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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**SYRACUSE SOMA PROJECT LLC**

**TRANSCRIPT OF PROCEEDINGS**

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**CLOSING DATE: SEPTEMBER 30, 2015**

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**(AMOS BUILDING ADDITION PROJECT)**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**SYRACUSE SOMA PROJECT LLC**

**(AMOS BUILDING ADDITION PROJECT)**

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**1**

**SYRACUSE SOMA PROJECT LLC**

**AND**

**CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY**

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**AMENDED AND RESTATED COMPANY LEASE AGREEMENT**

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**DATED AS OF SEPTEMBER 1, 2015**

**(AMOS BUILDING ADDITION PROJECT)**

## AMENDED AND RESTATED COMPANY LEASE AGREEMENT

**THIS LEASE AGREEMENT** made and entered into as of September 1, 2015, amends and restates in its entirety, that certain lease agreement dated as of January 1, 2006 (as amended and restated hereby, the “*Company Lease*”), each by and between **SYRACUSE SOMA PROJECT LLC** (the “*Company*”), a limited liability company organized under the laws of the State of Delaware, and qualified to conduct business in the State of New York, with an office at 4 Clinton Square, Suite 102, Syracuse, New York 13202 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**, by resolution adopted on October 12, 2004 and November 15, 2005, the Agency agreed, at the request of the Company to undertake a project (the “*Original Project*”) consisting of: (1)(A) the Agency’s acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the “*Original Land*”), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the “*Original Facility*”), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the “*Original Equipment*” and, together with the Original Land and the Original Facility, the “*Original Project Facility*”) for use as a mixed use facility

consisting of street level retail, approximately 19 apartment units and parking; and (2) the lease of the Original Project Facility to the Company; and

**WHEREAS**, the Agency, by resolution adopted on June 16, 2015, agreed, at the request of the Company to undertake an expansion of the Original Project (the “**Project**”) consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “**Expanded Land**” and together with the Original Land the “**Land**”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “**Expanded Facility**” and together with the Original Facility, the “**Facility**”); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the “**Expanded Equipment**” and together with the Original Equipment, the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting and/or continuation 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 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 and/or continuation of 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**

### **DEFINITIONS**

#### **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 September 1, 2015, 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 the State of Delaware and qualified to do business in the State 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 Certificate of Formation 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  
333 West Washington Street, Suite 130  
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:

Syracuse Soma Project LLC  
4 Clinton Square, Suite 102  
Syracuse, New York 13202  
Attn: Mark Congel, Managing Member

With a copy to:

Shulman Grundner Etoll & Danaher, P.C.  
250 South Clinton Street, Suite 502  
Syracuse, New York 13202  
Stephen G. Etoll, Esq.

#### **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 Agency and the Company acknowledge and agree 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 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 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.

#### **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:

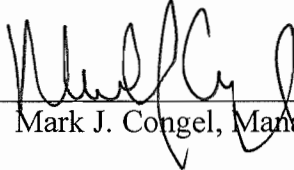
- 1) Terminate the Company Lease; or
- 2) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder.

#### **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.

**SYRACUSE SOMA PROJECT LLC**

By:  \_\_\_\_\_  
Mark J. Congel, Managing Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

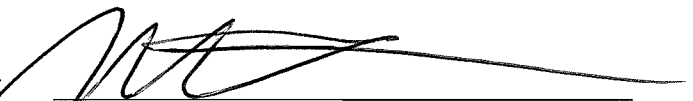
By: \_\_\_\_\_  
William M. Ryan, Chairman

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

**SYRACUSE SOMA PROJECT LLC**

By: \_\_\_\_\_  
Mark J. Congel, Managing Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

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

On the 29<sup>th</sup> day of September, 2015, before me, the undersigned, personally appeared **Mark J. Congel**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public  
STEPHEN G. ETOLL  
Notary Public, State of New York  
No. 02ET5024331  
Qualified in Onondaga County  
Commission Expires March 7, 2018

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

On the \_\_\_ day of September, 2015, 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.

---

Notary Public



## EXHIBIT A

### DESCRIPTION OF REAL PROPERTY

**ALL THAT TRACT OR PARCEL OF LAND** situate and being part of Lot 92 in the City of Syracuse according to a Map of the former Village of Syracuse, made by John Lathrup, City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

**BEGINNING** at a point being the northwesterly corner of said Block 92, said point also being the intersection of the east street line of South Franklin Street (66 feet wide) with the southerly street line of Erie Boulevard West (82.5 feet wide); thence,

1. South 89°31'18" East, along the southerly street line of Erie Boulevard West (82.5 feet wide), a distance of 461.39 feet to a point; thence,
2. South 00°03'30" West, along the westerly street line of South Clinton Street (66 feet wide), a distance of 53.88 feet to a point; thence,
3. North 89°40'10" West, along the northerly street line of West Water Street (80 feet wide), a distance of 461.41 feet to a point; thence,
4. North 00°05'00" East, along the easterly street line of South Franklin Street (66 feet wide), a distance of 55.07 feet to the POINT OF BEGINNING, containing approximately 0.577 acres of land.

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- Being "New Lot 1D" as shown on a Map dated September 9, 2013 entitled "Resubdivision Plat of Lots 1B and 1C of the Amos Block Subdivision Into New Lot 1D of the Amos Block Resubdivision, Block 92 of the Original Village of Syracuse, Known as 214 West Water Street" and filed in the Onondaga County Clerk's Office on March 17, 2015 as Map #11994.

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ONONDAGA COUNTY CLERK'S OFFICE  
 JACKIE NORFOLK - ACTING COUNTY CLERK  
 401 Montgomery St - Room 200  
 Syracuse, NY 13202

Phone: 315-435-2226  
 Fax: 315-435-3455

Doc Type: AMD/L  
 Grantor: SYRACUSE SOMA PROJECT LLC  
 CITY OF SYRACUSE INDUSTRIAL  
 Grantee: CITY OF SYRACUSE INDUSTRIAL  
 SYRACUSE SOMA PROJECT LLC  
 Legal Desc: SYR LOT 1D B92 RESUB S W

Receipt: 1242105 MM  
 Book/Page: 05343/0841 Inst: 34869  
 Date Filed: 10/02/2015 at 3:14PM  
 Updated: 10/05/2015 MO  
 Record and Return To:

SHULMAN GRUNDNER ETOLL  
 & DANAHER PC  
 250 S CLINTON ST STE 502  
 SYRACUSE NY 13202-1262

Prop Address: 204&208 W WATER ST

Submitted by: CHICAGO

Recording Fees		Miscellaneous Fees	
Addl pages:	5 x 5.00 = \$ 25.00	RMI:	\$ 20.00
Addl Names:	0 x 0.50 = \$ 0.00	TP 584:	\$ 5.00
Addl Refs:	0 x 0.50 = \$ 0.00	RP5217:	\$ 0.00
Misc:	0.00	AFFTS:	\$ 0.00
Basic:	\$25.50		
	=====		=====
<b>TOTAL:</b>	<b>\$50.50</b>	<b>TOTAL:</b>	<b>\$ 25.00</b>

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:		Consideration	\$0.00
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	3115
Net Add:	\$0.00	Map #:	104.-19-03.2/03.3
Misc:	\$0.00		=====
	=====	Total Paid	\$ 75.50
<b>TOTAL</b>	<b>\$0.00</b>	Control no	2483

WARNING - This sheet constitutes the Clerk's endorsement, required by Section 319 of the Real Property Law of the State of New York. Do not detach. Taxes imposed on this instrument at time of recording were paid. Certain information contained in this document is not verified by this office.

JACKIE NORFOLK  
 Onondaga County Clerk (Acting)

Book/Page 05343 / 0841 Instrument no.: 34869





CITY OF SYRACUSE  
3115

MEMORANDUM OF  
AMENDED AND RESTATED COMPANY LEASE AGREEMENT

*NAME AND ADDRESS OF LESSOR:* Syracuse Soma Project LLC  
4 Clinton Square, Suite 102  
Syracuse, New York 13202

*NAME AND ADDRESS OF LESSEE:* City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
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 September 1, 2015.

***TERM OF AMENDED AND RESTATED COMPANY LEASE AGREEMENT:***

The Project is leased for a term which shall commence as of September 1, 2015, and shall end on the expiration or earlier termination of the Agency Lease.

RR: 15675

4924/343 (02)

61

**IN WITNESS WHEREOF**, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of September, 2015.

**SYRACUSE SOMA PROJECT LLC**

By:  \_\_\_\_\_  
Mark J. Congel, Managing Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

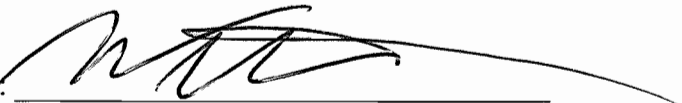
By: \_\_\_\_\_  
William M. Ryan, Chairman

**IN WITNESS WHEREOF**, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of September, 2015.

**SYRACUSE SOMA PROJECT LLC**


By: \_\_\_\_\_  
Mark J. Congel, Managing Member

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

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

On the 29<sup>th</sup> day of September, 2015, before me, the undersigned, personally appeared **Mark J. Congel**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

STEPHEN G. ETOLL  
Notary Public, State of New York  
No. 02ET5024331  
Qualified in Onondaga County  
Commission Expires March 7, 2018

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

On this \_\_\_\_\_ day of September, 2015, 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.

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

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

On the            day of September, 2015, before me, the undersigned, personally appeared **Mark J. Congel**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

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

On this 29<sup>th</sup> day of September, 2015, 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**

**ALL THAT TRACT OR PARCEL OF LAND** situate and being part of Lot 92 in the City of Syracuse according to a Map of the former Village of Syracuse, made by John Lathrup, City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

**BEGINNING** at a point being the northwesterly corner of said Block 92, said point also being the intersection of the east street line of South Franklin Street (66 feet wide) with the southerly street line of Erie Boulevard West (82.5 feet wide); thence,

1. South 89°31'18" East, along the southerly street line of Erie Boulevard West (82.5 feet wide), a distance of 461.39 feet to a point; thence,
2. South 00°03'30" West, along the westerly street line of South Clinton Street (66 feet wide), a distance of 53.88 feet to a point; thence,
3. North 89°40'10" West, along the northerly street line of West Water Street (80 feet wide), a distance of 461.41 feet to a point; thence,
4. North 00°05'00" East, along the easterly street line of South Franklin Street (66 feet wide), a distance of 55.07 feet to the POINT OF BEGINNING, containing approximately 0.577 acres of land.

Being "New Lot 1D" as shown on a Map dated September 9, 2013 entitled "Resubdivision Plat of Lots 1B and 1C of the Amos Block Subdivision Into New Lot 1D of the Amos Block Resubdivision, Block 92 of the Original Village of Syracuse, Known as 214 West Water Street" and filed in the Onondaga County Clerk's Office on March 17, 2015 as Map #11994.

SW



# 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**

Grantor/Transferor <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor) Syracuse SOMA Project LLC Mailing address 4 Clinton Square City State ZIP code Syracuse NY 13202 Single member's name if grantor is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 06-1718568 Single member EIN or SSN
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee) City of Syracuse Industrial Development Agency Mailing address 333 West Washington Street, Suite 130 City State ZIP code Syracuse NY 13202 Single member's name if grantee is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 52-1380308 Single member EIN or SSN

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
104.-19-03.3 104.-19-03.2		204 West Water Street 208 West Water Street	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 checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table border="1" style="display: inline-table; text-align: center;"> <tr> <td style="width: 30px;">09</td> <td style="width: 30px;">30</td> <td style="width: 30px;">2015</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	09	30	2015	month	day	year	Percentage of real property conveyed which is residential real property _____ 0 % (see instructions)
09	30	2015							
month	day	year							

Condition of conveyance (check all that apply)

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

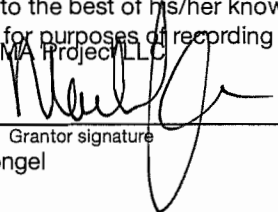
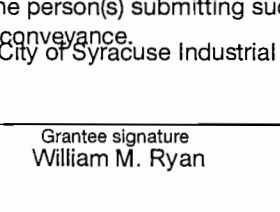
**Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation 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.

<p>Syracuse SOMA Project LLC                    Grantor signature                  Mark J. Congel</p>	<p>Managing Member                  Title</p>	<p>City of Syracuse Industrial Development Agency                    Grantee signature                  William M. Ryan</p>	<p>Chairman                  Title</p>
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 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)*

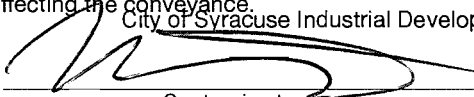
1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property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

_____ Grantor signature Mark J. Congel	_____ Managing Member Title	 _____ 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 \_\_\_\_\_ 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

**3**

**BILL OF SALE TO AGENCY**

**SYRACUSE SOMA PROJECT LLC**, a limited liability company organized under the laws of the State of Delaware, qualified to do business in the State of New York with an office to conduct business at 4 Clinton Square, Suite 102, Syracuse, New York 13202 (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 333 West Washington Street, Suite 130, 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 September 1, 2015 (the "**Agency Lease**"), and as listed on "**Exhibit A**" attached hereto.

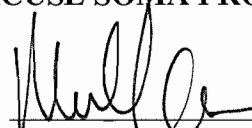
**TO HAVE AND HOLD** the same unto the Agency, its successors and assigns, forever.

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 September, 2015.

**SYRACUSE SOMA PROJECT LLC**

By:



Mark J. Congel, 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 **SYRACUSE SOMA PROJECT LLC** (the "**Company**") 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, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, freezers, rugs, movable partitions, cleaning equipment, maintenance equipment, restaurant supplies and equipment, shelving, racks, flagpoles, signs, waste containers, outdoor benches, 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.

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**SYRACUSE SOMA PROJECT LLC**

---

**AMENDED AND RESTATED AGENCY LEASE AGREEMENT**

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**DATED AS OF SEPTEMBER 1, 2015**

**(AMOS BUILDING ADDITION PROJECT)**



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## AMENDED AND RESTATED AGENCY LEASE AGREEMENT

**THIS LEASE AGREEMENT**, dated as of September 1, 2015, amends and restates in its entirety, that certain lease agreement dated as of January 1, 2006 (as amended and restated hereby, the "**Agency Lease**") each 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 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "**Agency**"), and **SYRACUSE SOMA PROJECT LLC**, a Delaware limited liability company, qualified to conduct business in the State of New York, having its office at 4 Clinton Square, Suite 102, Syracuse, New York 13202 (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**, by resolution adopted on October 12, 2004 and November 15, 2005, the Agency agreed, at the request of the Company to undertake a project (the "**Original Project**") consisting of: (1)(A) the Agency's acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the "**Original Land**"), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the "**Original Facility**"), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the "**Original Equipment**" and, together with the Original Land and the Original Facility, the "**Original Project Facility**") for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking; and (2) the lease of the Original Project Facility to the Company; and

**WHEREAS**, the Agency, by resolution adopted on June 16, 2015, agreed, at the request of the Company to undertake an expansion of the Original Project (the “**Project**”) consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “**Expanded Land**” and together with the Original Land the “**Land**”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “**Expanded Facility**” and together with the Original Facility, the “**Facility**”); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the “**Expanded Equipment**” and together with the Original Equipment, the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting and/or continuation 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 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 and equipping of the Project Facility and grant and/or continue 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 Amended and Restated Company Lease Agreement dated as of September 1, 2015(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 September 1, 2015 (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**

### **DEFINITIONS**

#### **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 Delaware and qualified to do business in the State, 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 Land and the Facility and shall remain the fee owner of the Land and Facility for the term of this Agency Lease unless otherwise consented to in writing by the Agency.

(d) Less than one-third of the Project will be used for retail sales as defined 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 Certificate of Formation 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 promote employment opportunities and help prevent economic deterioration in the City.

(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 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 and equipping of the Project Facility and has or will have such Approvals timely for each phase of, and throughout the, construction 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, including but not limited to the information required by Section 8.5 hereof.

(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, promptly 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 **\$264,000**. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount.

### **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 and equip the Project Facility, all in accordance with the Plans and Specifications. Unless a written waiver is first obtained from the Agency, the Company and its Additional Agents (as defined herein), shall utilize local labor, contractors and suppliers for the construction 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, Madison, Cayuga, Cortland and Oneida 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 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”**.

(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 and equip 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 and equipping 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 and equipping 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 and equipping 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 and equip the Project Facility. Completion of the acquisition, construction 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 pay in full all costs of the construction and equipping 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 and equipping 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 as 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 any existing Mortgages and for the costs of construction and equipping of the Project Facility, provided that:

(a) No Event of Default under this Agency Lease, the Company Lease, the PILOT 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 then applicable fee and the reasonable 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.

### **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: (i) June 30, 2028; 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.

(f) 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.

(g) Contemporaneously with the termination of this Agency Lease in accordance with this Section 5.2, 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 reasonable legal fees and costs associated therewith. Contemporaneously with the termination of this Agency Lease, the Company Lease and the PILOT Agreement shall terminate.

(h) The Agency shall, upon payment by the Company of the amounts pursuant to this Section 5.2 and Section 5.3 below, 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.



(i) 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 then 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 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 (or cause to be paid) 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 \$1,000,000 combined single limit 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 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 for coverage with respect to the Agency be primary and non-contributory 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. Certificates satisfactory in form and substance evidencing all insurance required hereby shall be delivered to the Agency before 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 a certificate dated not earlier than the immediately preceding January 1 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, the City and the Agency have entered into a PILOT Agreement with respect to payments in lie or real estate taxes.

**ARTICLE VII**

**DAMAGE, DESTRUCTION, AND CONDEMNATION**

**7.1 DAMAGE OR DESTRUCTION.**

(a) If a Mortgage shall be in effect or a Mortgagee shall have any interest in the Project Facility arising under or related to a 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 a 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 a Mortgage shall not be in effect and a 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 (such consent to be not unreasonably withheld), 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 a Mortgage shall not be in effect and a 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 then 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 then 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 then 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 then 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 a Mortgage shall be in effect or a Mortgagee shall have any interest in the Project Facility arising under or related to a 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.

(b) If a 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.

(c) If a 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 then 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 then 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 then payable under this Agency Lease, the Company Lease and other Agency Documents to the Agency shall be paid in full. If all amounts then 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.

(d) The Company and the Mortgagee, if any, 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 during normal business hours, 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

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<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.

any appeal therefrom unless the Agency or its members, officers, agents, or employees may be liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be reasonably 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 (which consent shall not be unreasonably withheld). 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 in accordance with applicable laws.

#### **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 where applicable 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<sup>2</sup>. However, for any Additional Agent that is so appointed, 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 that Additional Agents who have not been specifically appointed as agents of the Agency should use Form ST 120.1 for construction material purchases relative to the Project Facility. However, 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 sales and use tax exemption for purchases or rentals of construction equipment, tools and supplies that do not become part of the Project Facility and failure to so appoint will result in the loss of the exemption from State and local sales and use tax.

(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

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<sup>2</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 be specifically appointed as an agent of the Agency. Additional Agents who are specifically appointed as the Agency's agent must utilize Form ST-123 for all purchases as provided in §8.12(a). All other Additional Agents shall use Form ST-120.1 as provided in §8.12(c).

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 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 and use tax exemption to which the Company or the Project Facility was not entitled, which is in excess of the amount of the State and local Sales and Use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency and/or unrelated to the Project Facility; or (b) the full amount of such State and local sales and use tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as provided in the Agency Documents; (2) together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise. 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 (the “*Commissioner*”) to collect the State sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties and for the Agency to take, or cause to be taken, any and all action necessary to collect the local portion of the sales tax comprising the Recapture Amount.

### **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 reasonably 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(e); 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 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; or
- 3) Terminate the PILOT Agreement; or
- 4) 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, or the PILOT Agreement, and to enforce the Agency's right to terminate this Agency Lease, the Company Lease and the PILOT Agreement.

(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 or required to be given by the Agency in any other Agency Documents.

#### **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  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attn: Chairman

With a copy to:

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

(b) To the Company:

Syracuse Soma Project LLC  
4 Clinton Square, Suite 102  
Syracuse, New York 13202  
Attn: Mark J. Congel, Managing Member

With a copy to:

Shulman Grundner Etoll & Danaher, P.C.  
250 South Clinton Street, Suite 502  
Syracuse, New York 13202  
Stephen G. Etoll, 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.

#### **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 Sections 2.2 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 then 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.**

**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

**SYRACUSE SOMA PROJECT LLC**

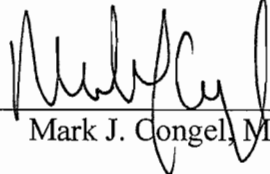
By: \_\_\_\_\_  
Mark J. Congel, Managing Member

**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

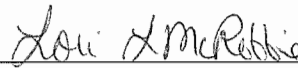
**SYRACUSE SOMA PROJECT LLC**

By:  \_\_\_\_\_  
Mark J. Congel, Managing Member



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

On the 29<sup>th</sup> day of September in the year 2015 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.



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 \_\_\_\_\_ day of September in the year 2015 before me, the undersigned, personally appeared **Mark J. Congel**, 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

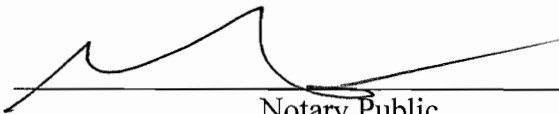
STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ONONDAGA )

On the            day of September in the year 2015 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.

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

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

On the 29<sup>th</sup> day of September in the year 2015 before me, the undersigned, personally appeared **Mark J. Congel**, 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  
STEPHEN G. ETOLL  
Notary Public, State of New York  
No. 02ET5024331  
Qualified in Onondaga County  
Commission Expires March 7, 2018

## EXHIBIT "A"

### REAL PROPERTY DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND** situate and being part of Lot 92 in the City of Syracuse according to a Map of the former Village of Syracuse, made by John Lathrup, City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

**BEGINNING** at a point being the northwesterly corner of said Block 92, said point also being the intersection of the east street line of South Franklin Street (66 feet wide) with the southerly street line of Erie Boulevard West (82.5 feet wide); thence,

1. South 89°31'18" East, along the southerly street line of Erie Boulevard West (82.5 feet wide), a distance of 461.39 feet to a point; thence,
2. South 00°03'30" West, along the westerly street line of South Clinton Street (66 feet wide), a distance of 53.88 feet to a point; thence,
3. North 89°40'10" West, along the northerly street line of West Water Street (80 feet wide), a distance of 461.41 feet to a point; thence,
4. North 00°05'00" East, along the easterly street line of South Franklin Street (66 feet wide), a distance of 55.07 feet to the POINT OF BEGINNING, containing approximately 0.577 acres of land.

Being "New Lot 1D" as shown on a Map dated September 9, 2013 entitled "Resubdivision Plat of Lots 1B and 1C of the Amos Block Subdivision Into New Lot 1D of the Amos Block Resubdivision, Block 92 of the Original Village of Syracuse, Known as 214 West Water Street" and filed in the Onondaga County Clerk's Office on March 17, 2015 as Map #11994.

## 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 **SYRACUSE SOMA PROJECT LLC** (the "*Company*") 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, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, freezers, rugs, movable partitions, cleaning equipment, maintenance equipment, restaurant supplies and equipment, shelving, racks, flagpoles, signs, waste containers, outdoor benches, 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 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 Amended and Restated Agency Lease Agreement dated as of September 1, 2015, 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 April 10, 2015, 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 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 September 1, 2015 in connection with the Equipment.

