect to the Transferred Membership Units; and

(e) If the transferee is not an individual of legal majority, the transferee provides the Company with evidence satisfactory to counsel for the Company of the authority of the transferee to become a Member and to be bound by the terms and conditions of this Agreement.

**10.8 LEGEND.** Each Unit Holder hereby agrees that the following legend may be placed upon any counterpart of this Agreement, the Articles, or any other document or instrument evidencing ownership of Membership Units:

The Membership Units represented by this document have not been registered under any securities laws and the transferability of such Membership Units is restricted. Such Membership Units may not be sold, assigned or transferred, nor will any assignee, vendee, transferee or endorsee thereof be recognized by the issuer as having acquired any such Membership Units for any purposes, unless (1) a registration statement under the Securities Act of 1933 with respect to such Membership Units shall then be in effect and such transfer has been qualified under all applicable state securities laws, or (2) the availability of an exemption from such registration and qualification shall be established to the satisfaction of counsel to the Company.

The Membership Units represented by this document are subject to further restriction as to their sale, transfer, hypothecation, or assignment as set forth in the Operating Agreement and agreed to by each Member. Said restriction provides, among other things, that no vendee, transferee, assignee, or endorsee of a Member shall have the right to become a substituted Member without the consent of the Management Committee

which consent may be given or withheld in the sole and absolute discretion of the Management Committee.

**10.11 DISTRIBUTIONS AND ALLOCATIONS IN RESPECT TO TRANSFERRED MEMBERSHIP UNITS.** If any Membership Units are Transferred during any fiscal year in compliance with the provisions of this **Section 10**, Profits, Losses, each item thereof, and all other items attributable to the Transferred Membership Units for such fiscal year shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during such fiscal year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Management Committee. Neither the Company nor any Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this **Section 10**, whether or not any Manager or the Company has knowledge of any Transfer of ownership of any Membership Units.

## **SECTION 11 DISSOLUTION AND WINDING UP**

**11.1 DISSOLUTION.** The Company shall dissolve upon the first to occur of any of the following events (each a “**Liquidating Event**”):

- (a) The sale by the Company of all or substantially all its Property;
- (b) The vote of the Management Committee and the Majority Vote of the Members to dissolve the Company;
- (c) The happening of any other event that makes it unlawful, impossible or impractical to carry on the business of the Company; or
- (d) A complete cessation of the Company’s business.

The Members hereby agree that the Company shall not dissolve prior to the occurrence of a Liquidating Event, except by order of a court of competent jurisdiction.

**11.2 WINDING UP.** Upon dissolution of the Company, the Management Committee or court appointed trustee if there is no Manager shall take full account of the Company’s liabilities and assets. The assets and Properties of the Company shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed in the following order:

- (a) First, to the payment and discharge of all of the Company’s debts and liabilities (other than to Unit Holders), including the establishment of any necessary reserves;
- (b) Second, to the payment and discharge of all of the Company’s debts and obligations to Unit Holders; and
- (c) The balance, to the Unit Holders in accordance with their Capital Accounts after giving effect to all contributions, distributions and allocations for all periods.

**11.3 COMPLIANCE WITH TIMING REQUIREMENTS OF REGULATIONS.** In the event the Company is “liquidated” within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this **Section 11** (if such liquidation constitutes a dissolution of the Company) or **Section 5** hereof (if it does not) to the Unit Holders who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Unit Holder has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and

allocations for all fiscal years, including the fiscal year such liquidation occurs) such Unit Holder shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or any other Person.

**11.4 ESTABLISHMENT OF TRUST.** In the discretion of the Management Committee, a pro-rata portion of the distributions that would otherwise be made to the Unit Holders pursuant to **Section 11.2** hereof may be distributed to a trust established for the benefit of the Unit Holders for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Management Committee arising out of or in connection with the Company. The assets of any such trust shall be: (a) distributed to the Unit Holders from time to time, in the reasonable discretion of the Management Committee, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Unit Holders pursuant to this Agreement; or (b) withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company provided that such withheld amounts shall be distributed to the Unit Holders as soon as practicable.

**11.5 RIGHTS OF UNIT HOLDERS.** Except as otherwise provided in this Agreement, each Unit Holder shall look solely to the assets of the Company for the return of his Capital Contribution and shall have no right or power to demand or receive property other than cash from the Company. No Unit Holder shall have priority over any other Unit Holder as to the return of his Capital Contributions, distributions, or allocations.

**11.6 DEEMED DISTRIBUTION AND RECONTRIBUTION.** Notwithstanding any other provision of this **Section 11**, in the event the Company is liquidated within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g) but no Liquidating Event has occurred, the assets and the Property of the Company shall not be liquidated, the Company's debts and other liabilities shall not be paid or discharged and the Company's affairs shall not be wound up. Instead, solely for federal income tax purposes, the Company shall be deemed to have contributed its assets and Properties in kind to a new limited liability company in exchange for an interest in such company and, immediately thereafter, the Company will be deemed to liquidate by distributing such interests in the new company to the Members.

## **SECTION 12 REPRESENTATIONS AND WARRANTIES**

**12.1 REPRESENTATIONS AND WARRANTIES OF THE MEMBERS.** Each Member hereby, represents, warrants and acknowledges to each of the other Members as follows:

(a) The Member the full power, legal capacity and authority to enter into this Agreement and to perform his obligations hereunder. This Agreement has been duly executed and delivered by the Member and (assuming the due authorization, valid execution and delivery hereof by each of the other Members) is a legal, valid and binding obligation of such Member, enforceable against such Member in accordance with its terms, except (i) as the same may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles relating to or affecting the enforcement of creditors' rights, and (ii) that the granting of specific performance is subject to the discretion of a court of equity;

(b) Neither the execution, delivery or performance of this Agreement by the Member nor the performance by the Member of his obligations hereunder (i) will result in any material breach of or default by the Member under any provision of any contract or agreement of any kind to which the Member is a party, or by which the Member or to which any property or asset of the Member is subject, (ii) is prohibited by, or requires the Member to obtain or make any consent, authorization, approval, registration or filing under, any statute, law, ordinance, regulation, rule, judgment, decree or order of any court or governmental agency, board, bureau, body, department or authority, or of any other person, (iii) will cause any acceleration of maturity of any note, instrument or other obligation to which the Member is a party or by which the Member is bound or with respect to which the Member is an obligor or guarantor, or (iv) will result in the creation or imposition of any security interest or other lien, or give to any other person any interest or right (including any right of termination or cancellation) in or with respect to, any of the properties, assets, business, agreements or contracts of the Member;

(c) There are no actions, suits, proceedings or investigations, either at law or in equity, or before any commission or other administrative authority in any United States or foreign jurisdiction, of any kind now pending or threatened or proposed against the Member regarding any business being conducted by the Member. Neither the Member nor any of the Member's properties or assets are subject to any judicial or administrative judgment, order, decree or restraint;

(d) The Member is not in violation of any law, rule or regulation, or any order, judgment or decree, in any case applicable to the Member or by which any of such Member's properties or assets are bound or affected;

(e) The Member has filed all foreign, federal, state and local tax returns that are required to be filed by such Member and has paid all taxes shown as due on such returns as well as all other taxes, assessments and governmental charges that are due and payable;

(f) The Member is acquiring the Membership Units for the Member's own account and not for the account of others. The Membership Units are not being acquired with a view to their distribution and the Member has no present intent of reselling or otherwise distributing the Membership Units. The Member was not formed for the purpose of making an investment in the Company;

(g) The Member has been advised that the Membership Units have not and shall not be registered under the Securities Act or any applicable state securities laws and, therefore, cannot be resold unless such Membership Units are registered under the Securities Act and all applicable state securities laws or unless exemptions from registration are available;

(h) Neither the Company nor anyone else has made any representation or warranty as to the period of time the Member shall be required to own the Membership Units. The Member is aware that the Membership Units may have to be held by the Member for an indefinite period of time;

(i) No state or other governmental authority has made any finding or determination relating to the fairness or substantive merit of an investment in the Company;

(j) The Member has, either alone or with such Member's Personal Representative (as that term is defined in Rule 501(h) of the Securities and Exchange Commission under the Securities Act of 1933) such knowledge and experience in financial and business matters that such Member is capable of evaluating the merits and risks of an investment in the Company;



(k) The Member is aware that an investment in the Company is highly speculative and is capable of bearing the economic risk of such investment; and

(l) The Company has made available to such Member, a reasonable time prior to such Member's acquisition of any Membership Units, the opportunity to ask questions and receive adequate answers concerning the terms and conditions of such acquisition and the Company and to request and obtain any information which the Company possesses or can acquire without unreasonable effort or expense regarding the Company or investment.

### SECTION 13 MISCELLANEOUS

**13.1 NOTICES.** Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be delivered personally to the Person or to an officer of the Person to whom the same is directed, or sent by regular, registered, or certified mail, or by recognized overnight carrier, addressed as follows: if to the Company, to the Company at the address set forth in **Section 2.4** hereof, or to such other address as the Management Committee may from time to time specify by notice to the Members; if to a Manager, to such Manager at the address set forth in the recitals to this Agreement hereto or to such other address as a Manager may from time to time specify by notice to the Company; and if to a Member, to such Member at the address set forth on **Exhibit "A"** hereto or to such other address as such Member may from time to time specify by notice to the Company. Any such notice shall be deemed to be delivered, given and received for all purposes as of the date (i) actually received, if delivered personally or if sent by regular mail or overnight carrier or (ii) as of the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, if sent by registered or certified mail, postage and charges prepaid.

**13.2 BINDING EFFECT.** Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors, transferees and assigns.

**13.3 CONSTRUCTION.** It is the intention of the parties that every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party (notwithstanding any rule of law requiring an agreement to be for or against the drafting party), it being understood that the parties to this Agreement are sophisticated and have had adequate opportunity and means to retain counsel to represent their respective interests and to otherwise negotiate the provisions of this Agreement.

**13.4 HEADINGS.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

**13.5 SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

**13.6 INCORPORATION BY REFERENCE.** Every exhibit, schedule and other appendix attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

**13.7 ADDITIONAL DOCUMENTS.** Each Unit Holder, upon the request of any Manager, agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

**13.8 VARIATION OF PRONOUNS.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require.

**13.9 NEW YORK LAW.** This Agreement, and any matter or dispute arising out of, in connection with or related to this Agreement, of any type or nature, shall be construed in accordance with, subject to and governed by the internal laws of the State of New York without giving effect to any conflicts of laws or other provisions which might result in the application of laws other than the internal laws of the State of New York. **Each Unit Holder hereby agrees that the federal and state courts located within Onondaga County, New York shall have the exclusive jurisdiction to determine any and all disputes arising out of or in connection with this Agreement and hereby irrevocably consents to the personal and subject matter jurisdictions of such court with respect thereto.**

**13.10 COUNTERPART EXECUTION; SIGNATURES.** This Agreement may be executed in any number of counterparts with the same effect as if all of the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement. Signatures received by facsimile or by electronic mail shall be deemed original signatures for all purposes of this Agreement.

**13.11 SPECIFIC PERFORMANCE.** The parties acknowledge that they will be irreparably harmed in the event any of the provisions of this Agreement are violated and that the damages that may result therefrom will be difficult, if not impossible, to calculate. Should any dispute arise concerning any matter provided for in this Agreement, the parties agree that an injunction may be issued restraining any of the foregoing events pending the resolution of the controversy. In the event of any controversy concerning any right or obligation of a party, such right or obligation shall be enforceable in a court of equity by a decree of specific performance. Any such remedy, however, shall be cumulative and not exclusive, and shall be in addition to any other remedies which the parties hereto may have.

**13.12 WAIVER OF JURY TRIAL. EACH UNIT HOLDER HEREBY IRREVOCABLY WAIVES, ON BEHALF OF HIMSELF OR ITSELF AND HIS OR ITS HEIRS, BENEFICIARIES, PERSONAL REPRESENTATIVES, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT SUCH UNIT HOLDER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY MATTER, DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH UNIT HOLDER HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER UNIT HOLDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER UNIT HOLDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT SUCH UNIT HOLDER AND THE OTHER UNIT HOLDER HERETO HAVE BEEN INDUCED TO ENTER INTO**


**THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION.**

**13.13 ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes any previous understanding whether oral or written.

**[Remainder of Page Intentionally Left Blank; Signature Page Follows]**

**IN WITNESS WHEREOF**, the parties have entered into this Operating Agreement as of the date first above set forth.

**900 EAST FAYETTE GROUP, LLC**

By:   
\_\_\_\_\_  
Christopher Geiger, Manager/Member

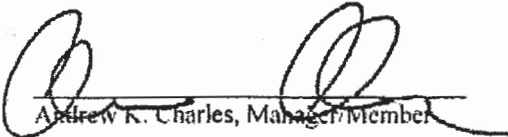
By: \_\_\_\_\_  
Andrew K. Charles, Manager/Member

By: \_\_\_\_\_  
Scott Smith, Manager/Member

IN WITNESS WHEREOF, the parties have entered into this Operating Agreement as of the date first above set forth.

**900 EAST FAYETTE GROUP, LLC**

By: \_\_\_\_\_  
Christopher Geiger, Manager/Member

By:   
Andrew K. Charles, Manager/Member

By: \_\_\_\_\_  
Scott Smith, Manager/Member

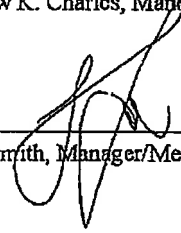
IN WITNESS WHEREOF, the parties have entered into this Operating Agreement as of the date first above set forth.

**900 EAST FAYETTE GROUP, LLC**

By: \_\_\_\_\_  
Christopher Geiger, Manager/Member

By: \_\_\_\_\_  
Andrew K. Charles, Manager/Member

By: \_\_\_\_\_  
Scott Smith, Manager/Member

A handwritten signature in black ink, appearing to read "Scott Smith", is written over the signature line for the third party.

IN WITNESS WHEREOF, the parties have entered into this Operating Agreement for 900 East Fayette Group, LLC as of the date first above.

EF INVESTORS GROUP, LLC



---

By Christopher Geiger, Manager

---

**EXHIBIT "A"**  
**OPERATING AGREEMENT**  
**OF**  
**900 EASE FAYETTE GROUP, LLC**  
**MEMBERS**

**Class A**

<b><u>Name</u></b>	<b><u>Address</u></b>
Christopher Geiger	1221 E Genesee St., Syracuse, NY 13210
Andrew Charles	7 Carriage Dr., Old Westbury, NY 11568
Scott Smith	20 Canterbury Lane, Roslyn Heights NY 11577

**Class B**

<b><u>Name</u></b>	<b><u>Address</u></b>
EF Investors Group, LLC	1221 E Genesee St., Syracuse, NY 13210



**EXHIBIT "B"**  
**OPERATING AGREEMENT**  
**OF**  
**900 EAST FAYETTE GROUP, LLC**  
**CAPITAL CONTRIBUTIONS**

<b>Name</b>	<b>Capital Contributions</b>
<b>Andrew Charles</b>	<b>\$ 65,000</b>
<b>Christopher Geiger</b>	<b>\$ 65,000</b>
<b>Scott Smith</b>	<b>\$ 65,000</b>
<b>EF Investors Group, LLC</b>	<b>\$ 1,680,000</b>

**EXHIBIT "C"**  
**OPERATING AGREEMENT**  
**OF**  
**900 EAST FAYETTE GROUP, LLC**  
**MEMBERSHIP UNITS**

**Class A**

<b>Name</b>	<b>Membership Units</b>
Christopher Geiger	2,000
Andrew Charles	2,000
Scott Smith	2,000

**Class B**

EF Investors Group, LLC	<u>3,000</u>
Total Units	6,000

**EXHIBIT "D"**  
**OPERATING AGREEMENT**  
**OF**  
**900 EAST FAYETTE GROUP, LLC**  
**MANAGERS**

<b>Name</b>	<b>Address</b>
Christopher Geiger	1221 E Genesee St., Syracuse, NY 13210
Andrew Charles	7 Carriage Dr., Old Westbury, NY 11568
Scott Smith	20 Canterbury Lane, Roslyn Heights NY 11577

## APPENDIX "A"

### TABLE OF DEFINITIONS

**"Accepting Class A Offerees"** has the meaning set forth in **Section 10.4** hereof.

**"Accepting Remaining Members"** has the meaning set forth in **Section 10.4** hereof.

**"Accountants"** means the independent accounting firm regularly engaged by the Company to provide audit, consulting, tax or similar type services to the Company. In the event the Company is not then regularly engaging the services of an independent accounting firm, "Accountants" shall mean such independent accounting firm as may be selected by the Management Committee in its discretion.