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

**Closing Date:** means September 30, 2015.

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

**Company:** means Syracuse Soma Project, LLC, a limited liability company, organized and existing under the laws of the State of Delaware and qualified to do business in the State of New York having an address at 4 Clinton Square, Suite 102, Syracuse, New York 13202, and its permitted successors and assigns.

**Company Documents:** means the Company Lease, the Agency Lease, 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 Amended and Restated Company Lease Agreement dated as of September 1, 2015 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 September 1, 2015 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 200-238 West Water Street and 204 and 208 West Water 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 constructing and/or equipping of the Project Facility or refinancing the Project.

**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 or refinancing 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 Amended and Restated Payment in Lieu of Taxes Agreement dated as of September 30, 2015 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 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 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 May 19, 2015 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(d), 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 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: \_\_\_\_\_

**EXHIBIT "E"**

**FORM OF ANNUAL REPORTING REQUIREMENTS**

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
333 West Washington Street, Suite 130, 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:

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\_\_\_\_\_  
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 **SYRACUSE SOMA PROJECT LLC** (the "**Company**"), with a mailing address of 4 Clinton Square, Suite 102, Syracuse, New York 13202 (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 resolution adopted on October 12, 2004 and November 15, 2005, the Agency agreed, at the request of the Company to undertake a project (the "**Original Project**") consisting of: (1)(A) the Agency's acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the "**Original Land**"), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the "**Original Facility**"), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the "**Original Equipment**" and, together with the Original Land and the Original Facility, the "**Original Project Facility**") for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking; and (2) the lease of the Original Project Facility to the Company; and

**WHEREAS**, the Agency, by resolution adopted on June 16, 2015 (the "**Resolution**"), agreed, at the request of the Company to undertake an expansion of the Original Project (the "**Project**") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the "**Expanded Land**" and together with the Original Land the "**Land**"); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the "**Expanded Facility**" and together with the Original Facility, the "**Facility**"); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the "**Expanded Equipment**" and together with the Original Equipment, the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting and/or continuation 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 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 Resolution and in the Amended and Restated Agency Lease Agreement by and between the Company and the Agency dated as of September 1, 2015 (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 Resolution and the Agency Lease.

**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 Resolution, the Agency Lease and Section 875(3) of the Act (as if such section were fully set forth herein) (collectively the “**Agency Documents**”). Without limiting the scope of the foregoing, the Sub-Agent acknowledges that pursuant to Section 875(3) of the Act and the Agency policies, the Agency shall recover, recapture, receive or otherwise obtain from the Sub-Agent the portion of the Financial Assistance (the “**Recapture Amount**”) consisting of: (1) (a) that portion of the State and local sales and use tax exemption claimed by the Sub-Agent to

which the Sub-Agent was not entitled, which is in excess of the amount of the State and local sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency and/or unrelated to the Project Facility; or (b) the full amount of such State and local sales and use tax exemption claimed by the Sub-Agent, if the Sub-Agent fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in the Company's application to the Agency in regard to the Project or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise.

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. The Sub-Agent 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 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: [FILL IN THE NAME OF THE PROJECT, THE STREET ADDRESS OF THE PROJECT SITE, AND IDA PROJECT NUMBER].

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. That the Sub-Agent shall complete the Local Access Agreement, a copy of which is attached hereto at **Exhibit "B"** and 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 the Local Access Agreement required in this Section, Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties. Failure to comply with the local labor requirements of this Section (j) (“**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: (A) 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-: (i) “All Risk” (excluding terrorism coverage if unavailable at commercially reasonable rates as determined by the Company) builder’s risk insurance, including collapse coverage and coverage for material in storage and while in transit, for one hundred percent (100%) of the insurable replacement value of the Project on a replacement cost basis on all materials, equipment and supplies which are to become a permanent part of the Project, while awaiting erection and until completion; (ii) worker’s compensation insurance including employer’s liability to provide statutory benefits as required by applicable Legal Requirements; (iii) commercial general liability insurance for hazard of operation, independent contractors, products and completed operations, such liability insurance to include broad form property damage and afford coverage for explosion, collapse and underground hazards and personal injury liability insurance, and contractual liability coverage for the Company’s indemnification obligations hereunder, all with limits of not less than Five Million Dollars (\$5,000,000) per occurrence on an “occurrence” basis and Ten Million Dollars (\$10,000,000) in the aggregate; and (iv) comprehensive automobile liability covering owned, non-owned and hired vehicles used in connection with the construction of the Project with limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage. The Company shall deliver to the Agency any policies (or certificates thereof) with respect to insurance required hereunder prior to the commencement of construction or related work on the Project, and shall deliver renewal policies (or certificates thereof) at least thirty (30) days before the expiration date of any policy maintained in connection with the Project. 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 all policies shall provide that the coverage with respect to the Agency be primary and non-contributory 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; and (B) 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.

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.

**SYRACUSE SOMA PROJECT LLC**

By: \_\_\_\_\_  
Mark J. Congel, Managing Member

[NAME OF SUB-AGENT]

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

**EXHIBIT "A"**  
**to Form of Sub-Agent Appointment 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

(2/14)

This certificate is not valid unless all entries have been completed.

**Note:** To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, for more information.

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 (use OSC 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/yy) .....	/	/
Enter the date that agent or project operator status ends (mm/dd/yy) .....	/	/

### 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 relationship)	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 1115(a)(15) and 1115(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-M-09(17)S, *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

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, 267, 306, 429, 475, 505, 697, 1095, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC §95(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) 457-5161.

### Need help?

	Visit our Web site at <a href="http://www.tax.ny.gov">www.tax.ny.gov</a>	
	• 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) 457-5431
	Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY)	(518) 485-5082

**EXHIBIT "B"**  
**to Form of Sub-Agent Appointment Agreement**

**LOCAL ACCESS AGREEMENT**



## Local Access Agreement

\_\_\_\_\_ (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.

<b>Company</b>				<b>General Contractor</b>							
<b>Representative for Contract Bids and Awards</b>				<b>Contact</b>							
<b>Address</b>				<b>Address</b>							
<b>City</b>		<b>ST</b>		<b>Zip</b>		<b>City</b>		<b>ST</b>		<b>Zip</b>	
<b>Phone</b>		<b>Fax</b>		<b>Phone</b>		<b>Fax</b>					
<b>Email</b>				<b>Email</b>							
<b>Project Address</b>				<b>Construction Start Date</b>							
<b>City</b>		<b>ST</b>		<b>Zip</b>		<b>Occupancy Date</b>					

**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:** \_\_\_\_\_ **Company:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Name:** \_\_\_\_\_

**5**

ONONDAGA COUNTY CLERK'S OFFICE  
 JACKIE NORFOLK - ACTING COUNTY CLERK  
 401 Montgomery St - Room 200  
 Syracuse, NY 13202

Phone: 315-435-2226  
 Fax: 315-435-3455

Doc Type: AMD/L  
 Grantor: SYRACUSE SOMA PROJECT LLC  
 CITY OF SYRACUSE INDUSTRIAL  
 Grantee: CITY OF SYRACUSE INDUSTRIAL  
 SYRACUSE SOMA PROJECT LLC  
 Legal Desc: SYR LOT 1D B92 RESUB S W

Receipt: 1242105 MM  
 Book/Page: 05343/0847 Inst: 34870  
 Date Filed: 10/02/2015 at 3:15PM  
 Updated: 10/05/2015 MO  
 Record and Return To:

SHULMAN GRUNDNER ETOLL  
 & DANAHER PC  
 250 S CLINTON ST STE 502  
 SYRACUSE NY 13202-1262

Prop Address: 204&208 W WATER ST

Submitted by: CHICAGO

Recording Fees		Miscellaneous Fees	
Addl pages:	5 x 5.00 = \$ 25.00	RMI:	\$ 20.00
Addl Names:	0 x 0.50 = \$ 0.00	TP 584:	\$ 5.00
Addl Refs:	0 x 0.50 = \$ 0.00	RP5217:	\$ 0.00
Misc:	0.00	AFFTS:	\$ 0.00
Basic:	\$25.50		
	=====		=====
<b>TOTAL:</b>	<b>\$50.50</b>	<b>TOTAL:</b>	<b>\$ 25.00</b>

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:		Consideration	\$0.00
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	3115
Net Add:	\$0.00	Map #:	104.-19-03.2/03.3
Misc:	\$0.00		=====
	=====	Total Paid	\$ 75.50
<b>TOTAL</b>	<b>\$0.00</b>	Control no	2484

**WARNING - This sheet constitutes the Clerk's endorsement, required by Section 319 of the Real Property Law of the State of New York. Do not detach. Taxes imposed on this instrument at time of recording were paid. Certain information contained in this document is not verified by this office.**

JACKIE NORFOLK  
 Onondaga County Clerk (Acting)

Book/Page 05343 / 0847 Instrument no.: 34870



D053430847

**MEMORANDUM OF  
AMENDED AND RESTATED AGENCY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

***NAME AND ADDRESS OF LESSEE:*** Syracuse Soma Project LLC  
4 Clinton Square, Suite 102  
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 AGENCY LEASE AGREEMENT:***

As of September 1, 2015

***TERM OF AMENDED AND RESTATED AGENCY LEASE AGREEMENT:***

The Agency Lease Agreement shall be in effect for a term commencing as of September 1, 2015 and terminating in accordance with Section 5.2 thereof.

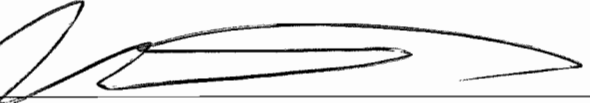
2

REC: 15675

4924/338 @

**IN WITNESS WHEREOF**, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of September, 2015.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**SYRACUSE SOMA PROJECT LLC**

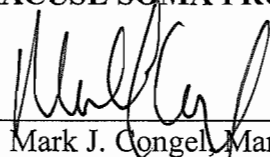
By: \_\_\_\_\_  
Mark J. Congel, Managing Member

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of September, 2015.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

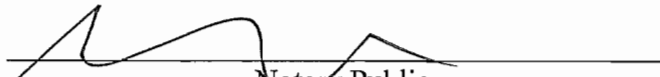
By: \_\_\_\_\_  
William M. Ryan, Chairman

**SYRACUSE SOMA PROJECT LLC**

By:  \_\_\_\_\_  
Mark J. Congel, Managing Member

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

On this 29<sup>th</sup> day of September, 2015, before me, the undersigned, personally appeared, **Mark J. Congel**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public  
STEPHEN G. ETOLL  
Notary Public, State of New York  
No. 02ET5024331  
Qualified in Onondaga County  
Commission Expires March 7, 2017

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

On this \_\_\_\_\_ day of September, 2015, 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.

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

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

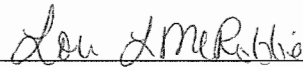
On this \_\_\_\_\_ day of September, 2015, before me, the undersigned, personally appeared, **Mark J. Congel**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public

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

On this 29<sup>th</sup> day of September, 2015, 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.



---

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

**ALL THAT TRACT OR PARCEL OF LAND** situate and being part of Lot 92 in the City of Syracuse according to a Map of the former Village of Syracuse, made by John Lathrup, City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

**BEGINNING** at a point being the northwesterly corner of said Block 92, said point also being the intersection of the east street line of South Franklin Street (66 feet wide) with the southerly street line of Erie Boulevard West (82.5 feet wide); thence,

1. South 89°31'18" East, along the southerly street line of Erie Boulevard West (82.5 feet wide), a distance of 461.39 feet to a point; thence,
2. South 00°03'30" West, along the westerly street line of South Clinton Street (66 feet wide), a distance of 53.88 feet to a point; thence,
3. North 89°40'10" West, along the northerly street line of West Water Street (80 feet wide), a distance of 461.41 feet to a point; thence,
4. North 00°05'00" East, along the easterly street line of South Franklin Street (66 feet wide), a distance of 55.07 feet to the POINT OF BEGINNING, containing approximately 0.577 acres of land.

SW  
Being "New Lot 1D" as shown on a Map dated September 9, 2013 entitled "Resubdivision Plat of Lots 1B and 1C of the Amos Block Subdivision Into New Lot 1D of the Amos Block Resubdivision, Block 92 of the Original Village of Syracuse, Known as 214 West Water Street" and filed in the Onondaga County Clerk's Office on March 17, 2015 as Map #11994.



# 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**

Grantor/Transferor <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor) City of Syracuse Industrial Development Agency Mailing address 333 West Washington Street, Suite 130 City: Syracuse State: NY ZIP code: 13202 Single member's name if grantor is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 52-1380308 Single member EIN or SSN
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee) Syracuse SOMA Project LLC Mailing address 4 Clinton Square City: Syracuse State: NY ZIP code: 13202 Single member's name if grantee is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 06-1718568 Single member EIN or SSN

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
104.-19-03.3		204 West Water Street	Syracuse	Onondaga
104.-19-03.2		208 West Water Street		

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 checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table style="border: 1px solid black; display: inline-table; text-align: center;"> <tr> <td style="width: 20px;">09</td> <td style="width: 20px;">30</td> <td style="width: 20px;">2015</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	09	30	2015	month	day	year	Percentage of real property conveyed which is residential real property _____ % (see instructions)
09	30	2015							
month	day	year							

Condition of conveyance (check all that apply)

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

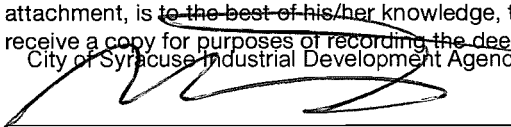
- 1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
- 2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real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

 _____ Grantor signature William M. Ryan	Chairman _____ Title	_____ Grantee signature Mark J. Congel	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 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)

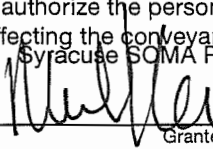
- 1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
- 2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real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

Grantor signature William M. Ryan	Chairman Title	 Grantee signature Mark J. Congel	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.

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**CERTIFICATION**

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Agency Lease Agreement by and between the parties dated as of September 1, 2015.

The undersigned, Mark J. Congel, Managing Member and authorized signatory of Syracuse Soma Project LLC (the “*Company*”), does hereby certify and confirm:

(1) that the Company has reviewed and understands the Agency’s Local Labor Policy which states as follows:

The Company understands and agrees that local labor and contractors will be used for the construction and equipping of the Project unless a written waiver is first received from the Agency. 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, Oneida, Onondaga 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 as of September 1, 2015

**SYRACUSE SOMA PROJECT LLC**

By:   
\_\_\_\_\_  
Mark J. Congel, Managing Member

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# INSURANCE BINDER

CSR: JC

DATE (MM/DD/YYYY)  
9/18/2015**THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.**

AGENCY  
Dominick Falcone Agency, Inc.  
901 Lodi Street  
Syracuse, NY 13203  
Michael J. LaValle

PHONE (A/C, No, Ext): 315-422-6128 FAX (A/C, No): 315-422-0015  
CODE: 810046 SUB CODE:  
AGENCY CUSTOMER ID: SYRSO-2

COMPANY BINDER # 4744  
Harleysville Ins Co of NY

DATE EFFECTIVE TIME DATE EXPIRATION TIME  
09/17/15 AM 11/17/15 NOON

THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY # UNASSIGNED

INSURED Syracuse SOMA Project LLC  
4 Clinton Square  
Syracuse NY 13202

DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)  
4 Story Addition being constructed at  
206-214 W Water Street, Syracuse, NY 13202

## COVERAGES LIMITS

TYPE OF INSURANCE	COVERAGE FORMS	DEDUCTIBLE	COINS %	AMOUNT
PROPERTY CAUSES OF LOSS BASIC <input type="checkbox"/> BROAD <input checked="" type="checkbox"/> SPEC <input checked="" type="checkbox"/> Replacement Cost	Builder's Risk Flood/Quake Equipment Breakdown Soft Costs	5000 25000 5000 5000	100 100 100 100	3300000 1000000 3300000 200000
GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP/ASG \$
AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ MEDICAL PAYMENTS \$ PERSONAL INJURY PROT \$ UNINSURED MOTORIST \$
AUTO PHYSICAL DAMAGE COLLISION OTHER THAN COL	ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES <input type="checkbox"/>			ACTUAL CASH VALUE \$ STATED AMOUNT \$ OTHER \$
GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EACH ACCIDENT \$ AGGREGATE \$
EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:			EACH OCCURRENCE \$ AGGREGATE \$ SELF-INSURED RETENTION \$
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY				WC STATUTORY LIMITS E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
SPECIAL CONDITIONS/ OTHER COVERAGES				FEES \$ TAXES \$ ESTIMATED TOTAL PREMIUM \$

## NAME & ADDRESS

Syracuse Industrial Development Agency  
333 W Washington Str Ste 130  
Syracuse NY 13202

MORTGAGEE  ADDITIONAL INSURED   
 LOSS PAYEE  
LOAN #

AUTHORIZED REPRESENTATIVE  
*Dominick Falcone III*



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/03/2015

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).

<b>PRODUCER</b> Dominick Falcone Agency, Inc. 901 Lodi Street Syracuse, NY 13203 Michael J. LaValle	<b>CONTACT NAME:</b> Michael J. LaValle <b>PHONE (A/C, Mo, Ext):</b> 315-422-6128 <b>FAX (A/C, No):</b> 315-422-0015 <b>E-MAIL ADDRESS:</b> mlavalle@falconeinsurance.com
<b>INSURED</b> Syracuse SOMA Project LLC 4 Clinton Square Syracuse, NY 13202	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Harleystville Ins Co of NY NAIC # 33235 <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

COVERAGES CERTIFICATE NUMBER: 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 type="checkbox"/> POLICY <input type="checkbox"/> PRO-JRCT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	X	BOP00000051454G	10/12/2014	10/12/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 100,000 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	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		BOP00000051454G	10/12/2014	10/12/2015	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED: <input checked="" type="checkbox"/> RETENTION \$ 10000		CMB00000036345L	10/12/2014	10/12/2015	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	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)

Syracuse Industrial Development Agency is listed as an additional insured for ongoing operations under the general liability policy as required by written contract.

## CERTIFICATE HOLDER

## CANCELLATION

SYRACIN

Syracuse Industrial  
 Development Agency  
 333 W Washington St Ste 130  
 Syracuse, NY 13202

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

*Dominick Falcone III*

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## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

**THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT** (the “*Agreement*”) is made as of the 1<sup>st</sup> day of September, between SYRACUSE SOMA PROJECT LLC (the “*Indemnitor*” or the “*Company*”), for the benefit of the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY (the “*Agency*”).

### RECITALS

**WHEREAS**, by resolution adopted on October 12, 2004 and November 15, 2005, the Agency previously agreed, at the request of the Indemnitor to undertake a project (the “*Original Project*”) consisting of: (1)(A) the Agency’s acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the “*Original Land*”), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the “*Original Facility*”), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the “*Original Equipment*” and, together with the Original Land and the Original Facility, the “*Original Project Facility*”) for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking; and (2) the lease of the Original Project Facility to the Company; and

**WHEREAS**, the Agency, by resolution adopted on June 16, 2015, agreed, at the request of the Indemnitor to undertake an expansion of the Original Project (the “*Project*”) consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “*Expanded Land*” and together with the Original Land the “*Land*”) (as more fully described on Schedule “A” hereto); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “*Expanded Facility*” and together with the Original Facility, the “*Facility*”); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the “*Expanded Equipment*” and together with the Original Equipment, the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting and/or continuation 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 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 Schedule of Definitions attached as Exhibit "C" to the Amended and Restated Agency Lease dated as of September 1, 2015 by and among the Agency and the Company (the "*Agency Lease*").

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  
333 West Washington Street, Suite 130  
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:

Syracuse Soma Project LLC  
4 Clinton Square, Suite 102  
Syracuse, New York 13202  
Attn: Mark J. Congel, Managing Member

With a copy to:

Shulman Grundner Etoll & Danaher, P.C.  
250 South Clinton Street, Suite 502  
Syracuse, New York 13202  
Stephen G. Etoll, 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]

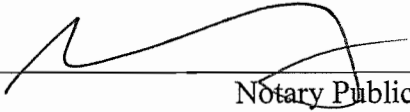
IN WITNESS WHEREOF, Indemnitor has executed this Agreement as of the date first above written.

**SYRACUSE SOMA PROJECT LLC**

By:   
Mark Congel, Managing Member

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

On the 29<sup>th</sup> day of September, in the year 2015 before me, the undersigned, a notary public in and for said state, personally appeared **Mark J. Congel**, 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

STEPHEN G. ETOLL  
Notary Public, State of New York  
No. 02ET5024331  
Qualified in Onondaga County  
Commission Expires March 7, 2018

## SCHEDULE "A"

### LEGAL DESCRIPTION

**ALL THAT TRACT OR PARCEL OF LAND** situate and being part of Lot 92 in the City of Syracuse according to a Map of the former Village of Syracuse, made by John Lathrup, City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

**BEGINNING** at a point being the northwesterly corner of said Block 92, said point also being the intersection of the east street line of South Franklin Street (66 feet wide) with the southerly street line of Erie Boulevard West (82.5 feet wide); thence,

1. South 89°31'18" East, along the southerly street line of Erie Boulevard West (82.5 feet wide), a distance of 461.39 feet to a point; thence,
2. South 00°03'30" West, along the westerly street line of South Clinton Street (66 feet wide), a distance of 53.88 feet to a point; thence,
3. North 89°40'10" West, along the northerly street line of West Water Street (80 feet wide), a distance of 461.41 feet to a point; thence,
4. North 00°05'00" East, along the easterly street line of South Franklin Street (66 feet wide), a distance of 55.07 feet to the POINT OF BEGINNING, containing approximately 0.577 acres of land.

Being "New Lot 1D" as shown on a Map dated September 9, 2013 entitled "Resubdivision Plat of Lots 1B and 1C of the Amos Block Subdivision Into New Lot 1D of the Amos Block Resubdivision, Block 92 of the Original Village of Syracuse, Known as 214 West Water Street" and filed in the Onondaga County Clerk's Office on March 17, 2015 as Map #11994.

**SCHEDULE "B"**

**EXCEPTIONS**

**NONE**

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## CLOSING RECEIPT

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION AMOS BUILDING ADDITION PROJECT (SYRACUSE SOMA PROJECT LLC)

**CLOSING RECEIPT** executed September 30, 2015 by the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**") and **SYRACUSE SOMA PROJECT LLC** (the "**Company**") in connection with a certain project (the "**Project**") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the "**Expanded Land**" and together with the Original Land the "**Land**"); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the "**Expanded Facility**" and together with the Original Facility, the "**Facility**"); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the "**Expanded Equipment**" and together with the Original Equipment, the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting and/or continuation 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 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 Original Land, the Original Facility and the Original Equipment (as referred to herein) were part of the Original Project Facility (as defined herein below) previously undertaken by the Agency consisting of: (1)(A) the Agency's acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the "**Original Land**"), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the "**Original Facility**"), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the "**Original Equipment**" and, together with the Original Land and the Original Facility, the "**Original Project Facility**") for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking.


#### 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.



**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**SYRACUSE SOMA PROJECT LLC**

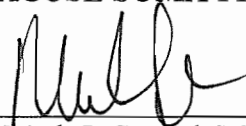
By: \_\_\_\_\_  
Mark J. Congel, Managing Member

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**SYRACUSE SOMA PROJECT LLC**

By:  \_\_\_\_\_  
Mark J. Congel, Managing Member

(Signature page to Closing Receipt)

**10**

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**City of Syracuse**  
**Industrial Development Agency**

333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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September 1, 2015

Syracuse Soma Project, LLC  
4 Clinton Square, Suite 102  
Syracuse, New York 13202  
Attn: Mark J. Congel, Managing Member

Re: City of Syracuse Industrial Development Agency  
Amos Building Addition Project (Syracuse Soma Project LLC)  
Sales Tax Appointment Letter

Dear Mr. Congel:

Previously, by resolutions adopted on October 12, 2004 and November 15, 2005, the City of Syracuse Industrial Development Agency (the “*Agency*”) agreed, at the request of the Syracuse Soma Project LLC (the “*Company*”) to undertake a project (the “*Original Project*”) consisting of: (1)(A) the Agency’s acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the “*Original Land*”), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the “*Original Facility*”), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the “*Original Equipment*” and, together with the Original Land and the Original Facility, the “*Original Project Facility*”) for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking; and (2) the lease of the Original Project Facility to the Company.

Thereafter, pursuant to a resolution duly adopted on June 16, 2015, the Agency agreed to appoint the Company the true and lawful agent of the Agency to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “*Expanded Land*” and together with the Original Land the “*Land*”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or

conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “*Expanded Facility*” and together with the Original Facility, the “*Facility*”); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the “*Expanded Equipment*” and together with the Original Equipment, the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting and/or continuation 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 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 \$264,000.**

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 and equipping 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 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 construction, improvement and equipping 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 construction, 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 construction, 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**"). However, if an Additional Agent is going to be purchasing or renting construction materials, equipment, tools and/or supplies that do not become part of the Project Facility, such Additional Agent must be specifically appointed by the Company in accordance and compliance with the terms of the Agency Lease ("**Appointed Additional Agents**"). Additional Agents who purchase construction materials, equipment and/or supplies that become part of the Project Facility need not be specifically appointed as an agent of the Agency. The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Appointed 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 Appointed 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 whether appointed or not 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.

The Company acknowledges and agrees, that pursuant to Section 875(3) of the Act and in connection with Agency policy, 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 and Use Tax exemption to which the Company, or its Additional Agents, was not entitled, which is in excess of the amount of the State and local Sales and Use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency or unrelated to the Project Facility; or (b) the full amount of such State and local Sales and Use Tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as provided in the Agency Documents; (2) together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise. 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 (the "**Commissioner**") to collect the State Sales and Use Taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties and for the Agency to take, or cause to be taken, any and all action necessary to collect the local portion of the sales tax comprising 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 Appointed 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)<sup>1</sup>.

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, 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) **March 31, 2017**, (ii) the issuance of a certificate of occupancy by the City; or (iii) the termination of the Agency Lease. You may apply to extend this agency authority by showing good cause.

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.

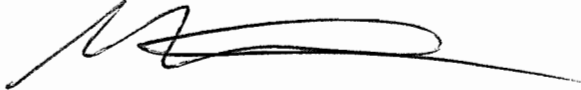
The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

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<sup>1</sup> Additional Agents who have not been specifically appointed as an agent of the Agency should use Form ST 120.1 for purchases or rentals of construction materials, equipment, tools and/or supplies that are affixed to or become part of the Project Facility.

Very truly yours

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

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



11

BARCLAY DAMON LLP

Susan R. Katzoff  
Partner

October 5, 2015

**VIA CERTIFIED MAIL**  
7012 3050 0002 1297 2072

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  
Syracuse SOMA Project LLC (Amos Building Addition Project)

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency (the "Agency"), please find a form ST-60 in connection with the appointment by the Agency of Syracuse SOMA Project LLC as its agent for sales tax purposes in connection with the IDA project identified above.

Please do not hesitate to contact me with any questions. Thank you.

Very truly yours,

7012 3050 0002 1297 2072

Sent To Street, Apt. No., or PO Box No. City, State, ZIP+4	Postage \$ Certified Fee Return Receipt Fee (Endorsement Required) Restricted Delivery Fee (Endorsement Required) Total Postage & Fees \$	<b>OFFICIAL USE</b> For delivery information visit our website at www.usps.com® <b>US Postal Service™</b> <b>CERTIFIED MAIL™ RECEIPT</b> (Domestic Mail Only. No Insurance Coverage Provided)	<b>RECIPIENT: COMPLETE THIS SECTION</b> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. 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. Article Addressed to: New York State Tax Department IDA Unit Building 8, Room 738 W.A. Harriman Campus Albany, New York 12227	<b>COMPLETE THIS SECTION ON DELIVERY</b> A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? <input type="checkbox"/> Yes If Yes, enter delivery address below. <input type="checkbox"/> No ALBANY, NY 12227 <b>SEP 07 2015</b>
	Postmark Here		Article Number (Transfer from service label) 7012 3050 0002 1297 2072	3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes



# 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) 31021507	
Street address 333 West Washington Street, Suite 130		Telephone number (315) 473-3275	
City Syracuse		State NY	ZIP code 13202
Name of IDA project operator or agent Syracuse SOMA Project LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or social security number 06-1718568
Street address 4 Clinton Square		Telephone number ( )	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
City Syracuse		State NY	ZIP code 13202
Name of project Amos Building Addition Project		Purpose of project (see instructions) other - commercial	
Street address of project site 204 and 208 West Water 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) 09/15/15	Date project operator or agent status ends (mm/dd/yy) 03/31/17	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: \$3,300,000	Estimated value of New York State and local sales and use tax exemption provided: \$264,000	

**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 9-29-15 Telephone number (315) 473-3275

## 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

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**CITY OF SYRACUSE**

**and**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY**

**and**

**SYRACUSE SOMA PROJECT LLC**

**AMMENDED AND RESTATED PAYMENT IN LIEU OF  
TAX AGREEMENT**

**Dated as of: September 1, 2015**

**Syracuse Soma Project LLC**

**Federal Tax ID #:06-1718568.**

**THIS AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT**, (the "*Agreement*") dated as of September 1, 2015, amends and restates in its entirety, that certain Payment in Lieu of Tax Agreement dated as of January 1, 2006 (the "Original PILOT Agreement") (and as amended and restated hereby, the "PILOT Agreement"), both the Original PILOT Agreement and the PILOT Agreement being by and among the **CITY OF SYRACUSE**, a municipal corporation of the State of New York, having an office at City Hall, Syracuse, New York 13202 (hereinafter referred to as the "*Municipality*"), 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 City Hall Commons, 333 West Washington Street, Suite 130, Syracuse, New York 13202, and **SYRACUSE SOMA PROJECT LLC**, a limited liability company organized under the laws of the State of Delaware with an office at c/o Granite Development Company, LLC, 4 Clinton Square, Suite 102, 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 other things, 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 Municipality and the inhabitants thereof; and

**WHEREAS**, by resolution adopted on October 12, 2004 and November 15, 2005, the Agency agreed, at the request of the Company to undertake a project (the "**Original Project**") consisting of: (1)(A) the Agency's acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the "**Original Land**"), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the "**Original Facility**"), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the "**Original Equipment**" and, together with the Original Land and the Original Facility, the "**Original Project Facility**") for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking; and (2) the lease of the Original Project Facility to the Company; and

**WHEREAS**, the Company executed and delivered an application to the Agency dated as of April 10, 2015 (the "Application") requesting certain benefits from the Agency including this PILOT Agreement; and

**WHEREAS**, the Application contained certain representations of the Company with regards to performance standards and project goals including if applicable job creation (the "Project Standards and Goals"); and

**WHEREAS**, the Agency, by resolution adopted on June 16, 2015, agreed, at the request of the Company to undertake an expansion of the Original Project (the "**Project**") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the

***“Expanded Land”*** and together with the Original Land the ***“Land”***); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the ***“Expanded Facility”*** and, together with the Original Facility, the ***“Facility”***); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the ***“Expanded Equipment”*** and, together with the Original Equipment, the ***“Equipment”*** and together with the Land and the Facility, the ***“Project Facility”***); (B) the granting and/or continuation 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 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 Project Facility from the Company pursuant to that certain Amended and Restated Company Lease Agreement dated as of September 1, 2015 (the ***“Company Lease Agreement”***), between the Company and the Agency, and sublease the Project Facility back to the Company pursuant to that certain Amended and Restated Agency Lease Agreement dated as of September 1, 2015 (the ***“Agency Lease Agreement”***), between the Agency and the Company (collectively the Company Lease Agreement and the Agency Lease Agreement are hereinafter 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

**WHEREAS**, the Company, to further induce the Agency to assist with the Project, has agreed with the Municipality and the Agency to enter into this Agreement; the Municipality’s



participation in this Agreement has been duly authorized by Ordinance No.563 of 2015, adopted by the Municipality's Common Council on June 22, 2015, and approved by Mayor Stephanie A. Miner on June 25, 2015.

**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 Municipality**

The Municipality does hereby represent, warrant and covenant as follows:

(a) Authorization. The Municipality has secured all approvals of appropriate officers, boards and bodies of the Municipality necessary to duly authorize the execution, delivery and performance of this Agreement by the Municipality and the performance by the Municipality of its obligations hereunder.

(b) Validity. The Municipality 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 the terms, conditions or provisions of any law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Municipality is a party or by which the Municipality is bound, and this Agreement is a legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

#### **Section 1.02. 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 1.03. Representations and Warranties by Company**

The Company does hereby represent and warrant as follows:

(a) Existence. The Company is a foreign Limited Liability Company duly organized and validly existing under the laws of the State of Delaware and is qualified to do business in the State of New York.

(b) Authorization. The Company is authorized and has the power 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 this Agreement and the consummation of the transactions 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) 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 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, by check made payable to "*Commissioner of Finance*". Upon receipt of the Company's payment, it shall be the Municipality's obligation to appropriately disburse any portion of the said payment to the County of Onondaga, 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 anything herein to the contrary, the year 1 payment due under this PILOT Agreement as calculated pursuant to Exhibit "A" shall commence on July 1, 2016. The Company shall continue making PILOT payments pursuant to the schedule attached to the Original PILOT Agreement through June 30, 2016. A copy of the Original PILOT Agreement was duly filed with the City of Syracuse Department of Assessment and is available to the Company upon request.

(b) Amount of Payments in Lieu of Taxes. Unless otherwise stated, and subject to section 2.02(a) above, 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 Facility, or any new or additional building shall be constructed on the real property described in Exhibit "B" that is in addition to the Facility (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 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 its 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 affected by revaluation, each year's payments subsequent to such revaluation shall be adjusted to properly reflect the 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. Obligation of Municipality**

The Municipality 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 said semi-annual statement shall be submitted to the Company at the same time that tax bills are mailed by the Municipality to the owners of privately owned property.

**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 timely 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 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 within thirty (30) days after written notice to the Company that it is due.

(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 and requesting that it be remedied.

(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 after notice from the Agency, any governmental unit or governmental agency; or if such failure cannot be cured within thirty (30) days, fails to commence a cure within thirty (30)

days after notice from the Agency, any governmental unit or governmental agency; 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 construction of the Expanded Facility within six months of the date of this Agreement.

(h) Failure of the Company to meet and continuously maintain its Project Standards and Goals as set forth in its Application throughout the term of the PILOT Agreement and a continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied.

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 the Project, as if the Project Facility was privately owned and assessed and without any further regard to Exhibit "A".

**Section 4.02. Remedies on Company Default**

Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e), 4.01 (f) or 4.01(g) shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Agreement, the Municipality or 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.

Whenever a Default under section 4.01(h) shall have occurred, and be continuing beyond any applicable cure period, the Agency at its discretion may impose penalties and sanctions upon

the Company in accordance with the terms of its Uniform Tax Exemption Policy (“UTEF”) in effect as of the date hereof, these penalties and sanctions may include but are not limited to, the termination of the PILOT Agreement and the recapture of all or part of the benefits received by the Company through and as a result of this PILOT Agreement.

**Section 4.03. Recording of Lease Terminations and Other Documents**

(a) Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e), 4.01 (f) or 4.01(g) 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, 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.

(b) 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 reasonably necessary to effectuate such termination by the Agency.

(c) 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 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 not the Agency. 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 that are either based upon Exhibit “A”, or if Exhibit “A” is no longer applicable for any reason, that are the equivalent of the real property taxes that would be due and owing if the Project Facility were privately owned.

**Section 4.04. Payment of Attorney's Fees and Expenses**

(a) 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.

(b) 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 or the Municipality 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 Municipality, 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) on June 30, 2028 . 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 tax bill 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 the Project 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 Municipality, 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 Municipality:  
City of Syracuse Office of the Mayor  
Attention: Mayor  
City Hall, Room 203  
233 East Washington Street  
Syracuse, New York 13202

With copy to:

City of Syracuse Department of Law  
Attention: Corporation Counsel  
City Hall, Room 300  
233 East Washington Street,  
Syracuse, New York 13202

- (b) To the Agency:  
City of Syracuse Industrial Development Agency  
Attention: Chairman  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

With copy to:

City of Syracuse Department of Law  
Attention: Corporation Counsel  
City Hall, Room 300  
233 East Washington Street  
Syracuse, New York 13202  
Attention: Corporation Counsel

- (c) To the Company:  
Syracuse Soma Project LLC  
c/o Granite Development Company, LLC  
4 Clinton Square, Suite 102  
Syracuse, New York 13202

With a copy to:  
Stephen G. Etoll, Esq.  
Shulman Grundner Etoll & Danaher, P.C.  
250 South Clinton Street, Suite 502  
Syracuse, New York 13202

The Municipality, 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 Municipality, Agency, and 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 Municipality and Agency.

**[No Further Text – Signature Pages Follow]**

**IN WITNESS WHEREOF**, the Municipality, Agency, and Company have caused this Agreement to be executed in their respective names on the date first above written.

**Attest**

By: *John P. Copanas*  
**John P. Copanas, City Clerk**

**CITY OF SYRACUSE**  
By: *Stephanie A. Miner*  
**Stephanie A. Miner, Mayor**

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

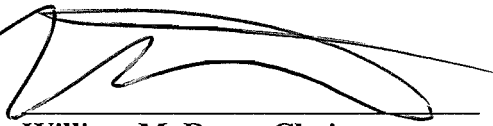
On this 28<sup>th</sup> day of September, 2015, before me personally came Stephanie A. Miner, Mayor of the City of Syracuse, with whom I am personally acquainted, who, being by me duly sworn, did depose and say: that she resides in the City of Syracuse, New York; that she is Mayor of the City of Syracuse, the corporation described in and which executed the within instrument; and that she signed said instrument as Mayor of said City of Syracuse by like authority.

**CHRISTINE ENRIGHT**  
Notary Public in the State of New York  
Qualified in Onondaga County  
No. 01EN5039029  
My Commission Expires 2/13/2019

*Christine E. Enright*  
Notary Public

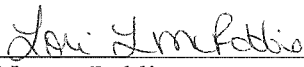


**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
**William M. Ryan, Chairman**

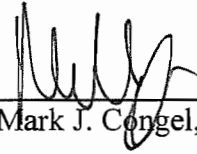
**STATE OF NEW YORK            )**  
**COUNTY OF ONONDAGA        ) ss:**

On the 29<sup>th</sup> day of September, 2015, 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

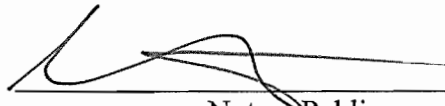
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No 01MC5055591  
Commission Expires on Feb. 12, 20 18

SYRACUSE SOMA PROJECT LLC

By:   
Mark J. Congel, Managing Member

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA       ) ss:

On the 29<sup>th</sup> day of September, in the year 2015, before me the undersigned, a notary public in and for said state, personally appeared Mark J. Congel, 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

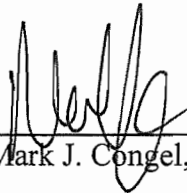
STEPHEN G. ETOLL  
Notary Public, State of New York  
No. 02ET5024331  
Qualified in Onondaga County  
Commission Expires March 7, 2017

**ACKNOWLEDGEMENT BY  
SYRACUSE SOMA PROJECT LLC**

SYRACUSE SOMA PROJECT 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 September 1, 2015.

**SYRACUSE SOMA PROJECT LLC**

By:   
Mark J. Congel, Managing Member

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA       ) ss:

On the 29<sup>th</sup> day of September, in the year 2015, before me the undersigned, a notary public in and for said state, personally appeared Mark J. Congel, 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

STEPHEN G. ETOLL  
Notary Public, State of New York  
No. 02ET5024331  
Qualified in Onondaga County  
Commission Expires March 7, 2018

**EXHIBIT "A"**  
**PILOT SCHEDULE**

SYRACUSE SOMA PROJECT LLC PILOT Schedule		
Year	Assessment	Payment
1	$\$1,896,000 \times \text{tax rate}^*$	-
2	$\$1,896,000 \times \text{tax rate}^*$	-
3	$\$1,896,000 \times \text{tax rate}^*$	-
4	$\$1,896,000 \times \text{tax rate}^*$	-
5	$\$1,896,000 \times \text{tax rate}^*$	-
6	$\$1,896,000 \times \text{tax rate}^*$	-
7	$\$1,896,000 \times \text{tax rate}^*$	-
8	$\$1,896,000 \times \text{tax rate}^*$	-
9	$((\text{full assessment} - \$1,896,000) \times .20) + \$1,896,000 \times \text{tax rate}$	-
10	$((\text{full assessment} - \$1,896,000) \times .40) + \$1,896,000 \times \text{tax rate}$	-
11	$((\text{full assessment} - \$1,896,000) \times .60) + \$1,896,000 \times \text{tax rate}$	-
12	$((\text{full assessment} - \$1,896,000) \times .80) + \$1,896,000 \times \text{tax rate}$	-

\*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 "B"**

### **LEGAL DESCRIPTION**

**ALL THAT TRACT OR PARCEL OF LAND** situate and being part of Lot 92 in the City of Syracuse according to a Map of the former Village of Syracuse, made by John Lathrup, City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

**BEGINNING** at a point being the northwesterly corner of said Block 92, said point also being the intersection of the east street line of South Franklin Street (66 feet wide) with the southerly street line of Erie Boulevard West (82.5 feet wide); thence,

1. South 89°31'18" East, along the southerly street line of Erie Boulevard West (82.5 feet wide), a distance of 461.39 feet to a point; thence,
2. South 00°03'30" West, along the westerly street line of South Clinton Street (66 feet wide), a distance of 53.88 feet to a point; thence,
3. North 89°40'10" West, along the northerly street line of West Water Street (80 feet wide), a distance of 461.41 feet to a point; thence,
4. North 00°05'00" East, along the easterly street line of South Franklin Street (66 feet wide), a distance of 55.07 feet to the POINT OF BEGINNING, containing approximately 0.577 acres of land.

Being "New Lot 1D" as shown on a Map dated September 9, 2013 entitled "Resubdivision Plat of Lots 1B & 1C of the Amos Block Subdivision Into New Lot 1D of the Amos Block Resubdivision, Block 92 of the Original Village of Syracuse, Known as 214 West Water Street" and filed in the Onondaga County Clerk's Office on March 17, 2015 as Map #11994.

13



**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 333 West Washington Street, Suite 130  
 City Syracuse  
 Telephone no. Day (315) 473-3275  
 Evening ( ) N/A  
 Contact Benjamin Walsh  
 Title Executive Director

**2. OCCUPANT (IF OTHER THAN IDA)**

(If more than one occupant attach separate listing)

Name Syracuse SOMA Project LLC  
 Street 4 Clinton Square, Suite 102  
 City Syracuse  
 Telephone no. Day ( 315) 423-9140  
 Evening ( ) N/A  
 Contact Mark J. Congel  
 Title Managing Member

RECEIVED  
OCT 06 2015  
DEPT. OF ASSESSMENT

**3. DESCRIPTION OF PARCEL**

- a. Assessment roll description (tax map no./roll year) 104.-19-03.4 / 2015
- b. Street address 214 West Water Street
- c. City, Town or Village Syracuse
- d. School District Syracuse
- e. County Onondaga
- f. Current assessment N/A
- g. Deed to IDA (date recorded; liber and page) N/A lease leaseback agreement

**4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)**

- a. Brief description (include property use) New construction of a four story mixed use addition containing approx. 24 apartments (flrs 2-4) and 6,321 sq. ft. of retail space on the ground floor.
- b. Type of construction Brick, Mortor, wood
- c. Square footage 27,310 in addition
- d. Total cost \$3,698,535.00
- e. Date construction commenced 10/2015
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) June 30, 2028

**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, 2028

c. Municipal corporations to which payments will be made

	Yes	No
County _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
School District _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>

d. Person or entity responsible for payment

Name Syracuse SOMA Project, LLC  
 Title \_\_\_\_\_  
 Address 4 Clinton Square, Suite 102  
Syracuse, NY

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.

Telephone 315 423 9140

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 PILOT assessment roll year 2006-present

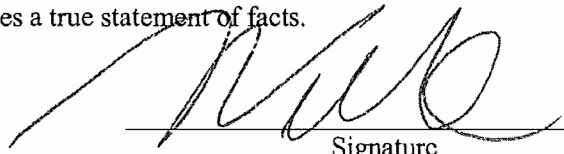
7. A copy of this application, including all attachments, has been mailed or delivered on 10/5/15 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

**CERTIFICATION**

I, William M. Ryan, Chair \_\_\_\_\_ 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.

10/6/15  
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 ad valorem levies for which the parcel is liable:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Assessor's signature



14

Ord. No. 563-2015

**City of Syracuse**

**CITY CLERK'S OFFICE**

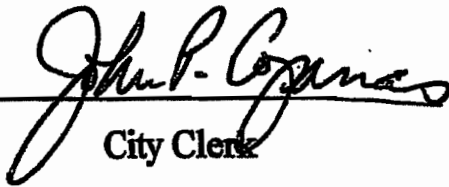
I, JOHN P. COPANAS, City Clerk of the City of Syracuse, New York do hereby certify that the attached is a true copy of an ORDINANCE:

Adopted by the Common Council on

June 22, 2015

Signed by the Mayor on

June 25, 2015

  
City Clerk

TO:

Mayor  
Assessment Commissioner  
Aviation Commissioner  
Board of Elections  
Bureau of Accounts  
Citizen Review Board  
City Auditor  
City School District  
Code Enforcement  
Neighborhood and Business Development  
Finance Commissioner  
Corporation Counsel  
United States Congressperson  
Governor of New York State  
New York State Senate  
New York State Assembly  
New York State Senator  
Onondaga County Legislature

Management & Budget Director  
Parks & Recreation Commissioner  
Personnel & Labor Relations Dir.  
Police Chief  
Public Works Commissioner  
Public Works/Bookkeeper  
Purchase Department  
Real Estate Division  
Research Director  
Water Department  
Zoning Administration  
United States Senator  
Department of Engineering  
Finance/Treasury  
Finance (Water Bureau)  
Fire Chief  
Grants Management Director  
Board of Education

Ordinance No. 563

2015

**ORDINANCE AMENDING ORDINANCE NO. 576  
OF 2004 AS LAST AMENDED BY ORDINANCE  
NO. 583-2005 AUTHORIZING AN AGREEMENT  
BETWEEN THE CITY OF SYRACUSE, THE  
CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY AND SYRACUSE  
SOMA PROJECT LLC, FOR ANNUAL  
PAYMENTS IN LIEU OF TAXES WITH  
RESPECT TO THE PROPERTY LOCATED AT  
204 WEST WATER STREET TO ERIE  
BOULEVARD WEST, SYRACUSE, NEW YORK  
AND 208 WEST WATER STREET TO ERIE  
BOULEVARD WEST, SYRACUSE, NEW YORK  
TO BE COMBINED INTO 214 WEST WATER  
STREET, SYRACUSE, NEW YORK**

BE IT ORDAINED, that Ordinance No. 576-2004 as last amended by Ordinance No. 583-2005 is hereby amended to read as follows:

BE IT ORDAINED, that Ordinance No. 576 of 2004 is hereby amended in its entirety to provide that the Mayor, on behalf of the City of Syracuse, be and he is hereby authorized to enter into a Payment in Lieu of Tax Agreement (the "*Agreement*") with the City of Syracuse Industrial Development Agency and Syracuse Soma Project LLC, for the property located at 204 West Water Street to Erie Boulevard West, Syracuse, New York and 208 West Water Street to Erie Boulevard West, Syracuse, New York to be combined into 214 West Water Street, Syracuse, New York, with payments under the Agreement to be made pursuant to the Amended and Restated PILOT Schedule attached hereto as Exhibit "B"; and

BE IT FURTHER ORDAINED, that such Agreement shall contain such terms and conditions as shall be determined by the Corporation Counsel to be in the best interest of the City of Syracuse and that payments made thereunder will be shared with Onondaga County in the same

proportion that real property tax revenues are shared.