**"Act"** means the Limited Liability Company Act of the State of New York as set forth in Chapter 34 of the Consolidated Laws of the State of New York as the same may be amended from time to time (or any corresponding provisions of succeeding law).

**"Affiliate"** means with respect to any Person: (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning or controlling 10 percent or more of the outstanding voting securities of such Person; (iii) any officer, director, manager or general partner of such Person; or (iv) any Person who is an officer, director, manager, general partner, trustee or holder of 10 percent or more of the voting securities of any Person described in clauses (i) through (iii) of this sentence.

**"Agreement"** or **"Operating Agreement"** means this Operating Agreement as the same may be subsequently amended from time to time. Words such as "herein," "hereinafter," "hereof," "hereto," and "hereunder" refer to this Agreement as a whole, unless the context otherwise requires.

**"Articles"** means the Articles of Organization filed on behalf of the Company with the Secretary of State of the State of New York on May 22, 2015.

**"Assignee"** means a Person who is a transferee of all or part of a Member's Membership Units which Person is not admitted as a Member with respect to such Membership Units. "Assignees" means all such Persons.

**"Class"** and **"Classes"** has the meaning set forth in **Section 3.2** hereof.

**"Class A"** has the meaning set forth in **Section 3.2** hereof.

**"Class A Members"** means those Persons designated as Members of Class A on **Exhibit "A"** and any Person who is both (i) a Permitted Transferee with respect to any Membership Units of any such Persons (or any successor thereto) and (ii) admitted as a Member with respect to such Membership Units pursuant to the terms of this Agreement.

**"Class A Offer Period"** has the meaning set forth in **Section 10.4** hereof.

**"Class B"** has the meaning set forth in **Section 3.2** hereof.

**"Class B Members"** means those Persons designated as Members of Class B on **Exhibit "A"** and any Person who is both (i) a Permitted Transferee with respect to any Membership Units of any such Persons (or any successor thereto) and (ii) admitted as a Member with respect to such Membership Units pursuant to the terms of this Agreement.

**"Charles"** has the meaning set forth in the introductory paragraph hereof.

**“Company”** means the limited liability company formed pursuant to this Agreement and the limited liability company continuing the business of this Company in the event of dissolution as herein provided.

**“Company Offer Period”** has the meaning set forth in Section 10.4 hereof.

**“Completion Event”** has the meaning set forth in Section 5.1 hereof.

**“Economic Rights”** shall have the meaning set forth in Section 10.6 hereof.

**“Equity Offering”** has the meaning set forth in Section 3.9 hereof.

**“Family”** means a Member’s spouse and a Member’s natural or adoptive lineal ancestors or descendants and trusts for his or their exclusive benefit.

**“Firm Offer”** has the meaning set forth in Section 10.4 hereof.

**“Geiger”** has the meaning set forth in the introductory paragraph hereof.

**“Initial Capital Contribution”** shall mean the initial Capital Contribution made by a Member as reflected on Exhibit “B” hereto.

**“Initial Managers”** has the meaning set forth in Section 6.1 hereof.

**“Institutional Lender”** means any banking institution (including but not limited to saving and loan associations or savings banks), insurance company, pension or profit sharing plan or fund, educational institution, or real estate investment trust.

**“Institutional Loan”** means a loan from an Institutional Lender.

**“Liquidating Event”** has the meaning set forth in Section 11.1 hereof.

**“Majority Vote”** means the affirmative vote of Persons holding more than fifty percent (50%) of the total number of votes cast by Persons entitled to vote at a meeting of the Members.

**“Management Committee”** shall have the meaning set forth in Section 6.1 hereof.

**“Manager”** means each Initial Manager and each Person who becomes a Manager pursuant to the terms of this Agreement and has not ceased to be a Manager pursuant to the terms of this Agreement. “Managers” means all such Persons.

**“Members”** means all Persons set forth on Exhibit “A” hereof and any Person subsequently admitted to the Company as a Member pursuant to the terms hereof for so long as such Persons have not ceased to be a Member pursuant to the terms of this Agreement. “Member” means any one of the Members.

**“Membership Percentage”** means for each Person, the ratio (expressed as a percentage) at the time the Membership Percentage is being determined, of the number of Membership Units held by such Person to the total number of Membership Units outstanding. “Membership Percentages” means the total percentages held by all Persons.

**“Membership Unit”** and **“Unit”** mean an ownership interest in the Company including any and all benefits to which the holder of such Membership Units may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement.

**“Minimum Return”** has the meaning set forth in Section 5.1 hereof.

**“Net Available Cash”** means the gross cash proceeds of the Company whether from Company operations, sales or other dispositions or refinancing of Company assets, less the portion thereof used to pay or establish reserves for all Company expenses, guaranteed payments, debt payments, capital improvements, replacement and contingencies, all as determined by the Management Committee. “Net Available Cash” shall not be reduced by depreciation, amortization, cost recovery deductions or similar allowances, but shall be increased by any reductions of reserves previously established.

**“New Interests”** has the meaning set forth in **Section 3.9** hereof.

**“Non-Economic Rights”** has the meaning set forth in **Section 10.6** hereof.

**“Offer Notice”** has the meaning set forth in **Section 10.4** hereof.

**“Offer Period”** has the meaning set forth in **Section 10.4** hereof.

**“Offer Price”** has the meaning set forth in **Section 10.4** hereof.

**“Offered Units”** has the meaning set forth in **Section 10.4** hereof.

**“Option Period”** has the meaning set forth in **Section 10.5** hereof.

**“Payment Terms”** has the meaning set forth in **Section 10.4** hereof.

**“Permitted Acquirer”** has the meaning set forth in **Section 10.2** hereof.

**“Permitted Transfer”** has the meaning set forth in **Section 10.2** hereof.

**“Permitted Transferee”** has the meaning set forth in **Section 10.2** hereof.

**“Person”** means any individual, partnership, limited liability company, corporation, trust or other entity.

**“Prime Rate”** means the prime rate (or base rate) reported in the “Money Rates” column or section of *The Wall Street Journal* as being the base rate on corporate loans at larger U.S. Money Center banks on the last business day immediately prior to the date on which it is necessary to determine such Prime Rate; provided, however, in the event *The Wall Street Journal* ceases publication of the Prime Rate, then the “Prime Rate” shall mean the “prime rate” or “base rate” announced by the bank with which the Company has its principal banking relationship (whether or not such rate has actually been charged by that bank) or as otherwise designated by the Management Committee. In the event that bank discontinues the practice of announcing that rate, Prime Rate shall mean the highest rate charged by that bank on short-term, unsecured loans to its most credit-worthy large corporate borrowers, unless otherwise designated by the Management Committee.

**“Profits” and “Losses”** means, for each fiscal year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be added to such taxable income or Loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv), and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to **subsections (b) or (d)** of the definition of Gross Asset Value hereof the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period; and

(f) Notwithstanding any other provision of this Section, any items which are specially allocated pursuant to **Section (b) or Section (c) of Appendix "B"** hereof shall not be taken into account in computing Profits or Losses pursuant to this Section.

**"Project"** shall mean acquiring the real property located at 1200 East Genesee Street and in Syracuse, New York, and constructing, developing, owning, leasing, operating, and holding multi-unit residential buildings on such real properties and, if the Managers so determine, the constructing, developing, owning, leasing, operating, and holding in similar projects in the Upstate New York region; provided that the Managers control the management of any such additional Projects.

**"Property"** shall mean all property acquired as part of any Project.

**"Purchase Note"** has the meaning set forth in **Section 10.6** hereof.

**"Purchase Offer"** has the meaning set forth in **Section 10.4** hereof.

**"Purchaser"** has the meaning set forth in **Section 10.4** hereof.

**"Remaining Members"** has the meaning set forth in **Section 10.4** hereof.

**"Remaining Offer Period"** has the meaning set forth in **Section 10.4** hereof.

**"Seller"** has the meaning set forth in **Section 10.4** hereof.

**"Supermajority Vote"** means the affirmative vote of Persons holding at least seventy five percent (75%) of the Membership Units then held by all Persons entitled to vote on the matter.

**"Transfer"** means, as a noun, any transfer, sale, pledge, hypothecation, or other disposition, whether voluntary, involuntary or by operation of law, and, as a verb, to transfer, sell, pledge, hypothecate or otherwise dispose of in any manner whatsoever, whether voluntarily, involuntarily or by operation of law.

**"Unit Holder"** means a Person who is the holder of Membership Units regardless of whether such Person has been admitted as a Member with respect to such Membership Units.

**APPENDIX "B"**  
**TAX PROVISIONS**

**(a) Definitions.** For purposes of this Agreement, including this **Appendix "B,"** the following terms (as indicated by the first letter of each word being capitalized) shall, unless the context clearly requires otherwise, have the following meanings:

**"Adjusted Capital Account Deficit"** means with respect to any Unit Holder, the deficit balance, if any, in such Person's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Person is obligated to restore or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

**"Capital Account"** means with respect to any Unit Holder, the Capital Account maintained for such Person in accordance with the following provisions:

(a) To each Person's Capital Account, there shall be credited such Person's Capital Contributions, such Person's distributive share of Profits, and any items in the nature of income or gain that are specially allocated pursuant to **Section (b)** or **(c)** of this **Appendix "B,"** and the amount of any Company liabilities that are assumed by such Person or that are secured by any Company asset distributed to such Person;

(b) To each Person's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company asset distributed to such Person pursuant to any provision of this Agreement, such Person's distributive share of Losses, any items in the nature of expenses or losses that are specially allocated pursuant to **Section (b)** or **(c)** of this **Appendix "B,"** and the amount of any liabilities of such Person that are assumed by the Company or that are secured by any property contributed by such Person to the Company;

(c) In the event any interest in the Company is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred interest; and

(d) In determining the amount of any liability for purposes of **subsections (a)** and **(b)** above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Management Committee shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including without limitation, debits or credits



relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Unit Holders), are computed in order to comply with such Regulations, the Management Committee may make such modifications, provided it is not likely to have a material effect on the amounts distributed to any Unit Holder pursuant to **Section 12** of the Agreement upon the dissolution of the Company. The Management Committee also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Unit Holders and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event unanticipated events (for example, the acquisition by the Company of oil or gas properties) might otherwise cause this Agreement not to comply with Regulation Section 1.704-1(b).

**"Capital Contribution"** means, with respect to any Unit Holder, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company with respect to the interest in the Company held by such Unit Holder.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

**"Company Minimum Gain"** has the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations substituting the term "company" for the term "partnership" whenever the context requires.

**"Depreciation"** means, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable under the Code with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Management Committee.

**"Gross Asset Value"** means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Unit Holder to the Company shall be the gross fair market value of such asset, as determined by the contributing Unit Holder and the Company;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Management Committee, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Unit Holder in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Unit Holder of more than a de minimis amount of assets as consideration for an interest in the Company; (iii) in connection with the grant of an interest in the Company to a Unit Holder (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Unit Holder acting in a Member capacity or by a new Unit Holder acting in a Member capacity or in anticipation of becoming a Member; and (iv) the

liquidation of the Company within the meaning of Regulations 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (i), (ii) and (iii) above shall be made only if the Management Committee reasonably determine(s) that such adjustments are necessary or appropriate to reflect the relative economic interests of the Unit Holders in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Unit Holder shall be the gross fair market value of such asset on the date of distribution; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation 1.704-1(b)(2)(iv)(m) and **Section (b)(iii)** of this **Appendix "B"**; provided, however, that Gross Asset Values shall not be adjusted pursuant to **this subsection (d)** to the extent the Management Committee determine(s) that an adjustment pursuant to **subsection (b)** is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to **this subsection (d)**. If the Gross Asset Value of an asset has been determined or adjusted pursuant to **subsections (a), (b) or (d)** hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**"Member Nonrecourse Debt"** has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations substituting the term "member" for the term "partner" whenever the context requires.

**"Member Nonrecourse Debt Minimum Gain"** means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations substituting the term "member" for the term "partner" whenever the context requires.

**"Member Nonrecourse Deductions"** has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

**"Nonrecourse Deductions"** has the meaning set forth in Section 1.704-2(b)(1) of the Regulations substituting the term "member" for the term "partner" whenever the context requires.

**"Nonrecourse Liability"** has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

**"Regulations"** means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

**(b) Special Allocations: Items in the Nature of Income or Gain.**

(i) In the event any Unit Holder unexpectedly receives any adjustments, allocations or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to such Unit Holder in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit of such Unit Holder as quickly as possible; provided, however, that an allocation pursuant to **this Section (b)(i)** shall be made if and only to the extent that such Unit Holder would

have an Adjusted Capital Account Deficit after all other allocations provided for in **Section 4** and this **Appendix "B"** have been tentatively made as if this **Section (b)(i)** of this **Appendix "B"** were not in this Agreement.

(ii) If, after giving effect to the allocation provisions of **Section 4** and this **Appendix "B"** (other than this **(b)(ii)**) and the distribution provisions of **Section 5** hereof for a particular fiscal year, any Unit Holder would have a deficit Capital Account at the end of such fiscal year in excess of the sum of (i) the amount such Unit Holder is obligated to restore and (ii) the amount such Unit Holder is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) such Unit Holder shall be specially allocated items of gross income in the amount of such excess as quickly as possible provided that an allocation pursuant to this **Section (b)(ii)** of this **Appendix "B"** shall be made if and only to the extent such Unit Holder would have a deficit Capital Account in excess of such sum after all other allocations provided for in **Section 4** and **Appendix "B"** have been tentatively made and as if **Sections (b)(i)** and **(b)(ii)** were not in this Agreement.

(iii) Except as otherwise provided in Section 1.704-2(f) of the Regulations and notwithstanding any other provision of **Section 4** and this **Appendix "B"** if there is a net decrease in Company Minimum Gain during any Company fiscal year, each Unit Holder shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to the portion of such Person's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Unit Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This **Section (b)(iii)** is intended to comply with the minimum gain charge back requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(iv) Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations and notwithstanding any other provision of **Section 4** and this **Appendix "B"** except **Section (b)(ii)** above, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year, each Person who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to the portion of such Person's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Unit Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This **Section (b)(iv)** is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(v) Any Member Nonrecourse Deductions for any fiscal year or other period shall be specially allocated to the Unit Holder who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or Section 743(b) of the Code is required to be taken into account in determining Capital Accounts as the result of a distribution to a Unit Holder in complete liquidation of his interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if such adjustment increases the basis of the assets) or loss (if such adjustment decreases such basis) and such gain or loss shall be specifically allocated to the Unit Holders in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies or to the Unit Holders to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(vii) Nonrecourse Deductions for any fiscal year or other period shall be specifically allocated to the Unit Holders in proportion to their respective Membership Percentages.

(viii) All allocations to the Unit Holders made pursuant to **Section 4** and this **Appendix "B"** shall, except as otherwise provided herein, be divided among them in proportion to their respective Membership Percentages.