\* \_\_\_\_\_ = new material

**EXHIBIT "B"**

<b>Syracuse Soma Project, LLC - Amended and Restated PILOT Schedule</b>		
<b>204 and 208 W. Water St. to Erie Blvd. W.</b>		
<b>Year</b>	<b>Assessment</b>	<b>Payment</b>
1	$\$1,896,000 \times \text{tax rate}^*$	-
2	$\$1,896,000 \times \text{tax rate}^*$	-
3	$\$1,896,000 \times \text{tax rate}^*$	-
4	$\$1,896,000 \times \text{tax rate}^*$	-
5	$\$1,896,000 \times \text{tax rate}^*$	-
6	$\$1,896,000 \times \text{tax rate}^*$	-
7	$\$1,896,000 \times \text{tax rate}^*$	-
8	$\$1,896,000 \times \text{tax rate}^*$	-
9	$((\text{full assessment} - \$1,896,000) \times .20) + \$1,896,000 \times \text{tax rate}$	-
10	$((\text{full assessment} - \$1,896,000) \times .40) + \$1,896,000 \times \text{tax rate}$	-
11	$((\text{full assessment} - \$1,896,000) \times .60) + \$1,896,000 \times \text{tax rate}$	-
12	$((\text{full assessment} - \$1,896,000) \times .80) + \$1,896,000 \times \text{tax rate}$	-

\*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

15

CHICAGO TITLE INSURANCE COMPANY

100 Madison Street, Suite 1910, Syracuse, NY 13202

Phone: 315-474-1273 Fax: 315-474-0109

Date: 10/6/15

To: NANCY

From: CASEY

RECORDING INFORMATION

Buyer's Name: SYRACUSE SOMA

Property Address: 204 & 208 W. WATER ST.

Recorded: 10/2/2015

Deed Book & Page: \_\_\_\_\_

**MODIFICATION**  
Mortgage Book & Page: 17857 / 819 @ 3:17pm

Consolidation Book & Page: \_\_\_\_\_

Assignment Book & Page: \_\_\_\_\_

Assigned To: \_\_\_\_\_

Assignment Rents & Leases: \_\_\_\_\_

Building Loan Agreement: \_\_\_\_\_

Notice of Lending: \_\_\_\_\_

UCC: \_\_\_\_\_

Other: AMENDED LEASES : 5343/841 @ 3:14 pm

Other: AMENDED LEASE : 5343/847 @ 3:15 pm

Other: \_\_\_\_\_

ONONDAGA COUNTY CLERK'S OFFICE  
 JACKIE NORFOLK - ACTING COUNTY CLERK  
 401 Montgomery St - Room 200  
 Syracuse, NY 13202

Phone: 315-435-2226  
 Fax: 315-435-3455

Doc Type: MOD  
 Mortgageor: SYRACUSE SOMA PROJECT LLC  
 CITY OF SYRACUSE INDUSTRIAL As  
 MIDFIRST BANK  
 Mortgagee:  
 Legal Desc: SYR LOT 1D B92 RESUB S W

Receipt: 1242105 MM  
 Book/Page: 17857/0819 Inst: 34873  
 Date Filed: 10/02/2015 at 3:17PM  
 Updated: 10/05/2015 MO  
 Record and Return To:

CHICAGO TITLE INS CO  
 ABSTRACTORS PICK UP BOX  
 COURTHOUSE

Prop Address:

Submitted by: CHICAGO

Recording Fees		Miscellaneous Fees	
Addl pages:	9 x 5.00 = \$ 45.00	RMI:	\$ 20.00
Addl Names:	0 x 0.50 = \$ 0.00	TP 584:	\$ 0.00
Addl Refs:	1 x 0.50 = \$ 0.50	RP5217:	\$ 0.00
Misc:	0.00	AFFTS:	\$ 5.00
Basic:	\$25.50		
=====		=====	
<b>TOTAL:</b>	<b>\$71.00</b>	<b>TOTAL:</b>	<b>\$ 25.00</b>

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:	\$3100000.00	Consideration	
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	
Net Add:	\$0.00	Map #:	
Misc:	\$0.00		
=====		Total Paid	\$ 96.00
<b>TOTAL</b>	<b>\$0.00</b>	Control no	DG8679

WARNING - This sheet constitutes the Clerk's endorsement, required by Section 319 of the Real Property Law of the State of New York. Do not detach. Taxes imposed on this instrument at time of recording were paid. Certain information contained in this document is not verified by this office.

JACKIE NORFOLK  
 Onondaga County Clerk (Acting)

Book/Page 17857 / 0819 Instrument no.: 34873



M178570819



ONONDAGA COUNTY

BASIC TAX \$  
ATG. INS. FID. TAX \$  
NET ADDITIONAL TAX \$  
TOTAL MTR. TAXES \$

4-06-08 08679TE

27043

**FIRST AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

**THIS FIRST AMENDMENT TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING** (hereinafter this "Agreement") is entered into this 4th day of September, 2015 by and among Syracuse Soma Project LLC, a Delaware limited liability company, having an address at 4 Clinton Square, Syracuse, New York 13202 ("**Borrower**"), the City of Syracuse Industrial Development Agency, a body corporate and politic and a public instrumentality of the State of New York, having a mailing address of 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "**Agency**") and MidFirst Bank, a federally chartered savings association, having an address at 501 NW Grand Boulevard, Oklahoma City, Oklahoma 73118 (together with its successors and/or assigns, "**Lender**").

**WITNESSETH:**

**WHEREAS**, Borrower executed a certain Promissory Note in favor of Lender, dated September 28, 2007 (the "**Note**"), in connection with a loan in the principal amount of Three Million One Hundred Thousand and 00/100 Dollars (\$3,100,000.00), which loan (hereinafter the "**Loan**") is secured by, among other things, a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated September 28, 2007, given by Borrower and the Agency in favor of Lender, recorded on October 3, 2007 in the Office of the Onondaga County Clerk in Book 15334 of Mortgages, Page 834 et seq. (the "**Security Instrument**"), encumbering certain property known as and located at The Amos Building at Clinton Square, 214 West Water Street, Syracuse, New York 13202, as more fully described in Exhibit A to the Security Instrument, attached hereto and incorporated herein (the "**Property**").

**WHEREAS**, contemporaneously with the execution of this Agreement, MJC Family Trust, a New York trust ("**Junior Lender**"), is making a loan to Mark J. Congel, an individual ("**Congel**"), in the aggregate principal amount of \$3,455,000.00, which indebtedness is evidenced by that certain Multiple Disbursement Construction Loan Note (the "**Junior Note**") made by Congel and payable to Junior Lender. "**Junior Loan Documents**" shall mean the Junior Note and any and all instruments, documents and agreements now or hereafter evidencing or securing the indebtedness set forth in the Junior Note.

**WHEREAS**, the Security Instrument prohibits Borrower from (i) removing, demolishing, or materially altering any of the Improvements (as such term is defined in the Security Instrument) to the Property or (ii) changing, modifying, or altering the existing access to the Property unless the prior written consent of Senior Lender is obtained.

**WHEREAS**, Lender is unwilling to consent to the Project (as such term is defined in Section 58 of the Security Instrument, as amended) unless Borrower executes this Agreement.

**WHEREAS**, the parties wish to modify and amend the Security Instrument for the purposes of: (i) adding a new Event of Default, (ii) deleting the existing Section 58, and (iii) inserting a new Section 58 in connection with the Project.

FIRST AMENDMENT TO MORTGAGE  
MIDFIRST BANK 179

MB 15334 pg 834

**NOW, THEREFORE,** for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Definitions.** All documents executed in connection with or to secure the Note, including the Security Instrument, that certain Limited Guaranty, dated September 28, 2007, and that certain Indemnity Agreement, dated September 28, 2007, are hereinafter referred to as the "Loan Documents." Unless specifically defined below, all defined terms contained herein shall have the meaning ascribed to them in the Loan Documents.

2. **Modification of Security Instrument.** The Security Instrument is hereby modified as follows:

(a) A new Section 18(r) is hereby inserted after existing Section 18(q) as follows:

(r) if Borrower fails to comply with any, or any part thereof, of the Required Actions (as defined in Section 58).

(b) Existing Section 58 "Release of Part of Mortgaged Property" is hereby deleted in its entirety.

(c) A new Section 58 is hereby inserted after existing Section 57 as follows:

58. **The Project.** Provided no Event of Default has occurred and is continuing, Borrower, or any of its directors, officers, employees, agents or representatives, may construct a four-story building in addition to the existing Improvements on a portion of the Mortgaged Property, which project is more particularly described in the drawings identified on Exhibit B-1 of that certain AIA Document A101-2007, dated August 10, 2015, by and among Mark J. Congel, an individual ("Congel"), and Rick Capozzi as owner of Burke Contracting LLC (the "Project"). The Project shall be completed in accordance with such plans and specifications as furnished by Borrower and approved by Lender (the "Plans"). In connection with the Project, Borrower shall comply with any and all of the following conditions (subsections (a) through (j) under this Section 58, collectively, the "Required Actions"):

(a) Borrower shall allow Lender, through the Inspector (as hereinafter defined) and Lender's officers, agents or employees, at all times, the right of entry and free access to the Mortgaged Property and the right to inspect all work done, labor performed and materials furnished or to be furnished in furtherance of the Project. Lender shall have the right to require that the work on the Project be stopped upon the occurrence of an Event of Default or event which with notice, the lapse of time or both would constitute an Event of Default. Lender shall be under no duty to examine, supervise or inspect the Plans or the Project. Any inspection or examination by Lender or the

Inspector is for the sole purpose of protecting Lender's liens and security interests and preserving its rights hereunder. No default or breach of Borrower will be waived by any inspection or examination by Lender or Inspector, nor shall any such inspections or examinations constitute a representation that there has been or will be compliance with the Plans or that the Project is free from defective materials or workmanship. The Inspector's services are for the sole benefit of Lender and Lender shall not be liable in any manner as a result of any inspection or examination. "Inspector" shall mean such person(s) or entity(ies) as Lender may designate from time to time to inspect the Project and perform other services with respect thereto on behalf of Lender:

(b) In the event there is any material change or material modification to the Plans, Borrower shall promptly notify Lender in writing;

(c) Borrower hereby agrees to defend, indemnify, protect and hold harmless Lender and its affiliates, directors, officers, employees, agents, successors and assigns, from and against any and all claims, losses, damages, liabilities, costs and expenses (including attorneys' fees and claims arising out of the loss of life, injury to persons, property or business) in connection with the Project;

(d) Borrower covenants and agrees that the Project shall be carried forward in a timely manner and shall be completed in a good and workmanlike manner, using new materials of first class quality or as otherwise specified in the Plans. Borrower shall cause the Project to be constructed in accordance with the Plans and all applicable zoning, building and other laws, statutes, codes, ordinances, rules and regulations, and all applicable agreements, covenants and restrictions;

(e) Borrower covenants and agrees to reimburse Lender promptly for all costs and expenses paid or incurred by Lender in connection with the Project, including the cost of title insurance premiums, charges and update fees, fees and expenses of Lender's attorneys, survey costs, appraisal costs, flood search costs, environmental consultant fees, all costs and expenses of the Inspector, lending fees, recording fees and taxes and all other expenses paid;

(f) Borrower covenants and agrees to obtain and keep in full force and effect such insurance as may be required by Lender from time to time;

(g) Borrower shall provide Lender with a title search of the Property on a quarterly basis confirming that no financing statement, mechanic's lien, materialmen's lien or other similar liens or encumbrances have been filed or

recorded:

(h) Upon request, Borrower shall provide Lender written updates identifying the status of the Project;

(i) Within five (5) days after receipt, Borrower or Congel shall deliver to Lender a copy of each and every AIA Form G702 and G703 made in connection with the Project; and

(j) Borrower shall provide Lender with a copy of a permanent certificate of occupancy promptly upon Borrower's receipt after completion of the Project.

3. **No Release or Novation.** This Agreement constitutes a modification of the Security Instrument and is not intended to and shall not extinguish any of the Debt, indebtedness or obligations of Borrower under the Note, the Security Instrument or any other document or instrument executed and delivered in connection therewith in such a manner as would constitute a release or novation of the original Debt, indebtedness or obligations of Borrower under the Note, the Security Instrument or any of such other documents or instruments, nor shall this Agreement affect or impair the priority of any liens created thereby, it being the intention of the parties hereto to preserve all liens and security interests securing payment of the Note, which liens and security interests are acknowledged by Borrower and Guarantors to be valid and subsisting against the Property and any other security or collateral for the Debt, indebtedness and obligations of Borrower.

4. **Borrower's Consent; Other Documents.** Borrower hereby consents to the covenants and conditions contained in this Agreement and agrees to be bound by the terms hereof and Borrower agrees to execute such documents as Lender may require to facilitate compliance with this Agreement and the conditions imposed hereby.

5. **Release.** Each of Borrower and Congel (hereinafter the "Borrower Parties") ratifies, reaffirms and acknowledges that the Loan Documents executed by each of the Borrower Parties represent its/his/her valid, enforceable and collectible obligations, and that none of the Borrower Parties has any claim, defense (personal or otherwise) or right of setoff with respect thereto. Each of the Borrower Parties hereby releases Lender and Lender's subsidiary and affiliated corporations and related corporate divisions, and all present and former officers, directors, shareholders, representatives, consultants, attorneys, employees and agents thereof, and their respective heirs, personal representatives, successors and assigns (collectively, the "Released Parties"), from any and all claims, liabilities, damages, actions and causes of action of every nature or character, known or unknown, direct or indirect, at law or in equity, for or because of any matter or thing done, omitted or suffered to be done by any of the Released Parties prior to and including the date of this Agreement, or that may hereafter arise with respect to acts or omissions occurring prior to such date, relating to the Loan Documents, the financing evidenced thereby and the administration of the Loan evidenced by the Loan Documents.

6. **Continuing Effect.** All terms and provisions of the Note, the Security Instrument and the Loan Documents shall remain in full force and effect, except to the extent that the Security Instrument is modified by

this Agreement. Borrower, Guarantors, the Agency and Lender hereby agree, ratify and confirm that except as provided herein, the Note, the Security Instrument and the Loan Documents have not been modified and that Borrower and Guarantors currently have no claim, defense or offset concerning the enforceability thereof.

7. **Agency Lease Agreement.** The terms of Section 57 of the Security Instrument are incorporated herein as if fully set forth herein, and Borrower acknowledges and reiterates the provisions and obligations of Borrower pursuant to Section 8.2 and 11.11 of that certain Agency Lease Agreement, dated January 1, 2006, between the Agency and Borrower, as if fully set forth herein and Borrower hereby agrees that such provisions shall be applicable to this Agreement.

8. **Amendments.** This Agreement may not be modified, altered, amended, changed, waived or terminated, except pursuant to a writing signed by all parties hereto.

9. **Entire Agreement.** This writing contains the entire agreement of the parties hereto, and no agreements, promises, covenants, representations or warranties have been made or relied upon by any of them other than those that are expressly herein set forth.

10. **Captions.** All paragraph headings used herein are included for convenience of reference purposes only and shall be accorded no consideration in the interpretation of the provisions, terms and conditions hereof.

11. **Severable Provisions.** If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

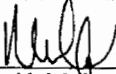
12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which when taken together shall constitute one agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have executed this Agreement or have caused the same to be executed by its representatives thereunto duly authorized.

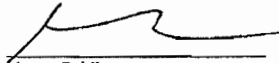
**BORROWER:**

Syracuse Soma Project LLC,  
a Delaware limited liability company

By:   
Name: Mark J. Congel  
Title: Manager

STATE OF NEW YORK            )  
  )  
COUNTY OF ONONDAGA        )

On the 29th day of September in the year 2015 before me, the undersigned, a Notary Public in and for said State, personally appeared Mark J. Congel, 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 s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individuals, or the person upon behalf of which the individual acted, executed the instrument.

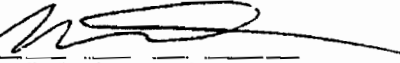
  
\_\_\_\_\_  
Notary Public

STEPHEN G. ETOLL  
Notary Public, State of New York  
No. 02ET5024331  
Qualified in Onondaga County  
Commission Expires March 7, 2018



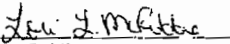
**AGENCY:**

City of Syracuse Industrial Development Agency

By:   
William M. Ryan, Chairman

STATE OF NEW YORK            )  
  )  
COUNTY OF ONONDAGA        )

On the 29<sup>th</sup> day of September in the year 2015 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 s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individuals, 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. 011425056691  
Commission Expires on Feb. 12, 20 18



EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

ALL THAT TRACT OR PARCEL OF LAND situate and being part of Lot 92 in the City of Syracuse according to a Map of the former Village of Syracuse, made by John Lathrup, City of Syracuse, County of Onondaga, State of New York and being more particularly described as follows:

BEGINNING at a point being the northwesterly corner of said Block 92, said point also being the intersection of the east street line of South Franklin Street (66 feet wide) with the southerly street line of Erie Boulevard West (82.5 feet wide); thence,

1. South 89°31'18" East, along the southerly street line of Erie Boulevard West (82.5 feet wide), a distance of 461.39 feet to a point; thence,
2. South 00°03'30" West, along the westerly street line of South Clinton Street (66 feet wide), a distance of 53.88 feet to a point; thence,
3. North 89°40'10" West, along the northerly street line of West Water Street (80 feet wide), a distance of 461.41 feet to a point; thence,
4. North 00°05'00" East, along the easterly street line of South Franklin Street (66 feet wide), a distance of 55.07 feet to the POINT OF BEGINNING, containing approximately 0.577 acres of land.

Being "New Lot 1D" as shown on a Map dated September 9, 2013 entitled "Resubdivision Plat of Lots 1B and 1C of the Amos Block Subdivision Into New Lot 1D of the Amos Block Resubdivision, Block 92 of the Original Village of Syracuse, Known as 214 West Water Street" and filed in the Onondaga County Clerk's Office on March 17, 2015 as Map #11994.

SW

**AFFIDAVIT  
UNDER SECTION 255 OF THE TAX LAW**

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

**STEPHEN G. ETOLL, ESQ.**, being duly sworn, deposes and says that:

1. He is the attorney for **SYRACUSE SOMA PROJECT LLC** (the "Borrower") which is the maker of the Mortgage and the Amendment (both as hereinafter defined) and, as such, he is familiar with the facts set forth herein.

2. Borrower and the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** ("SIDA") previously executed and delivered to **MIDFIRST BANK** ("Lender") that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated September 28, 2007 in the original principal amount of \$3,100,000.00 which was recorded on October 3, 2007 in the Onondaga County Clerk's Office in Book 15334 of Mortgages at page 834 (the "Mortgage"), upon which no mortgage tax was due by virtue of a Mortgage Tax Exemption pursuant to Article 18-A of the New York General Municipal Law.

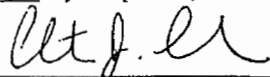
3. Borrower and SIDA are now executing with Lender that certain First Amendment to the Mortgage dated as of September 29, 2015 (the "Amendment") tendered herewith for recording which modifies the Mortgage.

4. The Amendment modifies certain terms of the Mortgage but does not create or secure any new or further indebtedness or obligation other than the principal indebtedness originally secured by the Mortgage, and no re-loans or re-advances have become secured under the Amendment.

5. Wherefore, deponent respectfully requests that recordation of the Amendment be declared exempt from taxation pursuant to the provisions of Section 255, Article 11 of the Tax Law of the State of New York.

  
\_\_\_\_\_  
**STEPHEN G. ETOLL, ESQ.**

Sworn to before me  
this 30<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
Notary Public My Commission Expires

**CHRISTIAN J. DANAHER**  
NOTARY PUBLIC, State of New York  
No. 02DA5075241  
Qualified in Onondaga County  
Commission Expires April 12, 2016

16

**AFFIDAVIT**  
**UNDER SECTION 255 OF THE TAX LAW**

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

**STEPHEN G. ETOLL, ESQ.**, being duly sworn, deposes and says that:

1. He is the attorney for **SYRACUSE SOMA PROJECT LLC** (the "Borrower") which is the maker of the Mortgage and the Amendment (both as hereinafter defined) and, as such, he is familiar with the facts set forth herein.

2. Borrower and the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** ("SIDA") previously executed and delivered to **MIDFIRST BANK** ("Lender") that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated September 28, 2007 in the original principal amount of \$3,100,000.00 which was recorded on October 3, 2007 in the Onondaga County Clerk's Office in Book 15334 of Mortgages at page 834 (the "Mortgage"), upon which no mortgage tax was due by virtue of a Mortgage Tax Exemption pursuant to Article 18-A of the New York General Municipal Law.

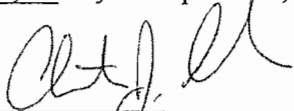
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5. Wherefore, deponent respectfully requests that recordation of the Amendment be declared exempt from taxation pursuant to the provisions of Section 255, Article 11 of the Tax Law of the State of New York.

  
\_\_\_\_\_  
**STEPHEN G. ETOLL, ESQ.**

Sworn to before me  
this 30<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
Notary Public My Commission Expires

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**CHRISTIAN J. DANAHER**  
**NOTARY PUBLIC, State of New York**  
**No. 02DA5075241**  
**Qualified in Onondaga County**  
**Commission Expires April 12, 2016**

17

**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 Company Lease, the Agency Lease 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 **SYRACUSE SOMA PROJECT LLC** (the “*Company*”) consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “*Expanded Land*” and together with the Original Land the “*Land*”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “*Expanded Facility*” and together with the Original Facility, the “*Facility*”); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the “*Expanded Equipment*” and together with the Original Equipment, the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting and/or continuation 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 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 Original Land, the Original Facility and the Original Equipment (as referred to herein) were part of the Original Project Facility (as defined herein below) previously undertaken by the Agency consisting of: (1)(A) the Agency’s acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the “*Original Land*”), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the “*Original Facility*”), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the “*Original Equipment*” and, together with the Original Land and the Original Facility, the “*Original Project Facility*”) for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Amended and Restated Agency Lease Agreement dated as of September 1, 2015 (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
Pamela Hunter	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 April 21, 2015 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 May 19, 2015, 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 May 6, 2015.

9. That a resolution consenting to the City of Syracuse Planning Commission acting as Lead Agency for purposes of a coordinated review pursuant to SEQRA (the “**Lead Agency Resolution**”) was adopted by the Agency on May 19, 2015 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Lead Agency 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 June 16, 2015 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. Attached hereto as **Exhibit “H”** is proof of mailing of notice to the chief executive officers of the affected tax jurisdictions of the meeting at which the Agency considered the request of the Company for a schedule of payments in lieu of real property taxes which deviates from the Issuer’s Uniform Tax Exemption Policy (“**UTEF**”) pursuant to Section 874(4) of the Act.



12. 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 (the “*PILOT Resolution*”) was adopted by the Agency on June 16, 2015 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the PILOT Resolution is attached hereto at **Exhibit “I.”**

13. 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 June 16, 2015 (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 “J”**.

14. 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.

15. 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.

16. 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.

17. 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.

18. September 30, 2015 has been duly designated as the date for the Closing.

19. 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.

20. In accordance with the Act, the Agency has determined:

(a) to assist the Company's acquisition, construction and equipping 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 and equipping of the Project Facility and to authorize the Company to appoint additional agents; and

(d) to assign its interest in the Company Lease and the Agency Lease (except the Agency's Unassigned Rights) to the Mortgagee(s) and grant the Mortgagee(s) a security interest in the Agency's leasehold interest in the Project Facility.

21. 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.

22. 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 Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

(b) an Agency Lease from the Agency to the Company pursuant to which the Agency agrees to sublease the Project Facility to the Company; and

(c) the Mortgage pursuant to which the Mortgagee has been granted a security interest in the Project Facility..

23. 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;

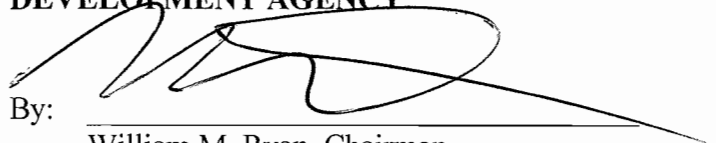
(b) is a partner, director or employee of the Company;

(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.

**WITNESS**, as of the 30<sup>th</sup> day of September, 2015.

**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

*Bill Paterano*

Secretary of State

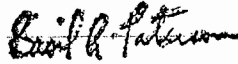
The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract, the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979

  
Lee Alexander  
Mayor

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

  
Secretary of State



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CITY OF SYRACUSE  
DEPARTMENT OF LAW



OFFICE OF THE MAYOR

**Stephanie A. Miner, Mayor**

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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 and officer of the City of Syracuse Industrial Development Agency:

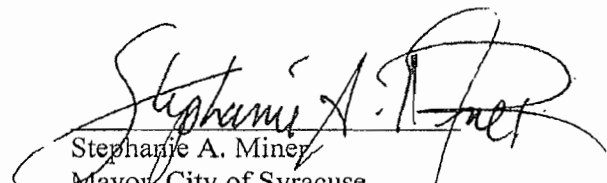
Mr. William Ryan - Member/Chairman

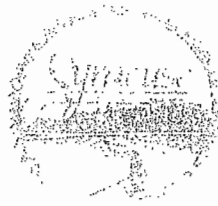
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

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



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OFFICE OF THE MAYOR

DEPARTMENT OF STATE

Stephanie A. Miner

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

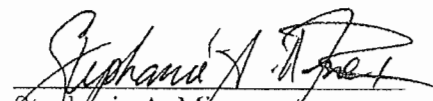
Pursuant to Article 18-A of the General Municipal Law of the State of New York,  
Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of  
the following person as a ~~Member~~ <sup>AN OFFICER</sup> of the City of Syracuse Industrial Development  
Agency:

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

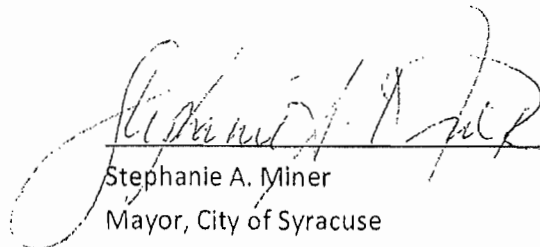
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

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:

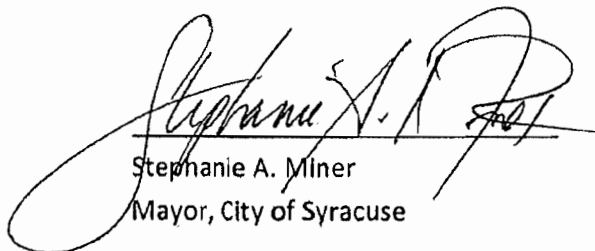
Mr. Steve Thompson - Member/Secretary

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

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CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

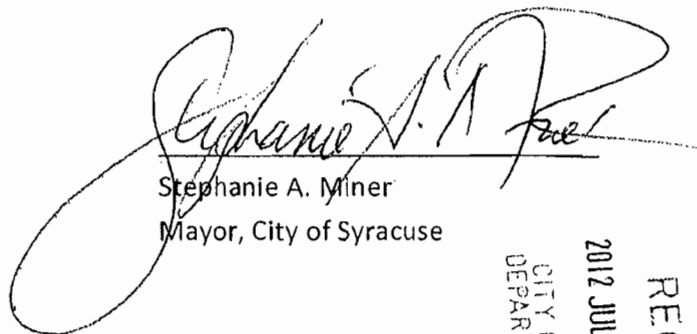
Pursuant to Article 18-A of the General Municipal Law of the State of New York, Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a Member of the City of Syracuse Industrial Development Agency:

Ms. Pamela J. 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 July 5, 2012.



Stephanie A. Miner  
Mayor, City of Syracuse

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DEPARTMENT OF LAW

**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 (l) (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 April 21, 2015, 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 M. Catherine Richardson and, upon roll being called, the following members of the Agency were:

**PRESENT:** Catherine Richardson, Esq., Donald Schoenwald, Esq., Pamela Hunter, Steven Thompson

**EXCUSED:** William Ryan

**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: Aggie Lane, Barry Lentz, Mark McNamara, Eric Glynn

The following resolution was offered by Donald Schoenwald and seconded by Pamela Hunter:

**RESOLUTION DETERMINING THAT THE ACQUISITION, CONSTRUCTION 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 April 10, 2015 (the "*Application*"), Syracuse SOMA Project LLC, or an entity to be formed, (the "*Company*"), requested the Agency undertake a project (the "*Project*") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in

the City of Syracuse, New York (the “*Land*”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in the 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 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>
Catherine Richardson	X	
Donald Schoenwald	X	
Pamela Hunter	X	
Steven Thompson	X	

The foregoing Resolution was thereupon declared duly adopted.

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

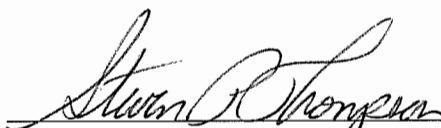
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on April 21, 2015, with the original thereof on 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 day of June, 2015.

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 19<sup>th</sup> day of May, 2015, 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:

Syracuse SOMA Project LLC, or an entity to be formed (the "Company"), has requested that the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the "Land"); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the exiting approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the "Facility"); (iii) the acquisition and installation in the 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 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: May 6, 2015

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY



HISCOCK & BARCLAY <sup>LLP</sup>

Susan R. Katzoff  
Partner

May 6, 2015

VIA CERTIFIED MAIL  
7012 3050 0002 1297 2027

Honorable Stephanie A. Miner  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

VIA CERTIFIED MAIL  
7012 3050 0002 1297 2010

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*")  
Syracuse SOMA Project LLC (the "*Company*")  
Amos Building Addition 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 or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the "*Land*"); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the "*Facility*"); (iii) the acquisition and installation in the 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

One Park Place – 300 South State Street – Syracuse, New York 13202 hblaw.com  
skatzoff@hblaw.com Direct: 315.425.2880 Fax: 315.425.8597

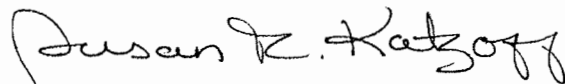
Honorable Stephanie A. Miner  
Honorable Joanne M. Mahoney  
May 6, 2015  
Page 3

designee as an agent of the Agency in connection with the acquisition, construction 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 **May 19, 2015** at 8:30 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 19<sup>th</sup> day of May, 2015, 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:

Syracuse SOMA Project LLC, or an entity to be formed (the "Company"), has requested that the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the "Land"); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the exiting approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the "Facility"); (iii) the acquisition and installation in the 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 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: May 6, 2015

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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

2. Article Number  
(Transfer from service label) 7012 3050 0002 1297 2027

PS Form 3811, July 2013 Domestic Return Receipt

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
*[Signature]*

B. Received by (Printed Name) Stephanie A. Miner C. Date of Delivery 5/8/16

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail®  Priority Mail Express™  
 Registered  Return Receipt for Merchandise  
 Insured Mail  Collect on Delivery

4. Restricted Delivery? (Extra Fee)  Yes

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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

2. Article Number  
(Transfer from service label) 7012 3050 0002 1297 2010

PS Form 3811, February 2004 Domestic Return Receipt

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
*[Signature]*

B. Received by (Printed Name) Joanne M. Mahoney C. Date of Delivery 8/20/15

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

7012 3050 0002 1297 2010

7012 3050 0002 1297 2027

**U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only - No Insurance Coverage Provided)

**OFFICIAL USE**

For delivery information visit our website at [www.usps.com](http://www.usps.com)

PS Form 3800, August 2006 See Reverse for Instructions

Sent To: Mayor  
Street, Apt. No., or PO Box No.  
City, State, ZIP+4

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark Here

Sent To: County Executive  
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

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HISCOCK & BARCLAY LLP  
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ONE PARK PL  
300 S STATE ST  
SYRACUSE, NY 13202-2078

Name: HISCOCK & BARCLAY LLP

Sales Rep: Pamela Gallagher

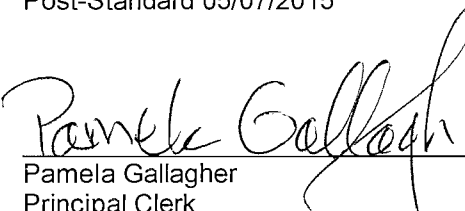
Account Number:0002941

INV#: 0000559987

Date	Position	Description	P.O. Number	Ad Size
05/07/2015	Other Legals	NOTICE OF PUBLIC HEARING NOTICE IS HEREB	billing matter #30750	1 x 126.00 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 05/07/2015

  
\_\_\_\_\_  
Pamela Gallagher  
Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 7th day of May 2015

  
\_\_\_\_\_  
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: 10/7/2017

Date	Position	Description	P.O. Number	Ad Size
05/07/2015	Other Legals	NOTICE OF PUBLIC HEARING NOTICE IS HEREB	billing matter #3075(	1 x 126.00 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 19th day of May, 2015, 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: Syracuse SOMA Project LLC, or an entity to be formed (the "Company"), has requested that the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the "Land"); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the "Facility"); (iii) the acquisition and installation in the 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 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: May 6, 2015 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**EXHIBIT "F"**

**LEAD AGENCY RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on May 19, 2015, 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 M. Catherine Richardson and, upon roll being called, the following members of the Agency were:

**PRESENT:** M. Catherine Richardson, Donald Schoenwald, Steven Thompson

**EXCUSED:** William Ryan, Pamela Hunter

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: Aggie Lane, Barry Lentz, Eric Glynn, Steve Etoll, Mr. King, Wayne, Rich Puchalski, David Pittman

The following resolution was offered by Donald Schoenwald and seconded by Steven Thompson:

### **RESOLUTION CONSENTING TO THE CITY OF SYRACUSE PLANNING COMMISSION ACTING AS LEAD AGENCY FOR PURPOSES OF A COORDINATED REVIEW PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT**

**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 April 10, 2015 (the "**Application**"), Syracuse SOMA Project LLC, or an entity to be formed, (the "**Company**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition or continuation of an interest in



approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the exiting approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in the 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 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 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 the Project constitutes such an action; and

**WHEREAS**, by resolution dated April 21, 2015, the Agency adopted a resolution classifying the Project as a Type 1 action under SEQRA and declaring its intent to act as lead agency for the purpose of conducting a coordinated environmental review under SEQRA; and

**WHEREAS**, the Agency was subsequently notified by letter dated April 28, 2015 of the City of Syracuse Planning Commission’s desire to act as lead agency concerning the Project; and

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

(1) The City of Syracuse Planning Commission is fully familiar with the facts and circumstances surrounding the Project; and

(2) The City of Syracuse Planning Commission is capable of conducting a thorough environmental review of the Project under SEQRA; and

(3) The Agency hereby rescinds its intent to act as lead agency under SEQRA and consents to the City of Syracuse Planning Commission serving in that role for the purpose of conducting a coordinated review of the Project pursuant to SEQRA; and

(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.

(5) This Resolution shall take effect immediately.

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>
M. Catherine Richardson	X	
Donald Schoenwald	X	
Steven Thompson	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 May 19, 2015, 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 day of June, 2015.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "G"**

**INDUCEMENT RESOLUTION**

## INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on June 16, 2015 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, Steven Thompson, Donald Schoenwald, Esq, M. Catherine Richardson, Esq., Pamela Hunter

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** **Staff Present:** Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq, Sue Katzoff, Esq.; **Others Present:** Richard Engel, Esq., Barry Lentz, Aggie Lane, Mike Wicker, Jim Leana, Edward Riley, James Trasher, Mark Congel

The following resolution was offered by Donald Schoenwald and seconded by Pamela Hunter:

**RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN 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**

**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**, by application dated April 10, 2015 (the “*Application*”), Syracuse SOMA Project LLC, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “*Land*”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in the 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 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 April 21, 2015, 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 May 19, 2015 pursuant to Section 859-a of the Act, notice of which was published on May 7, 2015 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 letter dated May 6, 2015; 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**, the City of Syracuse Planning Commission acted as lead agency for the purpose of conducting a coordinated environmental review of the Project under SEQRA, 6 NYCRR Part 617, and determined that the Project will not result in any significant adverse impacts on the environment and issued negative declarations dated June 8, 2015; 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 creating and/or preserving permanent, private sector jobs and 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:

**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) The Project constitutes a “*project*” within the meaning of the Act;

(B) The Planning Commission undertook a coordinated environmental review of the Project under SEQRA and determined that the project will not result in any significant adverse impacts on the environment and issued negative declarations dated June 8, 2015 and

(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 and equip the Project Facility in the City of Syracuse, and will serve the purposes of the Act by, among other things, preserving and/or creating permanent private sector jobs, the general prosperity 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 Section 4.02 of 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), or the Lease Documents 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 Company, 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 **\$264,000**.

**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 agents and subagents (collectively, “**Additional Agents**”) to proceed with the construction 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

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<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 be specifically appointed as an agent of the Agency.



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.

**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 Secretary of the Agency is 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.

**Section 9.** 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 10.** 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 11.** 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 12.** 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 13.** The Secretary of the Agency is 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 14.** 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:

	<b><u>AYE</u></b>	<b><u>NAY</u></b>
William Ryan	X	
Steven Thompson	X	
Donald Schoenwald, Esq.	X	
Catherine Richardson, Esq.	X	
Pamela Hunter	X	

The foregoing Resolution was thereupon declared duly adopted.



## 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 "), **SYRACUSE SOMA PROJECT LLC** (the "**Company**"), with a mailing address of 4 Clinton Square, Syracuse, New York 13202.

**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 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. By application dated April 10, 2015, Syracuse SOMA Project LLC, or an entity to be formed (the "**Company**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in the 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 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 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 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 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 June 16, 2015, 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 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 **\$264,000**.

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 and equipping the Project Facility, entering into contracts and doing all things requisite and proper for construction 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 the Company as the

Agency's agent for constructing 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 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 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 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 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 "*SEQRA*"), 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 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 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 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 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, Madison, Cayuga, Cortland and Oneida 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 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 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

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<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 be specifically appointed as an agent of the Agency.



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 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 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 **June 16, 2016**, 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 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.

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the 16<sup>th</sup> day of June, 2015.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**SYRACUSE SOMA PROJECT LLC**

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

**EXHIBIT “H”**

**DEVIATION NOTICE**

**BARCLAY DAMON** <sup>LLP</sup>

**Susan R. Katzoff**  
*Partner*

June 10, 2015

**VIA HAND DELIVERY**

Honorable Stephanie A. Miner  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

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  
Expansion of Amos Building (Syracuse Soma Project LLC)

Dear Mayor and County Executive:

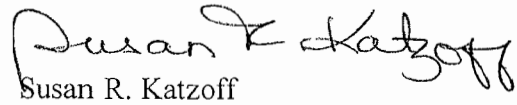
We are counsel to the City of Syracuse Industrial Development Agency (the “**Agency**”). On behalf of the Agency we hereby notify you that on June 16, 2015 the Agency will consider whether to approve the request by Syracuse Soma Project LLC (the “**Company**”) for deviation from the Agency’s Uniform Tax Exemption Policy with respect to the above-referenced project to be located in the City of Syracuse. Attached as Schedules “A” and “B” respectively are: (i) a description of the proposed deviation and the reasons therefor; and (ii) the proposed PILOT schedule. If approved, the Agency, the City of Syracuse and the Company will enter into a Payment in Lieu of Tax Agreement to evidence the proposed payment in lieu of tax schedule.

The Agency will review and respond to any correspondence received from any affected tax jurisdiction regarding the proposed deviation and allow any representative of an affected tax jurisdiction present at such meeting to address the Agency regarding the proposed deviation.

Should you wish to discuss this matter or the attachments, please feel free to contact me directly at 425-2880.

Honorable Stephanie A. Miner  
Honorable Joanne M. Mahoney  
June 10, 2015  
Page 2

Very truly yours,

  
Susan R. Katzoff

SRK:llm  
Enclosures  
cc: Thomas Babilon, Esq. (w/Enclosures)  
Ben Walsh (w/Enclosures)

## Schedule A

Syracuse Soma Project LLC (the “*Company*”) has requested that the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “*Land*”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the exiting approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in the 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 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 redeveloped the original AMOS building in 2006 which is subject to an existing payment in lieu of tax agreement (“*PILOT*”). The Company has requested that the PILOT be amended and restated to include the proposed addition in accordance with Schedule “B” attached hereto (the “*PILOT Agreement*”) which deviates from the Agency’s Uniform Tax Exemption Policy (“*UTEP*”) pursuant to General Municipal Law Section 874(4). The Agency has not yet made a determination with respect to such request.

The requested PILOT Agreement, varies from the schedule to which the Project would be subject under the Agency’s UTEP. The requested PILOT Agreement seeks a Class 5 exemption under the Agency’s UTEP to mirror that available under Section 485(a) of the Real Property Tax Law based on an exemption term of twelve (12) years exemption.

The Company has provided the following as justification for the requested deviation:

In order to facilitate cost effective development of the Project (e.g. sharing of building systems, including, but not limited to, elevator service), the proposed addition will be merged with the existing facility.

Had the addition been completed at the same time as the original project, the original 485-a exemption may have applied. However, because the original project now primarily includes residential property, a deviation is required.

As is typical in most markets in the Central NY region, the cost of the proposed new construction exceeds the as completed value of the development. The estimated as completed value of this Project is \$5.47 million with a projected Project cost of \$6.5 million. As such,



developments of this nature routinely require subsidies to both attract private investment and make the projects economically feasible.

The projected property taxes on the Project are estimated to be \$160,000 annually which approximate all other operating expenses combined (estimated to be approximately \$172,000). This level of tax burden has the effect of the lowering debt capacity and requiring increased equity. However, any required increase in equity results in well below market returns and would make the investment unlikely. Without appropriate market returns the Project would either not happen or be modified resulting in a decreased impact within the community.

The effect of granting the requested exemption would be a reduction in the Project's operating expenses thereby increasing the project's NOI and in turn debt capacity. This would allow for a reduction in the required developer equity and an increase in the returns to a level more in line with a development of this type. Returns would still be in the single digits, well below market. Even with the exemption, the return on the equity investment in the Project is long term requiring a significant reduction in debt over time thereby building equity.

With returns still in the single digits the project would likely not go forward without the exemption.

By approving the requested PILOT Agreement the City would be attracting new equity investment of \$3,700,000 in the underutilized last remaining vacant parcel fronting Clinton Square. Its development will make a significant difference in tying together the urban fabric of this important neighborhood. Additional benefits to the City include the following:

- Creation of 25 construction jobs
- Creation of 7 new full time, 14 part time and 4 seasonable jobs
- 24 new apartments which will help support neighborhood businesses and downtown economy

For the reasons set forth herein, and as more fully described in the Company's application on file with the Agency, the Company respectfully requests a deviation from the Agency's UTEP in the form submitted herewith.

Schedule B

**PROPOSED PILOT SCHEDULE**

Syracuse Soma Project, LLC - Amended and Restated PILOT Schedule		
204 and 208 W. Water St. to Erie Blvd. W.		
Year	Assessment	Payment
1	$\$1,896,000 \times \text{tax rate}^*$	-
2	$\$1,896,000 \times \text{tax rate}^*$	-
3	$\$1,896,000 \times \text{tax rate}^*$	-
4	$\$1,896,000 \times \text{tax rate}^*$	-
5	$\$1,896,000 \times \text{tax rate}^*$	-
6	$\$1,896,000 \times \text{tax rate}^*$	-
7	$\$1,896,000 \times \text{tax rate}^*$	-
8	$\$1,896,000 \times \text{tax rate}^*$	-
9	$((\text{full assessment} - \$1,896,000) \times .20) + \$1,896,000) \times \text{tax rate}$	-
10	$((\text{full assessment} - \$1,896,000) \times .40) + \$1,896,000) \times \text{tax rate}$	-
11	$((\text{full assessment} - \$1,896,000) \times .60) + \$1,896,000) \times \text{tax rate}$	-
12	$((\text{full assessment} - \$1,896,000) \times .80) + \$1,896,000) \times \text{tax rate}$	-

\*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"**  
**PILOT RESOLUTION**

## PILOT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on June 16, 2015 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 roll being called, the following members of the Agency were:

**PRESENT:** William Ryan, Steven Thompson, Donald Schoenwald, Esq, M. Catherine Richardson, Esq., Pamela Hunter

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** **Staff Present:** Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq, Sue Katzoff, Esq.; **Others Present:** Richard Engel, Esq., Barry Lentz, Aggie Lane, Mike Wicker, Jim Leana, Edward Riley, James Trasher, Mark Congel

The following resolution was offered by Donald Schoenwald and seconded by Pamela Hunter:

### **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 CERTAIN 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, 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**, Syracuse SOMA Project LLC, or an entity to be formed (the "**Company**"), has requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at

204 and 208 West Water Street, in the City of Syracuse, New York (the “*Land*”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the exiting approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in the 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 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 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**, the City of Syracuse Planning Commission acted as lead agency for the purpose of conducting a coordinated environmental review of the Project under SEQRA, 6 NYCRR Part 617, and determined that the project will not result in any significant adverse impacts on the environment and issued negative declarations dated June 8, 2015; and

**WHEREAS**, in the Application, the Company also requested that the Agency consider a payment in lieu of tax (“*PILOT*”) schedule<sup>1</sup>, more fully described on **Exhibit “A”** attached hereto, and such schedule constitutes a deviation from the Agency’s Uniform Tax Exemption Policy (“*UTEF*”) established pursuant to Section 874(4) of the Act; and

**WHEREAS**, by letters dated June 10, 2015, the Agency gave to the chief executive officers of the affected tax jurisdictions notice pursuant to Section 874 of the Act of this meeting (the “*Notice*”), at which the Agency would consider the Company’s request for a PILOT schedule which deviates from the UTEP; 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

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<sup>1</sup> The existing building is governed by a PILOT Agreement. The PILOT schedule requested herein would cover the entire Project Facility.