**(c) Curative Allocations.** The allocations set forth in **Sections (b)(i) through viii)** hereof (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Unit Holders that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deductions pursuant to this **Section (c)**. Therefore, notwithstanding any other provisions of **Section 4** and this **Appendix "B"** (other than the Regulatory Allocations) the Management Committee shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine appropriate so that after such offsetting allocations are made, each Unit Holder's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Unit Holder would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to **Section 4**. In exercising its discretion under this **Section (c)** of this **Appendix "B"** the Management Committee shall take into account future Regulatory Allocations under **Sections (b)(iii)** and **(b)(iv)** that, although not yet made, are likely to offset other Regulatory Allocations previously made under **Section (b)(v)** and **Appendix "B."**

**(d) Other Allocations Rules.**

(i) For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly or other basis, as determined by the Management Committee using any permissible method under Code Section 706 and the Regulations thereunder.

(ii) Except as otherwise provided in this Agreement, all items of income, gain, loss, deduction and any other allocations not otherwise provided for shall be divided among the Unit Holders in the same proportions as they share Profits and Losses, as the case may be, for the year.

(iii) In the event that the Company has taxable income that is characterized as ordinary income under the recapture provisions of the Code, each Unit Holder's allocable share of taxable gain or loss from the sale of Company Property (to the extent possible) shall include a

proportionate share of this recapture income equal to that Unit Holder's prior cumulative depreciation deductions with respect to the assets that gave rise to the recapture income.

(iv) The Unit Holders are aware of the income tax consequences of the allocations made by **Section 4** and this **Appendix "B"** and hereby agree to be bound by the provisions of **Section 4** and this **Appendix "B"** in reporting their shares of income and loss for income tax purposes.

(v) Nonrecourse Liabilities will be allocated among the Unit Holders based upon any methodology permitted under Treasury Regulations §1.752-3.

(vi) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Management Committee shall endeavor to treat distributions of Net Available Cash as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Unit Holders.

(vii) Losses allocated to the Unit Holders shall not exceed the maximum amount of Losses that can be allocated without causing the Unit Holders to have an Adjusted Capital Account Deficit at the end of any fiscal year. If some but not all of the Unit Holders would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses the foregoing limitations shall be applied on a Unit Holder-by-Unit Holder basis so as to allocate the maximum Loss to each Unit Holder under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

(viii) Each Unit Holder authorizes and directs the Company to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "**Notice**") apply to any interest in the Company transferred to a service provider by the Company on or after the effective date of such Revenue Procedure in connection with services provided to the Company. For purposes of making such Safe Harbor election, the Tax Matters Partner is hereby designated as the "partner who has responsibility for federal income tax reporting" by the Company and, accordingly, execution of such Safe Harbor election by the Tax Matters Partner constitutes execution of a "Safe Harbor Election" in accordance with Section 3.03(1) of the Notice. The Company and each Unit Holder hereby agree to comply with all requirements of the Safe Harbor described in the Notice, including, without limitation, the requirement that each Unit Holder shall prepare and file all federal income tax returns reporting the income tax effects of each Safe Harbor Membership Interest issued by the Company in a manner consistent with the requirements of the Notice.

The Company and any Unit Holder may pursue any and all rights and remedies it may have to enforce the obligations of the Company and the Unit Holder in the Company (as applicable) under **Section (d)(viii)**, including, without limitation, seeking specific performance and/or immediate injunctive or other equitable relief from any court of competent jurisdiction (without the necessity of showing actual money damages, or posting any bond or other security) in order to enforce or prevent any violation of the provisions of **Section (d)(viii)**. The obligations of a Unit Holder to comply with the requirements of this **Section (d)(viii)** shall survive the cessation of such Unit Holder being a holder of a membership interest in the Company and/or the termination, dissolution, liquidation and winding up of the Company, and, for purposes of this **Section (d)(viii)**, the Company shall be treated as continuing in existence.

Each Unit Holder authorizes the Management Committee to amend **Section (d)(viii)** to the extent necessary to achieve substantially the same tax treatment with respect to any interest in the Company transferred to a service provider by the Company in connection with services provided to the Company as set forth in Section 4 of the Notice (*e.g.*, to reflect changes from the rules set forth in the Notice in subsequent Internal Revenue Service guidance), provided that such amendment is not materially adverse to such Unit Holder (as compared with the after-tax consequences that would result if the provisions of the Notice applied to all interests in the Company transferred to a service provider by the Company in connection with services provided to the Company).

(ix) If and to the extent that any Unit Holder is deemed to recognize any item of income, gain, deduction or loss as a result of any transaction between such Unit Holder and the Company pursuant to Sections 83, 482, or 7872 of the Code or any similar provision now or hereafter in effect, the Management Committee shall use their reasonable best efforts to allocate any corresponding Net Profit or Net Loss of the Company to the Unit Holder who recognizes such item in order to reflect the Unit Holders' economic interest in the Company.

**(e) Tax Allocations: Code Section 704(c).** In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Unit Holders so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

In the event the Gross Asset Value of any asset is adjusted pursuant to the provisions of this **Appendix "B"** hereof dealing with the definition of Gross Asset Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Management Committee in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this **Section (e)** are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

**EXHIBIT "C"**  
**GOOD STANDING CERTIFICATE**

**State of New York  
Department of State } ss:**

*I hereby certify, that 900 EAST FAYETTE GROUP, LLC a NEW YORK Limited Liability Company filed Articles of Organization pursuant to the Limited Liability Company Law on 09/16/2013, and that the Limited Liability Company is existing so far as shown by the records of the Department. I further certify the following:*

*A Certificate of Publication of 900 EAST FAYETTE GROUP, LLC was filed on 11/21/2013.*

*The Biennial Statement is past due.*

*I further certify, that no other documents have been filed by such Limited Liability Company.*



\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 02nd day of October  
two thousand and seventeen.*

Brendan W. Fitzgerald  
Executive Deputy Secretary of State

201710030005 \* AT



**EXHIBIT "D"**  
**RESOLUTION**

**900 EAST FAYETTE GROUP, LLC  
ACTION BY MANAGERS WITHOUT MEETING**

**900 EAST FAYETTE GROUP, LLC**, a New York limited liability company, (the “Company”), acting by and through its managers, Christopher P. Geiger, Andrew Charles and Scott L. Smith, does hereby consent to the following resolutions in lieu of a formal meeting:

**WHEREAS** the Company is the owner of certain real property located at and now known as known as 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (and to be known as 900-916 East Fayette Street) (the “Property”); and

**WHEREAS** the Company is proposing to renovate an existing building (“Existing Building”)for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; and to construct a new four story addition to the existing building approximately 35,000 square feet consisting of approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “New Building” and together with the Existing Building, the “Facility (the “Facility”) on the Property (collectively the “Project Facility”); and

**WHEREAS** the Company has asked the City of Syracuse Industrial Development Agency (the “Agency”) for financial assistance with the project ;

**NOW, IT IS HEREBY RESOLVED AS FOLLOWS:**

**RESOLVED** that the Company hereby affirms the application to the Agency for financial assistance with the Project; and be if further

**RESOLVED** that the Company is hereby authorized and directed to enter into a transaction with the Agency to accept financial assistance from the Agency in the form of exemptions from mortgage recording tax and State and local sales and use taxation (the “Financial Assistance”); and is further authorized to accept the appointment of the Company as an agent of the Agency in connection with the acquisition, construction, equipping and completion of the Project Facility; and is further authorized to lease the Property and Facility to the Agency pursuant to a lease agreement and to allow the Agency to acquire an interest in the furniture, fixtures and equipment located at the Project Facility pursuant to a bill of sale from the Company to the Agency; and is further authorized to enter into a sublease with the Agency whereby the Project Facility will be leased back to the Company and to enter into an environmental compliance and indemnification agreement with respect to the Project and the Project Facility in favor of the Agency and to execute and deliver all other necessary certificates and documents in connection with the Project (collectively, the “Company Documents”); and be it further

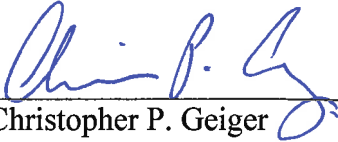
**RESOLVED**, that all action previously taken by the Company with respect to the Agency, the Application and/or the Project is hereby confirmed and ratified; and it be further

**RESOLVED** that the manager of the Company, Christopher Geiger, be and is hereby authorized to execute any and all documents on behalf of the Company in connection with the application to and acceptance of all terms and conditions for financial assistance provided by the Agency, including but not limited to the Company Documents and that upon such execution thereof, same shall be binding upon the Company.