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 create and/or preserve permanent and temporary private sector jobs 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 an amended and restated payment in lieu of tax agreement (“**PILOT Agreement**”) providing for the payment schedule attached as **Exhibit “A”** hereto.

(2) The Agency will, subject to, and in accordance with all resolutions adopted by the Agency in conjunction with this Project, execute and deliver a PILOT Agreement 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 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 of the Agency is hereby authorized and directed 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) The 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	
Steven Thompson	X	
Donald Schoenwald, Esq.	X	
Catherine Richardson, Esq.	X	
Pamela Hunter	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 June 16, 2015, 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 23 day of July, 2015.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "A"**  
**PROPOSED PILOT SCHEDULE**

Syracuse Soma Project, LLC - Amended and Restated PILOT Schedule		
204 and 208 W. Water St. to Erie Blvd. W.		
Year	Assessment	Payment
1	$\$1,896,000 \times \text{tax rate}^*$	-
2	$\$1,896,000 \times \text{tax rate}^*$	-
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10	$((\text{full assessment} - \$1,896,000) \times .40) + \$1,896,000) \times \text{tax rate}$	-
11	$((\text{full assessment} - \$1,896,000) \times .60) + \$1,896,000) \times \text{tax rate}$	-
12	$((\text{full assessment} - \$1,896,000) \times .80) + \$1,896,000) \times \text{tax rate}$	-

\*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 "K"**

**FINAL RESOLUTION**

## FINAL APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on June 16, 2015 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:

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

**PRESENT:** William Ryan, Steven Thompson, Donald Schoenwald, Esq, M. Catherine Richardson, Esq., Pamela Hunter

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** **Staff Present:** Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq, Sue Katzoff, Esq.; **Others Present:** Richard Engel, Esq., Barry Lentz, Aggie Lane, Mike Wicker, Jim Leana, Edward Riley, James Trasher, Mark Congel

The following resolution was offered by M. Catherine Richardson and seconded by Donald Schoenwald:

### **RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN 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**, by application dated April 10, 2015 (the "**Application**"), Syracuse SOMA Project LLC, or an entity to be formed (the "**Company**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the exiting approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom

apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in the 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 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 May 19, 2015 pursuant to Section 859-a of the Act, notice of which was published on May 7, 2015 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 letter dated May 6, 2015; 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**, the City of Syracuse Planning Commission acted as lead agency for the purpose of conducting a coordinated environmental review of the Project under SEQRA, 6 NYCRR Part 617, and determined that the Project will not result in any significant adverse impacts on the environment and issued negative declarations dated June 8, 2015; and

**WHEREAS**, the Agency adopted a resolution on June 16, 2015 (the “*Inducement Resolution*”) entitled:

**RESOLUTION UNDERTAKING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN 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**

which resolution is in full force and effect and has not been amended or modified; and

**WHEREAS**, the Agency adopted a resolution on June 16, 2015 (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 CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY**

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 Inducement 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 and equip the Project Facility.

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

(h) 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 creating and/or preserving private sector jobs and promoting economic development.

**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 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), and pledging and assigning to such lender (s) certain rights and remedies of the Agency under the sublease agreement by the execution and delivery of a Pledge and Assignment; (D) provide the approved Financial Assistance; and (E) execute and deliver any other documents necessary to effectuate the transfers 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 of the Agency is 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	
Steven Thompson	X	
Donald Schoenwald, Esq.	X	
Catherine Richardson, Esq.	X	
Pamela Hunter	X	

The foregoing Resolution was thereupon declared duly adopted.

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

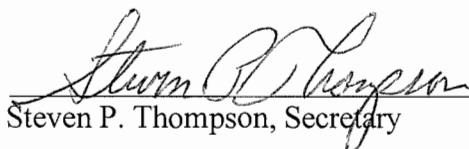
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on June 16, 2015, with the original thereof on file 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 23 day of July, 2015.

City of Syracuse Industrial Development Agency

  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

18

**GENERAL CERTIFICATE OF  
SYRACUSE SOMA PROJECT LLC**

This certificate is made in connection with the execution by **SYRACUSE SOMA PROJECT LLC**, a Delaware limited liability company qualified to conduct business in the State of New York (the “**Company**”) of the Company Lease, the Agency Lease, 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 or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “**Expanded Land**” and together with the Original Land the “**Land**”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “**Expanded Facility**” and together with the Original Facility, the “**Facility**”); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the “**Expanded Equipment**” and together with the Original Equipment, the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting and/or continuation 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 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 Original Land, the Original Facility and the Original Equipment (as referred to herein) were part of the Original Project Facility (as defined herein below) previously undertaken by the Agency consisting of: (1)(A) the Agency’s acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the “**Original Land**”), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the “**Original Facility**”), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the “**Original Equipment**” and, together with the Original Land and the Original Facility, the “**Original Project Facility**”) for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking.

The Project Facility is owed by the Company. The Company will lease the Land and Facility to the Agency pursuant to an Amended and Restated Company Lease Agreement dated as of September 1, 2015 (the “**Company Lease**”) and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of September 1, 2015 (the “**Bill of Sale**”) and the Agency will sublease the Project Facility back to the Company pursuant to an Amended and Restated Agency Lease Agreement dated as of September 1, 2015 (the “**Agency Lease**”).

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:

1. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the State of Delaware Limited Liability Company Certificate of Formation of the Company, which Certificate (including any amendments) are in full force and effect on the date hereof.

2. 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.

3. 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 Delaware and qualified and licensed under the laws of New York State to transact business as a limited liability company for the purpose of owning and operating the Project Facility in New York State. Attached hereto as **Exhibit "C"** are true and correct copies of a Certificate of Good Standing of the Company issued by both the Delaware and New York State Secretaries of State.

4. 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.

5. 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, Cortland and Oneida 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"**.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

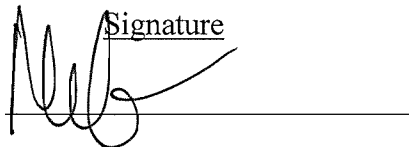
13. There is no Event of Default or default on the part of the Company under the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement or any other Company Document, and no event has occurred and is continuing which, after notice or passage of time or both, would give rise to a default under any thereof.

14. 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.

15. 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.

16. 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.

17. 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 representative, if any, is a genuine specimen of such representative's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
Mark J. Congel		Managing Member

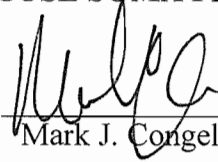
18. The Company represents and warrants that it has no employees and therefore is not now required to carry worker's compensation insurance. The Company represents and acknowledges that in the event it hires or obtains any employees in the future, it has an obligation pursuant to the Agency Lease, dated as of September 1, 2015 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 September 1, 2015.

**SYRACUSE SOMA PROJECT LLC**

By:



\_\_\_\_\_  
Mark J. Congel, Managing Member

**EXHIBIT "A"**

**CERTIFICATE OF FORMATION**

**(See attached)**

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "SYRACUSE SOMA PROJECT LLC", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF FEBRUARY, A.D. 2004, AT 4:10 O'CLOCK P.M.



3768733 8100

050996315

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

**AUTHENTICATION: 4351263**


**DATE: 12-07-05**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 04:44 PM 02/24/2004  
FILED 04:10 PM 02/24/2004  
SRV 040132008 - 3768733 FILE

**STATE of DELAWARE  
LIMITED LIABILITY COMPANY  
CERTIFICATE of FORMATION**

- **First:** The name of the limited liability company is Syracuse Soma Project LLC
- **Second:** The address of its registered office in the State of Delaware is 2711  
Centerville Rd, Ste 400 in the City of Wilmington  
The name of its Registered agent at such address is Corporation Service Company
- **Third:** *(Use this paragraph only if the company is to have a specific effective date of dissolution.)* "The latest date on which the limited liability company is to dissolve is \_\_\_\_\_."
- **Fourth:** *(Insert any other matters the members determine to include herein.)*

In Witness Whereof, the undersigned have executed this Certificate of Formation of  
Syracuse Soma Project this 24 day of February, 2004.  
LLC

BY:   
Authorized Person(s)

NAME: Daniel P. Daniluk, Authorized  
Type or Print Agent

**EXHIBIT "B"**  
**OPERATING AGREEMENT**

**(See attached)**

**OPERATING AGREEMENT  
OF  
SYRACUSE SOMA PROJECT LLC**

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## OPERATING AGREEMENT

of

### SYRACUSE SOMA PROJECT LLC

**THIS OPERATING AGREEMENT** shall be effective as of the 1<sup>st</sup> day of May, 2005 by and among **SYRACUSE SOMA PROJECT LLC**, a Delaware limited company with a place of business at 227 Fayette Street, Syracuse, New York 13202 (the "**Company**"); **DANIEL M. QUERI**, an individual residing at 18 Pittman Lane, Syracuse, New York 13224, **MARK J. CONGEL**, an individual residing at 4584 Bamerick Road, Jamesville, New York 13078, as Members and Managers of the Company; and **JOSEPH J. QUERI, JR.**, an individual residing at 4700 Ellsworth Avenue, Pittsburgh, Pennsylvania 15213, and **JAIME L. TUOZZOLO**, an individual residing at 116 E. Genesee Street, Skaneateles, New York 13152, as Non-Manager Members of the Company.

**WHEREAS**, the parties desire to form a limited liability company on the terms and conditions herein contained.

**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 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 the Table of Definitions appearing as Appendix "A" or in Appendix "B" at the end of this Agreement.

#### SECTION 2 THE COMPANY

**2.1 Formation.** The Company was formed on February 24, 2004 upon the filing of a Certificate of Formation (the "**Certificate**") with the Secretary of State for the State of Delaware. In consideration of the mutual provisions, covenants and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the rights and obligations of the parties and the administration and termination of the Company shall be governed by this Agreement, the Certificate and the Act.

**2.2 Name.** The name of the Company shall be Syracuse Soma Project LLC, a Delaware limited liability company, and all business of the Company shall be conducted in such name. The Manager(s) may change the name of the Company by amendment to the Certificate. The Company shall hold all of its Property in the name of the Company and not in the name of any Member. The

Company may transact business under an assumed name by filing an assumed name certificate in the manner prescribed by applicable law.

**2.3 Purpose.** The purpose of the Company is to own and operate the Business and to engage in any and all activities related or incidental thereto. The Company shall engage in such other businesses as the Manager(s) may deem advisable. The Company shall have the power to enter into all transactions which are provided for in this Agreement and as may be necessary or incidental to accomplish or implement the business or purpose 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 227 West Fayette Street, Syracuse, New York 13202 or such other place as the Manager(s) shall determine.

**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 Certificate has been filed in the office of the Secretary of State of Delaware in accordance with the provisions of the Act. The Manager(s) 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 Delaware. The Manager(s) shall cause amendments to the Certificate to be filed whenever required by the Act. Such amendments may be executed by any Manager.

(b) The Manager(s) 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.

**2.7 Registered Office and Registered Agent.** The Company's registered office in the State of Delaware shall be c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 and the name of its registered agent for service of process on the Company in the State of Delaware shall be Corporation Service Company with an address at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The Manager(s) shall have the authority, upon three (3) days notice to the Members, to change the registered office and or registered agent.

### **SECTION 3 MEMBERS; CAPITAL CONTRIBUTIONS**

**3.1 Members.** The names and addresses of the Members are set forth on Exhibit "A" hereof. Such Persons shall be admitted to the Company as Members effective as of the date hereof. The Members shall have the Membership Percentage set forth opposite their respective names on Exhibit "B" hereof.

**3.2 Capital Contributions.** Each Member, or his predecessor in interest, has contributed to the Company the Capital Contribution set forth opposite such Member's name on Exhibit "C" hereof and has a Capital Account equal to the amount of such contribution, as adjusted as provided herein. The Members shall not be required to make any additional Capital Contributions to the Company ("**Additional Capital Contributions**"). In the event Additional Capital Contributions are necessary or desirable to accomplish the purposes or satisfy the obligations of the Company as determined by the Managers, Mark J. Congel may, at his option, make such Additional Capital Contributions. Not less frequently than quarterly, the Company will account for the Additional Capital Contributions and the Priority Return payable pursuant to Section 5.1(a) hereof.

**3.3 Return of Capital.** Except as otherwise provided in this Agreement, no Member shall be entitled to have his Capital Contribution returned to him. Under circumstances requiring a return of any Capital Contributions, no Member shall have the right to receive Property other than cash except as may be specifically provided herein.

**3.4 Interest.** No Member shall receive any interest 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 Member, except as otherwise provided in this Agreement.

**3.5 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 and this Agreement, a Member shall be liable only to make his Capital Contributions and shall not be required to lend any funds to the Company or, after his Capital Contributions have been paid, to make any additional Capital Contributions to the Company. No Manager(s) shall have any personal liability for the repayment of any Capital Contributions of the Members; provided, however, nothing in this Section 3.5 shall be deemed to relieve the Manager(s) of any liability resulting from their bad faith, gross negligence, intentional misconduct, knowing violation of law and/or breach of fiduciary duty.

**3.6 Loans.** Any Member or any Affiliate of a Member may, with the approval of the Manager(s), lend or advance money to the Company. If any Member or Affiliate thereof shall make any loan or loans to the Company or advance money on its behalf, the amount of any such loan or advance shall not be treated as a contribution to the capital of the Company but shall be a debt due from the Company. The amount of any such loan or advance by a lending Member or Affiliate thereof 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 Prime Rate plus two percentage points. Except as otherwise set forth in this Agreement none of the Members shall be obligated to make any loan or advance to the Company.

**3.7 Defaults.** In the event a Member fails to make any Capital Contribution when due and such failure continues for a period of ten (10) days after notice from the Company to said Member (the "**Defaulting Member**"), the Defaulting Member shall be in default under this Agreement and, while such default continues, the Manager(s) (without prejudice to any other right of the Company and exclusive of the Defaulting Member if the Defaulting Member is a Manager) may elect in the sole and absolute discretion of the Manager(s): (i) not to pay the Defaulting Member any distribution

pursuant to Section 5 of this Agreement to which the Defaulting Member would otherwise be entitled and in lieu thereof to apply any undistributed amounts theretofore or thereafter distributable to the Defaulting Member pursuant to Section 5 towards the obligation of such Defaulting Member to make such Capital Contribution; (ii) for purposes of any provision of this Agreement providing for the consent or the action of Members or Manager(s), to deem the Defaulting Member not to be a Member and, if applicable, a Manager; (iii) to elect to treat such default as an Adverse Act; or (iv) to sue the Defaulting Member to collect the unpaid amount of any such Capital Contribution (together with interest thereon from the date such contribution was due at the lower of (A) the Prime Rate plus three (3) percentages points or (B) the highest lawful rate in the State of New York) plus any collection expenses incurred by the Company, including, but not limited to, the reasonable fees and disbursements of counsel to the Company. It is specifically recognized and understood that the provisions of this Section 3.7 and Section 3.6 may only be enforced by the Manager(s) and are in no way intended to expand the liability of the Members to creditors of or other third parties dealing with the Company. In the event the Defaulting Member is also a Manager, such Manager shall have no vote in determining the manner in which the Company exercises its rights pursuant to this Section 3.7.

#### **SECTION 4 ALLOCATIONS**

**4.1 Profits.** After giving effect to the special allocations set forth in Section 4.5 and Appendix "B" hereto, Profits for any fiscal year shall be allocated to the Members in the following order and priority:

(a) First to the Members, pro rata, in an amount equal to the excess, if any, of (i) the Losses allocated to the Members pursuant to Section 4.2 hereof for all prior fiscal years, over (ii) the cumulative Profits allocated to the Members pursuant to this Section 4.1(a) for all prior fiscal years; and

(b) The balance, if any, to the Members in accordance with their Membership Percentages.

**4.2 Losses.** After giving effect to the special allocations set forth in Section 4.5 and Appendix "B" hereto, Losses for any fiscal year shall be allocated to the Members in proportion to their Membership Percentages.

**4.3 Tax Allocations.** The provisions set forth in Appendix "B" attached hereto are hereby incorporated by this reference and shall be deemed a part of this Section 4 as if fully set forth herein.

**4.4 No Priority.** Except as provided in Sections 4.5 and 5.1 hereof or as required by the special allocations set forth in Appendix "B", no Member shall have priority over any other Member, either as to the return of a Capital Contribution, as to Profits or Losses, or distributions; provided however, this Section 4.4 shall not apply to loans (as distinguished from Capital Contributions or a guaranteed payment) which a Member has made to the Company.

**4.5 Special Allocations of Gross Income and Gain.** All or a portion of the gross income and gain of the Company for the fiscal year shall be specially allocated to the Members until the aggregate amount allocated to each Member pursuant to this Section 4.5 for such fiscal year and all previous fiscal years is equal to the cumulative amount of distributions to such Member pursuant to Section 5.1(a) hereof.

## **SECTION 5 DISTRIBUTIONS**

**5.1 Net Available Cash.** Except as otherwise provided in Section 5.2 hereof relating to tax payments and Section 12.2 hereof relating to the liquidation of the Company, Net Available Cash shall be distributed to the Members at such times and in such amounts as the Manager(s) shall determine from time to time in the following priority:

(a) First, entirely to the Members or their Assignees (in proportion to their respective Additional Capital Contributions) until such Members or Assignees receive an amount equal to (i) the cumulative Priority Return from the date the Additional Capital Contribution is made to the end of the calendar quarter preceding the quarter during which such distribution is made, minus (ii) the sum of all prior distributions to such Members or their Assignees pursuant to this Section 5.1(a);

(b) The balance, if any, to the Members or their Assignees in proportion to their Membership Percentages.

**5.2 Tax Distributions to Members.** Notwithstanding Section 5.1, within seventy-five (75) days of the end of each fiscal year of the Company, the Manager(s) shall distribute to each Member an amount equal to the "**Tax Payment**". The "**Tax Payment**" shall be equal to an amount needed by the Member to pay all federal and state income taxes on the income (net of any tax benefits produced for the Member by the Company's losses, deductions and credits) that passes through from the Company to the Member under the applicable provisions of the Code. In computing the Tax Payment it shall be assumed that all income that passes through to the Members will be taxed at the sum of the maximum federal rate (without regard to exemptions or phaseouts of lower tax rates) and the "**Adjusted New York State Rate**". The "**Adjusted New York State Rate**" shall mean the maximum New York State income tax rate applicable to individuals multiplied by one (1) minus the maximum federal rate as computed above.

**5.3 Amounts Withheld.** All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment or distribution by the Company to the Members shall be treated as amounts distributed to the Members pursuant to this Section 5 for all purposes under this Agreement. The Manager(s) may allocate any such amounts among the Members in any manner that is in accordance with applicable law.

**5.4 Limitations on Distributions.** No distribution shall be declared or made by the Manager(s) if payment of such distribution would cause the Company to violate any limitation on distributions provided in the Act or in any agreement to which the Company is a party.

**SECTION 6  
MANAGEMENT; INDEMNIFICATION**

**6.1 Managers.**

(a) The management of the Company shall be vested in the Manager(s). The initial Manager(s) of the Company are set forth in the introductory paragraph of this Agreement. The Manager(s) have been appointed by the terms of this Agreement and shall not be elected by the Members except as otherwise expressly provided herein.

(b) Each Manager shall be entitled to cast the number of votes set forth opposite such Manager's name as set forth on Exhibit "B" as in effect as of the date the vote is taken. All actions requiring the approval of the Managers shall require the unanimous approval of all Managers.

**6.2 Authority of the Manager(s).** Except to the extent otherwise provided herein, the Manager(s) shall have the sole and exclusive right to manage the Business of the Company, to make all decisions regarding those matters and to perform all other acts and activities customary to or incidental to the management of the Business, except only those acts and things as to which approval by the Members is expressly required by this Agreement or the Act. Without limiting the generality of the foregoing, the Manager(s) shall have all of the rights and powers which may be possessed by Manager(s) under the Act, including, without limitation, the rights and powers set forth in this Section 6.2. In no way limiting the foregoing, the Manager(s) shall have the following rights and powers:

(a) to conduct the Business, carry on its operations and have and exercise the powers granted by the Act in any state, territory, district or possession of the United States, or in any foreign country which may be necessary or convenient to effect any or all of the purposes of the Company;

(b) to 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;

(c) to operate, maintain, improve, construct, own, mortgage and lease any real estate and any personal property necessary, convenient or incidental to the accomplishment of the purposes of the Company;

(d) to execute any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the management, maintenance and operation of the Business, or in connection with managing the affairs of the Company including executing amendments to this Agreement and the Certificate in accordance with the terms of this Agreement, both as Manager(s) and, if required, as attorney-in-fact for the Members pursuant to any power of attorney granted by the Members to the Manager(s);

(e) to 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 mortgage, pledge, or other lien on any Company assets;

(f) to 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 Company assets;

(g) to prepay in whole or in part, refinance, recast, modify or extend any liabilities affecting the assets of the Company and, in connection therewith, execute any extensions or renewals of encumbrances on any or all of such assets;

(h) to 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;

(i) to contract on behalf of the Company for the employment and services of employees and/or independent contractors (including, without limitation, any Affiliates of the Manager(s)) and delegate to such Persons the duty to manage or supervise any of the assets or operations of the Company;

(j) to expend the capital and income of the Company to the extent permitted by this Agreement;

(k) to disburse Company funds for Company purposes to those Persons entitled to receive the same;

(l) to purchase from or through others, contracts of liability, casualty or other insurance for the protection of the assets or affairs of the Company or the Members or for any purpose convenient or beneficial to the Company;

(m) to 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 Manager(s) in connection with activities arising out of, connected with or incidental to this Agreement and to engage counsel or others in connection therewith;

(n) to engage in any kind of activity and perform and carry out contracts of any kind (including contracts of insurance covering risks to the Company assets 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;

(o) to take, or refrain from taking, all actions not expressly prescribed or limited by this Agreement, as may be necessary or appropriate to accomplish the purposes of the Company;

(p) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of domestic or foreign corporations, associations, general or limited partnerships, other limited liability companies or individuals, or direct or indirect obligations of the United States or of any government, state, territory, government district or municipality or of any instrumentality of any of them; and

(q) to 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 the assets of the Company 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 Members with respect to adjustments to the Company's federal, state or local tax returns; and (iii) to represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company and the Members in their capacity as Members and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company or the Members. Daniel M. Queri 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 Manager(s) designate in writing a different individual to serve as the Tax Matters Partner.

**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 Member; (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 Member.