**RESOLVED** that Christopher Geiger may take any action deemed necessary and proper in furtherance of the transaction with the Agency with respect to the Project and the intent of this resolution, and that the Agency, its successors, assigns, attorneys or agents may rely upon such actions as being the actions and consent of the Company, and it is further

**RESOLVED** that the Agency, its successors, assigns, attorneys or agents may rely upon the acts of Christopher Geiger and any action taken by him shall be deemed an action of and binding upon the Company.

The foregoing Resolution was signed as of the 1<sup>st</sup> day of November, 2017.

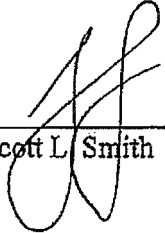
  
\_\_\_\_\_  
Christopher P. Geiger

\_\_\_\_\_  
Scott L. Smith

\_\_\_\_\_  
Andrew Charles

The foregoing Resolution was signed as of the 1<sup>st</sup> day of November, 2017.

\_\_\_\_\_  
Christopher P. Geiger

  
\_\_\_\_\_  
Scott L. Smith

\_\_\_\_\_  
Andrew Charles

The foregoing Resolution was signed as of the 1<sup>st</sup> day of November, 2017.

\_\_\_\_\_  
Christopher P. Geiger

\_\_\_\_\_  
Scott L. Smith

  
\_\_\_\_\_  
Andrew Charles

**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**

**City of Syracuse  
Industrial Development Agency**

**Local Access Agreement**

900 East Fayette Group LLC (the Company) understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.


Company	900 East Fayette Group LLC				General Contractor	VIP Structures					
Representative for Contract Bids and Awards	Chris Geiser				Contact	Jim Herr					
Address	1221 E. Guadalupe St #1				Address	One Webster's Landing					
City	Syracuse	ST	NY	Zip	13210	City	Syracuse	ST	NY	Zip	
Phone	315-474-6791		Fax	888 501 8535		Phone	315 471 5338		Fax		
Email	cgeiser44@gmail.com				Email	jherr@vipstructures.com					
Project Address	900 E. Fayette St.				Construction Start Date	11/2/17					
City	Syracuse	ST	NY	Zip	13210	Occupancy Date	9/1/18				

Project Components – Indicate those for which bids will be sought:

Item	Estimated Value	Bid Date	Contact
Site work/Demolition			
Foundation and footings			
Building			
Masonry			
Metals			
Wood/casework			
Thermal/moisture proof			
Doors, windows, glazing			
Finishes			
Electrical			
HVAC			
Plumbing			
Specialties			
Machinery & Equipment			
Furniture and Fixtures			
Utilities			
Paving			
Landscaping			
Other (identify)			

Date: 11/2/17

Company: 900 East Fayette Group LLC

Signature: 

Name: Christopher Geiser



Bid Package #	Work Summary	Invited Bidders	Contact	Bidding?	Proposal Recv'd
1	Sitework	<b>Lanco</b>	Tony Lupia	Yes	Yes
		Siteworks	Andrew Aupperle		
		JK Tobin	Joe Mueller	Yes	Yes
2	Landscaping	J&J Landscaping	Pat White	yes	yes
		Twin Oaks	Joe Chiarenza		
		Clarkes Landscape Solutions	Jon Clarke	yes	yes
3	Fencing	Butler Fence	Mike Austin	yes	yes
		Atlas Fence	Matt Simcoe		
4	Selective Demolition	<b>ERSI</b>	Chad Parks	Yes	Yes
		Sullivan Contracting	Bob Sullivan		
		JAG Environmental	Tara Chapel		
		Environmental Contracting	Mike Fortier	Yes	Yes
		Abscope Environmental	Robert Duffy	Yes	Yes
5	Concrete Foundations	Burns Brothers	Emmett Burns	yes	yes
		VIP Concrete	Dale Coss		
		EJ Construction	Jerry Abrantes	Yes	Yes
		KBI Concrete	Sean Bruno	Yes	Yes
6	Concrete Reinforcing	Hertel	Jason Lashomb	Yes	Yes
		Whitacre	Tommy Wheat	Yes	Yes
7	Concrete Slabs	Saunders Concrete	John Wehrle	Yes	Yes
		KBI Concrete	Sean Bruno	Yes	yes
		Western Concrete	Ron Pattison	Yes	Yes
8	Masonry	<b>Remlap</b>	Mike Palmer	Yes	Yes
		Laface	Giovanni Laface	Yes	Yes
		Paragon Supply (Supplier)	Scott Kominski	Yes	Yes
		Schneid Masonry	Paul Schneid		
9	Masonry Restoration	Heritage Masonry <small>Jamie Alexander &amp;</small>	Steve Atkinson	Yes	Yes
		Paragon Supply (Supplier)	Scott Kominski	Yes	Yes
		Raymond E Kelly	Steve Sandroni		
		Lupini Construction	Adam Brady	Yes	Yes
10	Structural Steel	JPW Structural	Jeff Exner	Yes	Yes
		Ward Steel	Roger Lawton	Yes	Yes
		Homer Iron Works	Mike Park	Yes	Yes
		Titan Steel	Phil Haggart		
		Rauli Ironworks	Mark Rauli	Yes	Yes
11	Wood Framing	VIP Structures	Tom Booth		
		GD Mapstone	Laura Gauthier	Yes	Yes
		Ron Wright, Inc.	Ron Wright	Yes	Yes



Bid Package #	Work Summary	Invited Bidders	Contact	Bidding?	Proposal Recv'd
12	Building Materials	Little Falls Lumber	John McCarthy	Yes	Yes
		84 Lumber	Andy Wood	Yes	Yes
		Liverpool Lumber	Len Barry		
		Giarrusso Building Supplies Rev 1/27	Jamie Giarrusso	Yes	Yes
13	Not Used				
14	Cabinetry & Wood Trim-Installation	Wood Etc.	Jesse Schmidt		
		Arrow Contracting	Joe Younis		
15	Cabinetry	Modern Kitchens	Mark Martino	Yes	Yes
		Case Supply (Revised 1/23)	Rob Dimiero	Yes	Yes
		Little Falls Lumber	John McCarthy	Yes	Yes
		Auction Outlet of Queens	Greg Leitstein		
16	Roofing	Apple Roofing	Andy Sheridan	Yes	Yes
		Commercial Roofing	Ken Saya	Yes	Yes
		J & B Installations	Chris Bacon		
		EV Roofing	Tim Borza		
17	Metal Roofing	Arrow Sheet Metal Works, Inc.	Paul Schubring	No	
		Commercial Roofing	Ken Saya	Yes	Yes
18	Metal Siding	Arrow Sheet Metal Works, Inc.	Paul Schubring	No	
		BR Johnson	Mike Howard		
		Erie Materials	Neal Bryden	Yes	Yes
19	Windows	BR Johnson	Tony Minieri	Yes	Yes
		<b>Window Specialists</b>	Rob Krysztofowicz	Yes	Yes
20	Aluminum & Glass Systems	BR Johnson	Tony Minieri	Yes	Yes
		Window Specialists	Rob Krysztofowicz	Yes	Yes
		Bon Ton Glass	Mike Tyrell	Yes	Yes
21	Doors, Frames & Hardware	BR Johnson (Cathy Roberts, Tony Bartorillo and Tony Minieri)		Yes	Yes
		Kelley Brothers	Glenn Taylor		
		Little Falls Lumber - Interior Apartment Doors		Yes	Yes
22	Painting	Lewis Painting	Scott Lewis		
		Neave Painting	Jim Carranti	Yes	Yes
		Commercial Painting	Dave Stanton	Yes	Yes
23	ACT & GWB	JW Interiors	Dave Taylor		
		Pinnacle Builders	Lance Pezzlo	Yes	Yes
		Martin-Zombek	Andrew Zombek		
		Fleetwood Drywall	Jack Needle	Yes	Yes
		Truax & Hovey	Darrell Weare	Yes	Yes