**6.4 Prohibited Transactions.** Notwithstanding any other provision of this Agreement, the Manager(s) shall not, without a Super Majority Vote of the Members:

- (a) Do any act which would make it impossible to carry on the ordinary business of the Company;
- (b) Guarantee, secure or collateralize any loan made by a third party to any other Person;
- (c) Knowingly perform any act that would subject any Members to liability in any jurisdiction;
- (d) Elect to dissolve the Company;
- (e) Admit any additional Members other than pursuant to Section 10 hereof or issue any additional membership interests, units or percentages;
- (f) Approve the sale or other disposition of all or substantially all of the assets of the Company; or
- (g) Approve the merger or consolidation of the Company with or into another entity.



## **6.5 Duties and Obligations of Manager(s).**

(a) The Manager(s) shall cause the Company to conduct its Business and operations separate and apart from that of any Member of Manager or any of its Affiliates, 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 Member or Manager or any of its Affiliates, (ii) maintain books and financial records of the Company separate from the books and financial records of any Member or Manager or any of its Affiliates, in 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 by 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 Manager(s) 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 Delaware 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, and (ii) for the accomplishment of the Company's purposes, including the Business, in accordance with the provisions of this Agreement and applicable laws and regulations.

(c) The Manager(s) shall be under 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 Company assets for the exclusive benefit of the Company.

## **6.6 Indemnification.**

(a) No Manager or Member of the Company shall be liable to the Company or its Members for monetary damages for an act or omission in such person's capacity as a Manager or a Member, except for (i) acts or omissions which a Manager knew at the time of the acts or omissions were clearly in conflict with the interests of the Company, (ii) any transaction from which a Manager derived an improper personal benefit, (iii) acts or omissions occurring prior to the date this provision becomes effective, or (iv) a Manager's bad faith, gross negligence, intentional misconduct, knowing violation of law and/or breach of fiduciary duty. If the Act is amended to authorize action further eliminating or limiting the liability of Managers and Members, then the liability of a Manager or Member of the Company shall be eliminated or limited to the fullest extent permitted by the Act as so amended. Any repeal or modification of the governing sections of the Act shall not adversely affect the right or protection of a Manager or Member existing immediately before such repeal or modification.

(b) The Company shall indemnify the Managers and Members to the fullest extent permitted or required by the Act, as amended from time to time, and the Company may advance expenses incurred by the Manager or Member upon the approval of the Manager(s) 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 Manager(s).

(c) The indemnification provided by this Agreement shall: (i) be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, agreement, vote of 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 or entity.

(d) The details concerning any action to limit the liability, indemnify or advance expenses to a Manager, Member or other person, taken by the Company shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting or, if sooner, separately within ninety (90) days immediately following the date of the action.

**6.7 Compensation and Expenses of Manager(s).** Each Manager may charge the Company for any reasonable expenses incurred in connection with the Business. 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 the Super 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(s), nor may any Manager(s) participate in any business arrangement which would circumvent this Agreement.

(b) The funds of the Company shall not be commingled with the funds of any other Person.

(c) The signature of any one of the Managers shall be necessary to convey title to any real property owned by the Company or to execute any promissory notes, trust deeds, mortgages or other instruments of hypothecation, and all of the Members agree that a copy of this Agreement may be shown to the appropriate parties in order to confirm the same, and further agree that the signature of any one of the Managers shall be sufficient to execute any documents necessary to effectuate this or any other provision of this Agreement.

**6.9 Removal of Manager(s).**

(a) In the event of the Disability of a Manager, the remaining Manager(s) (if any) or if there is no remaining Manager other than the Manager whose condition is in question, the Members, by a Super Majority Vote, shall have the right to remove the disabled Manager.

(b) In the event of the proven fraud, willful misconduct, gross negligence or material breach of this Agreement by a Manager (collectively the "**Removal Events**") which Removal Event causes material and demonstrable harm to the Company the Members shall have the right by a Super Majority Vote to remove the offending Manager.

(c) Solely for purposes of this Section 6.9, in determining whether an action has received the requisite approval, the Manager whose condition is in question or who has been charged with committing a Removal Event, as the case may be, shall have no vote and his Membership Percentage shall be disregarded in calculating Membership Percentages.

(d) In the event a Manager is removed pursuant to this Section 6.9 then for all purposes of this Agreement the number of votes assigned to such removed Manager shall automatically be deemed to be zero and the Exhibits hereto shall be amended to reflect the same. Such removal shall not affect such removed Manager's status, if any, as a Member and such removed Manager shall remain a Member of the Company, subject to the provisions of this Agreement.

(e) The right of removal set forth in this Section 6.9 shall be null and void unless, prior to the exercise of such right, the Members receive an opinion of counsel satisfactory to the Members to the effect that the existence and exercise of such right will not prevent the treatment of the Company as a partnership for federal income tax purposes.

#### **6.10 Vacancies.**

(a) In the event of a vacancy due to the death, resignation or any other cause (including, but not limited to, removal pursuant to Section 6.9) of a Manager, the remaining Manager(s) (if any) shall have the authority to appoint a successor to fill such vacancy or to determine in his or their own discretion that such vacancy should not be filled. In the event there is no such remaining Manager, such vacancy shall be filled (or not filled) by a Super Majority Vote of the Members.

(b) The Managers shall have the right exercisable at any time, to increase the number of Manager(s). In the event of a vacancy in the Manager(s) by reason of any such increase, the Managers and not the Members shall have the right to fill such vacancy.

(c) In the event a Manager is appointed pursuant to this Section 6.10, the appointment shall specify the number of management votes assigned to the appointed Manager and the Exhibits hereto shall be appropriately amended to reflect the same.

(d) If a Manager ceases to be a Manager and such Manager is also a Member, then such Manager's status as a Member shall not be affected by such cessation and, subject to the provisions of this Agreement, such Manager shall continue as a Member.

**6.11 Limitation on Liability of Manager(s).** Neither the Manager(s) nor their employees or agents shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for any loss to the Company or any Member resulting from the operation of the Business or any action taken or not taken by the Manager(s); provided, however, nothing in this Section shall be deemed to relieve the Manager(s) of any liability resulting from their bad faith, gross negligence, intentional misconduct, knowing violation of law or breach of any fiduciary duty.

**6.12 Officers.** The Manager(s) may designate one or more individuals as officers of the Company, who shall have such title(s) and shall exercise and perform such powers and duties as the Manager(s) may from time to time assign. Any officer may be removed by the Manager(s) at any time and for any or no reason whatsoever. The salary and other compensation, if any, of the officers shall be fixed by the Manager(s).

## **SECTION 7 ROLE OF NON-MANAGER-MEMBERS**

**7.1 Rights or Powers.** The Members shall have no rights or powers to take part in the management and control of the Company and its business and affairs or to act for or bind the Company in any way. Notwithstanding the foregoing, the Members have all the rights and powers specifically set forth in this Agreement and, to the extent not inconsistent with this Agreement, in the Act.

**7.2 Representations and Warranties of the Members.** Each of the Members hereby represents, warrants and acknowledges to each of the other Members and to the Company as follows:

(a) The Member has the full power, legal capacity and authority to enter into this Agreement and to perform its 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 its 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 the 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 are bound or affected.

(e) The Member has filed all foreign, federal, state and local tax returns that are required to be filed by it 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 interest in the Company for the Member's own account and not for the account of others. The membership interest in the Company is not being acquired with a view to its distribution and the Member has no present intent of reselling or otherwise distributing the membership interest in the Company.

(g) Neither the Company nor anyone else has made any representation or warranty as to the period of time the Member shall be required to hold his or its interest in the Company. The Member is aware that the membership interest in the Company may have to be held by the Member for an indefinite period of time.

(h) The purchase of a membership interest in the Company and an investment in the Company involves a high degree of risk.

(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 acknowledges the membership interests have not been registered under the Securities Act or under any state securities laws. Further, the Member acknowledges such interests may not be offered, sold, transferred, pledged or hypothecated unless either the interests are registered under the Securities Act and all applicable state securities laws or the Company is first furnished with an opinion of counsel, in form and substance satisfactory to the Company, that the proposed transaction will be exempt from registration, qualification and filings in all applicable jurisdictions or otherwise complies with the laws of said jurisdictions.

(k) The Member has made the determination to invest in the Company based on the Member's own analysis of the merits of the investment, together with the advice of the Member's advisors. In connection with such analysis, Member and Member's representatives have had the opportunity to ask questions of and to receive answers from the management of the Company and to review all such information regarding the Company as the Member and the Member's representatives have deemed necessary and/or advisable in connection with the purchase of the membership interest in the Company. Neither the Company nor anyone else has made any representations or warranties as to the Company, including but not limited to, its financial prospects, potential income or cash flow, including but not limited to, any potential financial return or other benefit which may be realized from an investment in the Company.

## **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. Any Member or his designated representative shall have the right, at any reasonable time and at his own expense to have access to and inspect and copy the contents of such books or records. 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. Necessary tax information shall be delivered to each Member as soon as practicable after the end of each Company fiscal year.

## **SECTION 9 MEETINGS**

### **9.1 Meetings and Means of Voting.**

(a) The Company shall not be required to hold an annual meeting of the Members. Special meetings of the Members may be called by the Manager(s) or shall be called upon the written request of any Member or Members holding ten percent (10%) or more of the Membership Percentages. The call shall state the nature of the business to be transacted. Notice of any such meeting shall be given to all Members not less than three (3) days nor more than thirty (30) days prior to the date of such meeting. Members may vote in person or by proxy at such meeting. Whenever the vote or consent of Members is permitted or required under the Agreement, such vote or consent may be taken without a meeting on written consent, setting forth the action so taken, signed by the Members holding ninety-five percent (95%) of the Membership Percentages entitled to vote. All votes or consents shall be in accordance with Membership Percentages with each Member being entitled to cast one vote (or a fraction of a vote) for each full percentage (or fraction of a percentage) in such Member's Membership Percentage. Except as otherwise expressly provided in the Agreement, the Super Majority Vote of the Members shall control.

(b) For the purpose of determining the Members entitled to vote on, or to vote at, any meeting of the Members or any adjournment thereof, the Manager(s) may fix, in advance, a date as the record date for any such determination of Members. Such date shall not be more than fifty (50) days nor less than three (3) days before any such meeting.

(c) Each Member may authorize any Person or Persons to act for him by proxy on all matters in which a Member is entitled to participate, whether by waiving notice of 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 months from the date thereof unless otherwise provided in the proxy. Unless otherwise specifically stated therein, every proxy shall be revocable at the pleasure of the Member executing the same.

(d) Each meeting of Members shall be conducted by the Manager(s) or such other Person as the Manager(s) may appoint pursuant to such rules for the conduct of the meeting as the Manager(s) or such other Person deems appropriate.

## SECTION 10 TRANSFERS OF INTERESTS

**10.1 Restriction on Transfers.** Except as otherwise permitted by this Agreement, no Member shall Transfer all or any portion of his interest in the Company (the "**Interest**") without the consent of each of the Managers. Any Transfer or attempted Transfer by a Member in violation of the preceding sentence shall be null and void and of no effect whatever and shall constitute an Adverse Act. Each Member hereby acknowledges the reasonableness of the restrictions on Transfer imposed by this Agreement in view of the Company purposes and the relationship of the Members and agrees that the restrictions on Transfer contained herein shall be specifically enforceable. Each Member hereby further agrees to hold the Company and each Member (and each 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 Member may at any time Transfer all or any portion of his Interest to any one or more of the following (a "**Permitted Transferee**"): (a) any other Member; (b) any Person approved by the Managers as a Permitted Transferee; or (c) any Purchaser in accordance with Section 10.4 hereof (any such Transfer being referred to in this Agreement as a "**Permitted Transfer**").

**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. In the case of a Transfer of an Interest at death or involuntarily by operation of law, the Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer in form and substance satisfactory to counsel to the Company.

(b) The transferor (or his personal representative, as the case may be) shall furnish to the Company an opinion of counsel, which counsel and opinion shall be satisfactory to the Company, that the Transfer will not cause the Company to terminate for federal income tax purposes and that such Transfer will not cause the application of the rules of Code Sections 168(g)(1)(B) and 168(h) (generally referred to as the "**tax exempt entity leasing rules**") or similar rules to apply to the Company, Company assets, or the Members.

(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 Interest 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. Without limiting the generality of the



foregoing, the Company shall not be required to make any distribution otherwise provided for in this Agreement with respect to any Transferred Interest until it has received such information.

(d) Either: (i) such Interest shall be registered under the Securities Act of 1933, as amended, and any applicable state securities laws; or (ii) the transferor shall provide an opinion of counsel, which opinion of counsel shall be satisfactory to the Manager(s), 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 of counsel shall be reasonably satisfactory to the Manager(s), 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 in connection with the Transfer.

**10.4 Right of First Refusal.** In addition to the other limitations and restrictions set forth in this Section 10, except as permitted by Section 10.2 hereof, no Member shall Transfer all or any portion of his Interest (the "**Offered Interest**") unless such Member (the "**Seller**") first offers to sell the Offered Interest pursuant to the terms of this Section 10.4. Any Transfer made in violation of this Section 10.4 shall constitute an Adverse Act.

(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 Interest 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 Interest to the other Members (the "**Offerees**") for the price equal to the lower of: (i) the price set forth in the Purchase Offer; or (ii) an amount determined pursuant to Section 10.7 hereof (the "**Offer Price**"), payable according to the same terms as (or more favorable terms than) 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 Interest) to be provided for any deferred portion of the Offer Price.

(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 thirtieth (30<sup>th</sup>) day following the date all parties are notified of the determination of the Net Equity of the Company (the "**Offer Period**").

(d) Any Offeree may accept the Firm Offer as to all or any portion of the Offered Interest, by giving written notice of such acceptance to the Seller and the Manager(s) which notice shall indicate



the maximum portion of the Interest that such Offeree is willing to purchase. In the event the Offerees (the "**Accepting Offerees**"), in the aggregate, accept the Firm Offer with respect to all of the Offered Interest, the Firm Offer shall be deemed to be accepted and each such Accepting Offeree shall be deemed to have accepted that portion of the Offered Interest that corresponds to the ratio of the Interest that such Accepting Offeree indicated a willingness to purchase to the aggregate portion of the Interest all Accepting Offerees indicated a willingness to purchase. If the Offerees in the aggregate do not accept the Firm Offer as to all of the Offered Interest during the Offer Period, the Firm Offer shall be deemed to be rejected in its entirety.

(e) In the event the Firm Offer is accepted, the closing of the sale of the Offered Interest shall take place within thirty (30) days after the Firm Offer is accepted or, if later, the date of closing set forth in the Purchase Offer. The Seller and the Accepting Offerees shall execute such documents and instruments as may be necessary or appropriate to effect the sale of the Offered Interest pursuant to the terms of the Firm Offer and this Section 10.

(f) If the Firm Offer is not accepted in the manner hereinabove provided, the Seller may sell the Offered Interest 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 Interests and are not expressly made inapplicable to sales occurring under this Section 10.4. In the event the Offered Interest is not sold in accordance with the terms of the preceding sentence, the Offered Interest shall again become subject to all of the conditions and restrictions of this Section 10.4.

**10.5 Purchase on Death.** Each Member agrees for himself and his personal representatives, that upon such Member's death such Member's personal representative shall sell to the Company and the Company shall purchase the entire Interest then owned by such Member. The purchase and sale shall be mandatory and shall be at the purchase price and upon the terms and conditions set forth in Sections 10.7 and 10.8 hereof. The closing of the purchase and sale shall take place within ninety (90) days of the date of the Member's death or, if later, within sixty (60) days of the determination of the purchase price in accordance with Section 10.7 hereof.

**10.6 Adverse Act Purchase.**

(a) Upon the occurrence of an Adverse Act with respect to a Member, such Member shall automatically be deemed to have offered to sell his entire Interest to the Company on the terms and conditions contained in this Section 10.6 and Sections 10.7 and 10.8 hereof. The Company shall have sixty (60) days from the date of the determination of the purchase price in accordance with Section 10.7 hereof during which to accept or reject the deemed offer to sell. In the event the Company fails to accept within such sixty (60) day period, the offer shall automatically be deemed rejected.

(b) The closing of the purchase and sale of the selling Member's Interest shall occur within ninety (90) days of the date the deemed offer to sell is accepted. At the closing, the selling Member and the Company shall each execute such documents and instruments as may be necessary or appropriate to confirm the transactions contemplated hereby, including, without limitation, the Transfer to the Company of the Interest of the selling Member.

**10.7 Purchase Price.** For purposes of this Section 10, the purchase price shall be the amount determined by multiplying the selling Member's Membership Percentage by the Net Equity of the Company as of the last day of the month immediately preceding (i) the date of the Offer Notice in the case of a purchase pursuant to Section 10.4 hereof, (ii) the date of death in the case of a purchase pursuant to Section 10.5 hereof, or (iii) the date of the occurrence of the Adverse Act in the case of a purchase pursuant to Section 10.6 hereof, whichever may be applicable (the "**Valuation Date**").

**10.8 Payment of Purchase Price.** In the event of the purchase of a Member's Interest pursuant to Sections 10.5 or 10.6, the purchase price shall be paid as follows:

(a) There shall be paid in cash upon closing an amount equal to ten percent (10%) of the total purchase price.

(b) The balance of the purchase price shall be evidenced by a promissory note from the Company (the "**Purchase Note**"). The Purchase Note shall bear interest at the Prime Rate in effect on the closing date plus two (2) percentage points and shall be paid in sixty (60) equal monthly installments of principal and interest on an amortized basis. The Purchase Note shall contain a provision requiring a mandatory prepayment of all or that portion of the remaining principal balance of the Purchase Note (but not in excess thereof) equal to the net insurance proceeds (including any accumulated dividends and paid up additions) owned by the Company insuring the life of the deceased Member. The first installment on the Purchase Note shall be due and payable on the first day of the second month following the month during which the closing occurs (together with interest from the date of the closing to the first day of the month following the month during which the closing occurs). The Purchase Note shall permit the prepayment thereof, either in whole or in part, at any time or from time to time, without penalty. The Purchase Note shall also contain a provision requiring the mandatory prepayment of the entire amount due thereunder upon the sale by the Company of all or substantially all of its assets. If required by any third party lending institution with which the Company does business on the date of the closing, the Purchase Note shall be subordinate to any existing indebtedness due and owing to such third party lending institution and the Member's personal representative shall execute any documentation reasonably requested to evidence such subordination including, without limitation, an inter-creditor agreement. Payment of the Purchase Note shall be solely the responsibility of the Company. The selling Member's personal representative shall have no recourse with respect to the Purchase Note against any of the remaining Members. Neither the Company nor any of the remaining Members shall be required to give any security for the payment of the Purchase Note.

**10.9 Transfer Documents.** Whenever a Member shall sell all or any portion of his Interest to the Company or another Member the selling Member and the purchaser shall each execute such documents and instruments as may be necessary or appropriate to confirm the Transfer.

**10.10 Rights of Unadmitted Assignees.**

(a) A Person who acquires one or more Interests but who is not admitted as a Substituted Member in accordance with this Agreement shall be entitled only to allocations and distributions

with respect to such Interest in accordance with this Agreement (collectively, 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, including, but not limited to, the right to vote on the selection of the Manager(s) or to cause a dissolution or liquidation of the Company (collectively, the "**Non-Economic Rights**").

(b) In the event of a Transfer of an Interest to a Person who is not admitted as a Substituted Member, 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 Interest.

(c) Any Person who is the Assignee of all or any fraction of an Interest as herein permitted and who is not admitted as a Substituted Member and who desires or who shall be required to make a further assignment of such Interest 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 an assignment of an Interest.

**10.11 Admission of Assignees as Members.** Subject to the other provisions of this Section 10, a transferee of an Interest may be admitted to the Company as a Substituted Member only upon satisfaction of the conditions set forth below:

(a) All of the non-transferring Manager(s) consent to such admission, which consent may be given or withheld in the sole and absolute discretion of the Manager(s);

(b) The Interest with respect to which the transferee is being admitted was 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 Manager(s) may reasonably request (including, without limitation, amendments to the Certificate) 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 hereof;

(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 Interest; 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.

**10.12 Legend.** Each Member hereby agrees that the following legend may be placed upon any counterpart of this Agreement, the Certificate, or any other document or instrument evidencing ownership of Interests:

The Interests represented by this document have not been registered under any securities laws and the transferability of such Interests is restricted. Such Interests 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 Interests for any purposes, unless (1) a registration statement under the Securities Act of 1933, as amended, with respect to such Interests 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 Interests 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 Interest may be transferred without first offering such Interest to the other Members, and that no vendee, transferee, assignee, or endorsee of a Member shall have the right to become a substituted Member without the consent of all of the Manager(s) which consent may be given or withheld in the sole and absolute discretion of the Manager(s).

**10.13 Distributions and Applications in Respect to Transferred Interests.** If any Interest is sold, assigned, or 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 Interest 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 Manager(s). All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, provided that, if the Company is given notice of a Transfer at least ten (10) business days prior to the Transfer the Company shall recognize such Transfer as of the date of such Transfer, and provided further that, if the Company does not receive a notice stating the date such Interest was Transferred and such other information as the Manager(s) may reasonably require within thirty (30) days after the end of the fiscal year during which the transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the Interest on the last day of the fiscal year during which the Transfer occurs. Neither the Company nor any Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 10.13, whether or not any Manager or the Company has knowledge of any Transfer of ownership of any Interest.

**10.14 Closings.** All membership interest purchase and sale transactions pursuant to this Agreement shall be consummated at a closing to be held at the offices of the Company or at such other location as may be agreed upon by the parties to the transaction. At the closing:

(a) Each membership interest being sold shall be delivered free and clear of all liens, claims, encumbrances and any other restrictions.

(b) If required, a representative of the estate of a deceased Member shall deliver a certified copy of the certificate of appointment of the personal representative and evidence of fiduciary authority and of release of waiver of notice of transfer from federal or state tax officials.

(c) If the subject Member is an employee, officer, Manager and/or director of the Company, he or she shall deliver to the Company written resignations from such positions to be effective immediately upon delivery, and, if a nominee of the subject Member is a officer, Manager and/or director of the Company, the written resignation of such nominee to be effective immediately upon delivery.

(d) The subject Member shall execute any document which is required by this Agreement or reasonably necessary or desirable to effect the purchase and sale of the membership interest(s) contemplated hereby.

(e) Payment of the cash portion of the purchase price for the membership interest(s) being purchased shall be made by the purchasing party/parties in immediately available funds.

**10.15 Termination of Agreement with Respect to a Member.** This Agreement shall terminate with respect to a Member upon such Member's sale of all of his or her membership interest; provided that the Agreement shall terminate only as to such Member and shall continue among the remaining parties hereto.

## SECTION 11 WITHDRAWAL; NON-COMPETITION

**11.1 Covenant Not to Withdraw, Transfer, or Dissolve.** Except as otherwise permitted by this Agreement, each Member 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.