Bid Package #	Work Summary	Invited Bidders	Contact	Bidding?	Proposal Recv'd
24	Countertops	Roma Tile & Marble	Nick Romagno	Yes	Yes
		Busch Products	Darlene Brown	Yes	Yes
		Upstate Stone	Anthony DeFazio	Yes	Yes
25	Flooring	JOH Commercial	Kurt Hibshman	Yes	Yes
		Sposato Carpets Wholesale	Paul Krawczyk		
		The Effect Group	Michael Blowers		
26	Specialties	Alexander Mitchell	John White	Yes	Yes
		BR Johnson	Ron Fiorentino		
		Kinlow Associates	Lisa Parker		
27	Conveying Systems	<b>Schindler</b>	Ed Seager	Yes	Yes
		Otis Elevator			
		Kone	Patrick Layton	Yes	Yes
28	Plumbing Systems	PA Leone	Rick Leone	Yes	Yes
		Woodcock & Armani	Kelly Perkins	No	
		ATL Plumbing	Alfie Larosa		
29	HVAC Systems	Century Heating	Dave Wildrick	Yes	Yes
		Woodcock & Armani	Kelly Perkins	No	
30	Fire Protection Systems	ABJ Fire Protection	Tim Perkins	Yes	Yes
		Dwyer Fire Protection	Tim Dwyer	Yes	Yes
		Associated Fire Protection	Mark Gardner	Yes	Yes
31	Electrical Systems	Phoenix Electric	Brian Newman	Yes	Yes
		O'Connell Electric	Don Coon	Yes	Yes
		<b>Demco New York Corp.</b>	Thomas Collins	Yes	Yes
		Huen Electric	Aaron Kiley	Yes	Yes
32	Appliances	Olum's	Andrew Malone	Yes	Yes
		Home Depot			
33	Trash Chute	D.V. Brown	Robert Bianco	Yes	Yes
34	Window Blinds	Design Specialists, Inc.	Krista Taskey	Yes	Yes
35	Thermal-Fireproofing	Gyptech Systems	David Eidt	Yes	Yes

**22**

November 7, 2017

City of Syracuse Industrial Development Agency  
City Hall Commons, 7<sup>th</sup> Floor  
201 East Washington Street  
Syracuse, New York 13202

900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
900 East Fayette Group, LLC

Ladies and Gentlemen:

We have acted as counsel to the City of Syracuse Industrial Development Agency (the “**Agency**”) in connection with a project (the “**Project**”) undertaken by the Agency at the request of 900 East Fayette Group, LLC (the “**Company**”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company has also requested that the Agency grant the Financial Assistance to the Project. The Agency and the Company will enter into a Payment in Lieu of Taxes Agreement dated as of November 1, 2017 (the "*PILOT Agreement*") with respect to the Project. Capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Agency Lease.

As counsel to the Agency, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, and documents as we have deemed necessary or appropriate for the purposes of the opinion expressed below. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies, and have assumed the accuracy and truthfulness of the factual information, expectations, conclusions, representations, warranties, covenants and opinions of the Company and its counsel and representatives as set forth in the various documents executed and delivered by them or any of them and identified in the Closing Memorandum in connection with the Project.

We are of the opinion that:

1. The Agency is a duly organized and existing corporate governmental agency constituting a public benefit corporation of the State of New York.
2. The Agency is duly authorized and empowered by law to acquire, reconstruct, renovate and equip the Project, to lease the Land and the Facility from the Company pursuant to the Company Lease; to accept an interest in the Equipment pursuant to the Bill of Sale; to sublease the Project Facility back to the Company pursuant to the Agency Lease and to appoint the Company as its agent for completion of the Project.
3. The Agency Documents have been authorized by and lawfully executed and delivered by the Agency and (assuming the authorization, execution, and delivery by the other respective parties thereto) are valid and legally binding obligations enforceable against the Agency in accordance with their respective terms.

In rendering this opinion, we advise you of the following:

The enforceability of the Agency Documents may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law or enactment now or hereafter enacted by the State of New York or the Federal government affecting the enforcement of creditors' rights generally and the general principles of equity, including limitations on the availability of the remedy of specific performance which is subject to discretion of the court.

This opinion is rendered to the addressees named above and their successors and/or assigns, and may not be relied upon by any other person without our prior, express written consent.

November 7, 2017  
Page 3

Very truly yours,

BARCLAY DAMON LLP

*Barclay Damon LLP*

**23**



## ZENZEL LAW OFFICES

6320 Fly Rd. Suite 207  
East Syracuse, NY 13057  
Phone: (315) 701-1115 • Fax: (315) 431-9771  
E-Mail: [carol@zenzellaw.com](mailto:carol@zenzellaw.com)

November 2, 2017

900 East Fayette Group, LLC  
1221 East Genesee Street, Suite 1  
Syracuse, New York 13210

City of Syracuse Industrial Development Agency  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
900 East Fayette Group, LLC Project

Ladies and Gentlemen:

We have acted as counsel to 900 East Fayette Group, LLC (the “**Company**”) in connection with a certain project (the “**Project**”) undertaken by the City of Syracuse Industrial Development Agency (the “**Agency**”) at the Company’s request. The Project consists of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “**Existing Building**”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue, in the City of Syracuse, New York (the “**Land**”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “**New Building**” and together with the Existing Building, the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition,

construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Agency has acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of November 1, 2017 (the “*Company Lease*”) and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of November 1, 2017 (the “*Bill of Sale*”) and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of November 1, 2017 (the “*Agency Lease*”). Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

The Company has also requested that the Agency grant the Financial Assistance to the Project. The Agency, the Company and the City of Syracuse, New York entered into a Payment in Lieu of Taxes Agreement dated November 1, 2017 (the “*PILOT Agreement*”) with respect to the Project.

In that regard, we have examined the Project Agreement, the Company Lease, the Agency Lease, the Bill of Sale, the Mortgage, the Environmental Compliance, the Indemnification Agreement, the PILOT Agreement, and the other documents identified in the Closing Memorandum and defined in the Agency Lease to which the Company is a party (collectively, the “*Company Documents*”).

We have also examined corporate documents and records of the Company and made such investigation of law and/or fact that we deem necessary or advisable in order to render this opinion. For purposes of such examination, we have assumed the genuineness of all certificates and the authenticity of all documents submitted to us as original counterparts or as certified or photostatic copies; the genuineness of all signatures of all parties to the Company Documents other than on behalf of the Company; and the due authorization, execution and delivery of the Company Documents by and the enforceability thereof against all parties thereto other than the Company.

As to questions of fact material to our opinion, we have relied upon the representations and warranties made by the Company in the Company Documents and upon one or more certificates of officers of the Company. Whenever the phrase “to the best of our knowledge” is used in this opinion, it refers to actual knowledge of members of this firm obtained from our representation of the Company and inquiries of responsible officers of the Company made in connection with this opinion, but no further investigation or review has been conducted.

Based upon the foregoing, it is our opinion that:

1. The Company is a validly existing New York limited liability company and possesses full corporate power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.

2. The execution, delivery and performance of the Company Documents have been duly authorized by the Company and the Company Documents have been duly executed and delivered by an Authorized Representative of the Company.

3. The Company Documents constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting creditors' rights generally and to the extent that the availability of the remedy of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

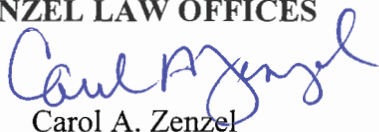
4. To the best of our knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by the Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not constitute a breach of, or default under the Company's Articles of Organization, Operating Agreement or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company or any of its Property may be bound, for which a valid consent has not been secured; nor is any approval or any action by any governmental authority required in connection with the execution, delivery and performance thereof by the Company.

5. To the best of our knowledge, in reliance on the certificates and opinions specified herein, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting the Company wherein an unfavorable decision, ruling or finding would in any way adversely affect in a material fashion the validity or enforceability of the Company Documents.

Our examination of law relevant to matters herein is limited to the laws of the State of New York and also the Federal law, where appropriate, and we express no opinion as to matters governed by the laws of any other state or jurisdiction.

This opinion is only for the benefit of and may be relied upon only by the Agency, its successors and assigns. The opinions set forth in this letter are limited to those expressly stated and no other opinion may be inferred nor is any implied. No other use of this opinion may be made without prior written consent. This opinion is given as of the date hereof and we undertake no obligation, and hereby disclaim any obligation, to update or supplement this opinion in response to a subsequent change in the law or future events affecting the documents identified in this letter.

Very Truly Yours,  
**ZENZEL LAW OFFICES**



Carol A. Zenzel

**24**

## CLOSING MEMORANDUM

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

#### 900 EAST FAYETTE GROUP PROJECT

**DATE AND TIME OF PRE-CLOSING:** November 2, 2017  
2:00 p.m.

**DATE OF CLOSING:** November 7, 2017

**PLACE OF CLOSING:** Barclay Damon LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202

#### **I. Action Taken Prior to Closing**

At the request of 900 East Fayette Group, LLC (the “*Company*”), the City of Syracuse Industrial Development Agency (the “*Agency*”), a public benefit corporation organized under the laws of the State of New York, has undertaken a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the “*Existing Building*”) located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the “*Land*”); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the “*New Building*” and together with the Existing Building, the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company also requested that the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

The Company is, or will be at the time of closing, the owner of the Project Facility.

The Agency will acquire a leasehold interest in the Land and Facility from the Company pursuant to a Company Lease Agreement dated as of November 1, 2017 (the “*Company Lease*”), between the Company, as landlord and the Agency, as tenant; and an interest in the Equipment pursuant to a bill of sale from the Company dated as of November 1, 2017 (the “*Bill of Sale*”). The Agency will sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of November 1, 2017 (the “*Agency Lease*”) between the Agency, as sublessor and the Company, as sublessee. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in Exhibit “C” to the Agency Lease.

Among the actions taken by the Agency with respect to the Project prior to Closing were the following:

- |                   |  |
|-------------------|--|
| January 19, 2016  | The Company submitted an application for financial assistance for the project.   |
| January 26, 2016  | A resolution determining that the acquisition, construction, renovation and equipping of a commercial facility constitutes a project; describing the financial assistance in connection therewith; and authorizing a public hearing (the “ <i>Public Hearing Resolution</i> ”).              |
| February 18, 2016 | Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions pursuant to Section 859-a of the Act.  |
| February 21, 2016 | Notice of the Public Hearing was published in the <u>Post-Standard</u> pursuant to Section 859-a of the Act.   |
| March 9, 2016     | The Agency conducted the Public Hearing pursuant to Section 859-a of the Act.  |
| March 9, 2016     | A resolution classifying the project as an Unlisted Action pursuant to the State Environmental Quality Review Act, declaring the agency lead agency for purposes of an uncoordinated review thereunder and determining that the action will not have a significant effect on the environment |
| March 9, 2016     | A resolution authorizing the undertaking of the acquisition, construction, renovation and equipping of a project; appointing the Company agent of the Agency for the purpose of the acquisition,   |

construction, renovation and equipping of the Project and authorizing the execution and delivery of an agreement between the Agency and the Company (the “**Inducement Resolution**”).

March 9, 2016

A resolution approving a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with the Project (the “**PILOT Resolution**”).

March 9, 2016

A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the “**Final Approving Resolution**”).

September 20, 2016

A resolution describing the request for additional financial assistance in connection with a project and authorizing a public hearing (“**Second Public Hearing Resolution**”)

October 18, 2016

A resolution approving an amended payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with the Project (the “**Amended PILOT Resolution**”).



## II. Action To Be Taken At Closing

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency (A), Agency's Counsel (AC), the Company (C), Company's Counsel (CC), Lender's Counsel (LC) as follows:

<b>A.</b>	<b>Basic Documents</b>	<b>Responsible Party</b>	<b>Signatories</b>
1.	Project Agreement	AC	C, A
2.	Company Lease Agreement	AC	C, A
3.	Memorandum of Company Lease Agreement with TP-584	AC	C, A
4.	Bill of Sale	AC	C
5.	Agency Lease Agreement	AC	C, A
6.	Memorandum of Agency Lease Agreement with Form TP-584	AC	C, A
7.	Company Certification re: Local Labor Policy	AC	C
8.	Certificates of casualty, liability, workers' compensation and other required insurance		
9.	Environmental Compliance and Indemnification Agreement	AC	C
10.	Closing Receipt	AC	C, A
11.	Sales Tax Exemption Letter	AC	A
12.	Form ST-60 indicating appointment of the Company to act as the agent of the Agency	AC	A
13.	PILOT Agreement	CC	A, C
14.	412 a	CC	A
15.	Construction Loan and Permanent Loan Mortgage	LC	C, A
16.	Assignment of Leases, Rents and Profits	LC	C, A
17.	UCC-1 Financing Statement(s)	LC	

18.	Survey	CC	
<b>B. Items To Be Delivered By The Agency</b>			
1.	General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits:	AC	A
	Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended	A	
	Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members	A	
	Exhibit "C" - By-laws	A	
	Exhibit "D" - Public Hearing Resolution	AC	
	Exhibit "E" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions	AC	
	Exhibit "F" - SEQRA Resolution	AC	
	Exhibit "G" - Inducement Resolution	AC	
	Exhibit "H" - PILOT Resolution	AC	
	Exhibit "I" - Final Approving Resolution		
	Exhibit "J" - Second Public Hearing Resolution	AC	
	Exhibit "K" - Notice of Second Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions	AC	
	Exhibit "L" - Amended Financial Assistance Resolution		
2.	Mortgage Recording Tax Affidavit	AC	A

**C. Items To Be Delivered By The Company**

- |   |    |   |
|---|----|---|
| 1. General Certificate of the Company relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits: | AC | C |
| Exhibit "A" - Articles of Organization  | C  |   |
| Exhibit "B" - Operating Agreement   | C  | C |
| Exhibit "C" - Certificate of Good Standing  | C  |   |
| Exhibit "D" - Company Resolution  | C  |   |
| Exhibit "E" - Local Access Agreement  | C  |   |

**D. Opinions of Counsel**

- |  |    |    |
|--|----|----|
| 1. Opinion of Barclay Damon, LLP, counsel to the Agency, addressed to the Company and the Agency | AC | AC |
| 2. Opinion of Carol Zenzel, counsel to the Company, addressed to the Agency and the Company.     | AC | CC |

**III. Action To Be Required Concurrently With Or After Closing**

Memorandum of Company Lease Agreement, Memorandum of Agency Lease Agreement, Mortgage [and Assignment of Leases and Rents] are to be filed with the Onondaga County Clerk and the UCC-1 Financing Statement(s) are to be filed as appropriate under the Uniform Commercial Code.

**IV. Post-Closing**

Scan copy of Local Access Agreement to SIDA.

**SCHEDULE "A"**

**PERSONS APPEARING**

For the Agency: City of Syracuse Industrial Development Agency  
William M. Ryan, Chairman

For the Company: 900 East Fayette Group, LLC  
Christopher Geiger, Managing Member

Company Counsel: Carol Zenzel, Esq.

For the Lender: Five Star Bank

Lender's counsel: Phillips Lytle, LLP  
Raymond Ruff, Esq.

Agency's Counsel: Barclay Damon LLP  
Susan R. Katzoff, Esq.