### **11.2 Covenant Not To Compete; Confidentiality.**

(a) The Members hereby acknowledge and agree that each owes the Company and each other Member the highest fiduciary loyalty and duty. In furtherance, and not in limitation of such fiduciary obligation, each Member hereby agrees that for so long as he is a Member and for a period of three (3) years thereafter, he will not compete, directly or indirectly, as an owner, partner, employee, agent, broker, shareholder, joint venturer, consultant, manager, officer or director, or in any other manner, in any business similar to the business then being conducted by the Company within a geographical area defined as a one hundred fifty (150) mile radius of the principal place of business of the Company set forth in Section 2.4 hereof. In elaboration of the foregoing and not in limitation thereof, such Member shall not during the period described above, directly or indirectly: (i) canvas, solicit, or accept any business for himself or any other company or firm from any present or past customers, franchisors or principals of the Company; (ii) give any person, firm or corporation the right to canvas, solicit or accept any business from any present or past customers, franchisors or principals of the Company; (iii) advise any present or future customers, franchisors or principals of the Member to withdraw, curtail or cancel their business with the Company; (iv) disclose to any other person, firm or corporation the names of any present, past or future customers, franchisors or principals of the Company; or (v) seek or solicit any of the employees of the Company to leave the employ of the Company.

Notwithstanding the above, nothing herein contained shall be deemed to prohibit a Member from owning less than five percent (5%) of any entity, the securities of which are traded on a national stock exchange or are regularly quoted in the over-the-counter market.

(b) In addition to the foregoing, each Member agrees that while a Member and thereafter, such Member shall not use for himself or for any other person, firm, corporation, partnership, association or other entity, or divulge or disclose in any manner to any person, the methods of operation, financial data, sources of supply, knowhow, designs, formulas, patterns, devices, secret inventions, processes, computer controls, computer systems and software, marketing plans, marketing information, marketing projections, marketing timetables, manuals, pricing information, records, books, agreements, techniques, forms, procedures, systems, financial information or other trade secrets or confidential or proprietary information used in or relating to the Business (the "**Confidential Information**"). Notwithstanding the foregoing, the restrictions on the disclosure and use of Confidential Information shall not apply to (i) information that is or has been generally known to the public other than through disclosure (whether deliberate or inadvertent) by such Member or any other person not under a duty of confidentiality to the Company, and (ii) disclosure of Confidential Information in judicial or administrative proceedings to the extent such Member is legally compelled to disclose such information provided such Member shall have used his best efforts to have afforded the Company the opportunity to obtain an appropriate protective order or other assurance satisfactory to the Company of confidential treatment for the information to be disclosed.

(c) The Members hereby agree that the periods of time, geographical scope and other limitations provided for in this Section 11.2 are the minimum such terms necessary to protect the Company and their successors and assigns in the use and employment of the goodwill respecting the Business and the Company. The Members further agree that damages cannot adequately compensate the Company in the event of the Members' breach of any of the covenants contained in this Section 11.2. Accordingly, each Member agrees that in the event of a breach or threatened breach by such Member of any of the covenants and agreements herein contained, the Company shall be entitled to seek and obtain on *ex parte* basis a temporary restraining order and/or a preliminary or permanent injunction prohibiting the prescribed activities and/or specifically enforcing the provisions of this Agreement. Each Member hereby waives any requirement that the Company post a bond or other security with respect to obtaining or continuing any such injunctive relief and hereby releases and discharges the Company, its agents, managers, officers and employees from and against any and all claims for damages such Member may have as a result of the Company seeking, in good faith, any injunctive or other relief pursuant to this Agreement. The obtainment of any such injunction by the Company shall not be deemed an election of remedies or a waiver of any right to assert any other remedies the Company may have at law or in equity. The existence of any claim or cause of action by the Members against the Company, of whatever nature, shall not constitute a defense to the Company's enforcement of this Agreement. To the extent any of such restrictive covenants are deemed unenforceable by virtue of their scope in terms of geographical area or length of time or otherwise, but may be made enforceable by limitations thereon, the Members agree that the same shall be enforceable to the fullest extent permissible under the laws and public policies of the jurisdiction in which enforcement is sought. The parties hereto hereby authorize any court of competent jurisdiction to modify or reduce the scope of the restrictive covenants to the minimum extent necessary to make such restrictive covenants enforceable.

## SECTION 12 DISSOLUTION AND WINDING UP

**12.1 Dissolution.** The Company shall dissolve upon the first to occur of any of the following events (the "**Liquidating Events**"):

- (a) The election of the Members, pursuant to Section 6.4 hereof, to dissolve the Company;
- (b) The happening of any other event that makes it unlawful, impossible or impractical to carry on the business of the Company; or
- (c) The complete cessation of the Business.

The Members hereby agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Liquidating Event. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Liquidating Event, then the Members hereby agree to continue the business of the Company without a winding up or liquidation.

**12.2 Winding Up.** Upon a dissolution of the Company, the Manager(s) or court-appointed trustee if there be no Manager(s) shall take full account of the Company's assets and liabilities. Profits or Losses realized upon the sale or liquidation of the Company's assets will be allocated to the Members' Capital Accounts in accordance with the provisions of Section 4. Prior to any distribution relating to liquidation of the Company, the Manager(s) will also adjust each Member's Capital Account to reflect the manner in which the unrealized income, gain, loss and deduction inherent in the Company's assets (that has not been reflected in the Members' Capital Accounts previously) would be allocated among the Members if there were a taxable disposition of such assets for the fair market value of such assets (taking Code Section 7701(g) into account) on the date of distribution. The assets and Property 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) To the payment and discharge of all of the Company's debts and liabilities (other than those to Members), including the establishment of any necessary reserves;
- (b) Second, to the payment and discharge of all of the Company's debts and liabilities to Members; and
- (c) The balance, to the Members and Assignees in accordance with the net credit balances of their respective Capital Accounts after giving effect to all contributions, distributions and allocations for all periods (other than those made pursuant to this subsection (c)).

No Member will have any obligation to restore any negative balance in its Capital Account upon liquidation or dissolution of the Company or otherwise.



**12.3 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 12 (if such liquidation constitutes a dissolution of the Company) or Section 5 hereof (if it does not) to the Members and Assignees who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Member 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 Member 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.

**12.4 Establishment of Trust.** In the discretion of the Manager(s), a pro rata portion of the distributions that would otherwise be made to the Members and Assignees pursuant to Section 12.2 hereof may be distributed to a trust established for the benefit of the Members and Assignees 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 Manager(s) arising out of or in connection with the Company. The assets of any such trust shall be: (a) distributed to the Members and Assignees from time to time, in the reasonable discretion of the Manager(s), in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members and Assignees 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 Members and Assignees as soon as practicable.

**12.5 Rights of Members and Assignees.** Except as otherwise provided in this Agreement, each Member or Assignee 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 Member or Assignee shall have priority over any other Member or Assignee as to the return of his Capital Contributions, distributions, or allocations.

**12.6 Deemed Contribution and Distribution.** Notwithstanding any other provision of this Section 12, 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 properties 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 interest in the new company to the Members.



## 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, 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 Company may from time to time specify by notice to the Members; 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 so delivered, if delivered personally or if sent by regular mail, or 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.** Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Member.

**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 Member, 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 Delaware Law.** The laws of the State of Delaware, without reference to the principles governing the conflict of laws applicable in that or any other jurisdiction, shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Members.

**13.10 Waiver of Action for Partition.** Each of the Members irrevocably waives any right that he may have to maintain any action for partition with respect to any of the Property.

**13.11 Counterpart Execution.** 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.

**13.12 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.

**13.13 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, including without limitation, the Operating Agreement dated February 24, 2004 executed by Joseph J. Queri, Jr., as the original sole member of the Company.

**13.14 Amendment of Agreement; Termination.** (a) Except as otherwise specifically provided herein, this Agreement may be amended in whole or in part only with a Super Majority Vote of the Members; provided, that without the express written consent of each Member adversely affected thereby, no amendment shall be made: (i) that would reduce the Capital Account of any Member, or (ii) that would reduce such Member's rights to allocations and distributions. This Section 13.14 may not be amended without the unanimous consent of all Members. The Manager(s) shall give prior written notice of any proposed amendment to all of the Members, which notice shall set forth the text of the proposed amendment.

(b) Notwithstanding subsection (a) above, this Agreement may be amended by the Company without the approval of the Members if such amendment is:

(i) for the purpose of substituting or adding a Member or class of Members which have been admitted to the Company in accordance with the provisions of this Agreement; or

(ii) in the opinion of counsel for the Company, to the extent necessary or appropriate to satisfy requirements of the Code with respect to partnerships, including without limitation the requirements under Sections 7701, 704 and 752 of the Code, or of any federal or state securities laws or regulations promulgated thereunder.

(c) No amendment or termination shall be effective to the extent it deprives any person or party to this Agreement of any rights that have already accrued hereunder.

**13.15 Waivers.** No failure by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

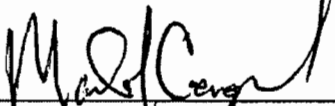
**13.16 Arbitration.** Any controversy, disputes or claims arising out of or relating to this Agreement shall be decided by arbitration in accordance with the arbitration rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other parties to this Agreement and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

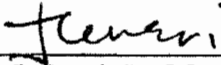
**IN WITNESS WHEREOF,** the parties have entered into this Operating Agreement as of the day first above set forth.

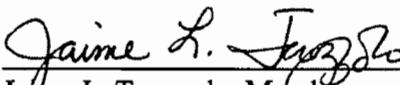
**SYRACUSE SOMA PROJECT LLC**

By:   
Daniel M. Queri, Manager

  
Daniel M. Queri, Manager and Member

  
Mark J. Congel, Manager and Member

  
Joseph J. Queri, Jr., Member

  
Jaime L. Tuozzolo, Member

**EXHIBIT "A"**  
Operating Agreement  
of  
Syracuse Soma Project LLC

**MEMBERS**

(a) **Members**

<u>Name</u>	<u>Address</u>
Daniel M. Queri	18 Pittman Lane Syracuse, New York 13224
Mark J. Congel	4584 Bamerick Road Jamesville, New York 13078

(b) **Non-Manager Members**

<u>Name</u>	<u>Address</u>
Joseph J. Queri, Jr.	4700 Elsworth Avenue, #7 Pittsburgh, Pennsylvania 15213
Jaime L. Tuozzolo	116 E. Genesee Street Skaneateles, New York 13152

**EXHIBIT "B"**

Operating Agreement

of

Syracuse Soma Project LLC

**PERCENTAGES**

(a) **Manager(s)**

<u>Name</u>	<u>Membership Percentage</u>	<u>Management Votes</u>
Daniel M. Queri	15%	1
Mark J. Congel	70%	1

(b) **Non-Manager Members**

<u>Name</u>	<u>Membership Percentage</u>
Joseph J. Queri, Jr	10%
Jaime L. Tuozzolo	5%

**EXHIBIT "C"**

Operating Agreement

of

Syracuse Soma Project LLC

**CAPITAL CONTRIBUTIONS**

<b><u>Member</u></b>	<b><u>Capital Contribution of May 1, 2005</u></b>
Mark J. Congel	\$298,000.00
Joseph J. Queri, Jr.	\$0.00
Daniel M. Queri	\$0.00
Jaime L. Tuozzolo	\$0.00

**EXHIBIT "D"**

**Operating Agreement**

of

**Syracuse Soma Project LLC**

**PROPERTY DESCRIPTION**

**PARCEL A - 228-38 Water Street**

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 No. 92 of said City according to a map of the former Village of Syracuse, made by John Lathrop, bounded and described as follows: Beginning at the northwesterly corner of said Block 92, thence southerly along the easterly line of South Franklin Street, about fifty-five and twenty-one hundredths (55.21) feet to the northerly line of West Water Street, thence easterly along the northerly line of West Water Street about two hundred twenty-four and seventy-eight one hundredths (224.78) feet to the southwesterly corner of premises previously acquired by the City of Syracuse by Tax Deed dated April 17, 2001 and recorded in the Onondaga County Clerk's Office on April 18, 2001 in Book 4542 of Deeds at page 092 et seq., thence northerly along the westerly boundary of the above referenced premises owned or formerly owned by the City of Syracuse, and at about right angles to the northerly line of West Water Street, about fifty-five feet (55) to the southerly line of Erie Boulevard West, thence westerly along the southerly line of Erie Boulevard West about two hundred twenty-four and seventy-eight one hundredths (224.78) feet to the place of beginning.

**PARCEL B - 208, 210-16, 218 Water Street**

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 No. 92 of said City according to a map of said City made by John Randall, Jr., bounded and described as follows: beginning at a point in the northerly line of West Water Street approximately ninety-four and nine-tenths (94.9) feet westerly from the southeasterly corner of said Block No. 92, thence northerly at about right angles to the northerly line of West Water Street, about fifty-five (55) feet to the southerly line of Erie Boulevard, then westerly along the southerly line of Erie Boulevard about one hundred forty-three and fourteen one hundredths (143.14) feet the northeasterly corner of premises previously acquired by the Syracuse Urban Renewal Agency by deed dated August 20, 1970 and recorded in the Onondaga County Clerk's Office on August 28, 1970 in Book 2434 of Deeds , page 967, etc. and deed dated November 6, 1974 and recorded in the Onondaga County Clerk's Office on December 19, 1974 in Book 2545 of Deeds at page 781 et seq., then southerly along the easterly boundary of the above referenced premises now or formerly of the Syracuse Urban Renewal Agency and at about right angles to the northerly line of West Water Street about fifty- five (55) feet to the northerly line of West Water Street, thence easterly along the northerly line of West Water Street about one hundred forty-two and thirty-six one hundredths (142.36) feet to the place of beginning.

PARCEL C - 204-06 Water Street

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, on part of Block 92 bounded as follows: beginning in the south line of the Block at the southwest corner of the late W & H Raynor's store on Lot 16, running thence westerly on said south line 20 feet and extending in rear by parallel lines to the Erie Canal, also 6 inches of the wall front and rear on the west side of the premises adjoining on the east.

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, bounded as follows: beginning 20 feet west of the southwest corner of the store of W & H Raynor in the south line of Block 92, running thence west on the south line of Block 92, 20 feet, thence northerly at right angles to the south line of the Block to the south line of lands appropriated to the Erie Canal, thence easterly parallel to the south line of the Block, 20 feet, thence southerly to the place of beginning.

PARCEL D - 200-02 Water Street

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Syracuse, County of Onondaga and State of New York, bounded and described as follows, to wit: being Lot No. 17 in Block No. 92, in said City, according to a map of said City, made by John Randall, Jr., said Lot No. 17 being bounded on the east by the west line of South Clinton Street, on the south by the north line of West Water Street, on the west by Lot No. 16 and on the north by the Erie Canal.

ALSO, ALL THAT CERTAIN TRACT OR PARCEL OF LAND, situate in the City, County and State aforesaid, being part of Lot No. 16 in Block No. 92 in said City, according to the aforesaid map made by John Randall, Jr. and bounded and described as follows: on the south by the north line of West Water Street, on the east by said Lot No. 17, on the north by the south line of Erie Boulevard, and running westerly on the Berme Bank of the former Erie Canal, now the south line of Erie Boulevard, to a point distant 6" east of the west line of said Lot No. 16, thence southerly at a distance of 6" from the west line of the said Lot No. 16 to the north line of West Water Street.

PARCEL D - 204-06 Water Street

ALL THAT PARCEL OF LAND being the following described premises in the City of Syracuse being part of Block Number 92 in said City according to a map and survey of the Village of Syracuse made by John Randall, Jr. beginning in the south line of said Block twenty feet wide of the southwest corner of W&H Raynor store on lot number sixteen in said Block, running thence westerly along the south line of said Block twenty feet; thence northerly at right angles to said south line in said Block to the south line of land appropriated by the Erie Canal as surveyed for the enlargement thereof by Holmes Hutchinson; thence easterly and parallel with the south line of said Block twenty feet; thence southerly by a right line to the place of beginning.

ALSO part of said Block number ninety two beginning on the south line of said Block at the southwest corner of the brick store formerly owned by W&H Raynor on lot number sixteen aforesaid; thence westerly on said south line twenty feet and extending in rear by parallel lines at right angles to said south line to the Erie Canal. Also six inches of land on the west line of said lot number sixteen Block ninety two being the same six inches of wall reserved in sale of Store to Ellis Wicks and Fitch by Hudson.



## APPENDIX "A"

### TABLE OF DEFINITIONS

**"Accountants"** mean such firm of independent certified public accountants as shall, from time to time, be engaged by the Manager(s) on behalf of the Company to render accounting, auditing, tax and similar services.

**"Act"** means the Limited Liability Company Act of the State of Delaware as the same may be amended from time to time (or any corresponding provisions of succeeding law).

**"Additional Capital Contributions"** shall have the meaning assigned to such term in Section 3.2 hereof.

**"Adverse Act"** means, with respect to any Member, any of the following:

(a) a Transfer of all or any portion of such Member's interest in the Company except as expressly permitted or required by this Agreement;

(b) a Member violating or attempting to violate the provisions of Section 11 hereof;

(c) the entry of an order or the execution of any agreement the effect of which is to require the Company or a Member to transfer any or all such Member's membership interest to his or her spouse or any other Person incident to a divorce;

(d) an Event of Bankruptcy occurring with respect to any Member; or

(e) any other occurrence or transaction that is expressly provided elsewhere in this Agreement as constituting an Adverse Act.

**"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 officer, director, general partner or manager of such Person, or (iii) any Person who is an officer, director, general partner, trustee or manager of any Person described in clauses (i) and (ii) of this sentence. For purposes of this definition the term "controls", "is controlled by" or "is under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

**"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.

**"Assignee"** means a Person who is a transferee of all or part of a Member's interest in the Company which Person is not admitted as a Substituted Member. "Assignees" means all such Persons.

**"Business"** means the ownership, operation and management of a real estate project known as the Amos Building Project and the acquisition, lease, sale, exchange and exercise of all other rights and remedies with respect to the Property, as the same may from time to time be conducted and owned in accordance with the terms and conditions of this Agreement and any other business the Company may subsequently engage in.

**"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.

**"Disability"** means the inability of a Manager to perform his usual and customary duties on behalf of the Company for a period of one hundred eighty (180) consecutive days or a total of two hundred seventy (270) days out of a three hundred sixty five (365) consecutive day period. The decision as to whether a Manager has failed to perform his usual and customary duties shall be made by the Manager(s) exclusive of the Manager whose condition is in question. The decision as to whether a Manager's inability to perform is the result of a Disability shall be made by a physician jointly selected by the Manager whose condition is in question (or such Manager's personal representative, as the case may be), on the one hand, and the Company, on the other hand.

**"Event of Bankruptcy"** means, with respect to any Member or the Company, any of the following:

- (a) filing a voluntary petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code (as now or in the future amended) or an admission seeking the relief therein provided;
- (b) making a general assignment for the benefit of creditors;
- (c) consenting to the appointment of a receiver for all or a substantial part of such Person's property;
- (d) in the case of the filing of an involuntary petition in bankruptcy, the entry of an order for relief;
- (e) the entry of a court order appointing a receiver or trustee for all or a substantial part of such Person's property without such Person's consent; or
- (f) the assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of such Person's property.

**"Fair Market Value"** shall mean such fair market value of the Business as may be mutually agreed to by the Member (or his personal representative as the case may be) who is offering or is deemed to be offering to sell his Interest pursuant to Section 10 hereof (the "**Offering Member**"), on the one hand, and the Company and the remaining Members, on the other hand. If the Offering Member and the Company and the other Members are unable to mutually agree upon a fair market value within thirty (30) days from the date the Offering Member shall have offered (or have been deemed to have automatically offered) the Interest for sale, the Fair Market Value shall be determined as follows: the Offering Member, on the one hand, and the Company, on the other hand, shall each have the opportunity to appoint, at his or its own cost, a "**Qualified Appraiser**" (as herein defined), within five (5) days following the expiration of the ten (10) day period set forth above. If either party shall fail to appoint a Qualified Appraiser within this five (5) day period, the one Qualified Appraiser so appointed shall unilaterally establish the Fair Market Value. If both parties appoint a Qualified Appraiser within this five (5) day period, the two (2) Qualified Appraisers shall jointly establish the Appraised Value. If the Qualified Appraisers' values are within ten percent (10%) of each other's value, the Fair Market Value shall be the amount which is the average of the two (2) values determined by the Qualified Appraisers. If such values are not within ten percent (10%) of each other, the Fair Market Value shall be determined by arbitration in accordance with the Rules of the American Arbitration Association. Each side shall be allowed to submit appraisal testimony and other relevant testimony as to value to the Arbitrator so appointed. In determining the Fair Market Value, no consideration shall be given by the Qualified Appraiser(s) to any proceeds in excess of the cash surrender value of any insurance proceeds to be received by the Company as the result of the death of a Member. The cost and expenses of the Arbitration shall be borne by that party whose Qualified Appraiser's Fair Market Value differs the most in absolute dollars from the Appraised Value established by the Arbitrator.

**"Family"** means a Member's natural or adoptive lineal ancestors or descendants and trusts for his or their exclusive benefit as well as a trust established for the spouse of the Member, provided that any such spousal trust (i) does not allow the trustees thereof to distribute the Membership Interest outright to the spouse and (ii) on termination thereof, provides that the Membership Interest is to be distributed to the natural or adoptive lineal ancestors or descendants of the Member or trusts for his or their exclusive benefit.

**"Manager(s)"** means any Person(s) who (i) is referred to as such in the first paragraph of this Agreement or has become a Manager pursuant to the terms of this Agreement, and (ii) has not ceased to be a Manager(s) pursuant to the terms of this Agreement. "Manager(s)" means all such Persons.

**"Members"** means all individuals or entities set forth on Exhibit "A" hereof and any Person subsequently admitted to the Company as a Member pursuant to the terms hereof. "Member" means any one of the Members. All references in this Agreement to a majority in interest or a specified percentage of the Members shall mean Members holding more than 50 percent or such specified percentage, respectively, of the Membership Percentages then held by all Members.

**"Membership Percentage"** means those percentages with respect to each Member (or Assignee) as set forth on Exhibit "B". "Membership Percentages" means the total percentages set forth on Exhibit "B". In the event any interest in the Company is transferred in accordance with the

terms of this Agreement, the transferee shall succeed to the Membership Percentage of the transferor to the extent it relates to the Transferred interest.

**"Net Available Cash"** means the gross cash proceeds of the Company whether from Company operations, sales or other dispositions or refinancings of the Property, less the portion thereof used to pay or establish reserves for all Tax Payments, Company expenses, debt payments, capital improvements, replacement and contingencies, all as determined by the Manager(s). "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.

**"Net Equity"** means the amount that would be available to be distributed to the selling Members in liquidation if: (i) the Business was sold for its Fair Market Value; (ii) the Company paid its accrued but unpaid liabilities; and (iii) reasonable reserves were established for all contingent liabilities. The Net Equity of the Company shall be determined, without audit or certification, from the books and records of the Company by the Accountants within thirty (30) days of the day upon which the Accountants are apprised in writing of the Fair Market Value of the Business. The Net Equity determination of the Accountants shall be final and binding in the absence of gross negligence or willful misconduct.

**"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 Manager(s). 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 Manager(s).

**"Priority Return"** means a sum equivalent to the Prime Rate per annum, of the Additional Capital Contributions from time to time during the period which the Priority Return relates. The Priority Return shall be determined on the basis of a 365 day year and shall be based on the actual number of days in the period for which the Priority Return relates.

**"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)(I), 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 (c) 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.

**"Property"** means the property, both real, personal, tangible and intangible owned by the Company, including, without limitation, the real property more particularly described in Exhibit "D" attached hereto, together with such additional property as may be hereafter acquired by the Company.

**"Qualified Appraiser"** means any professional appraiser or certified public accountant who is qualified by experience and ability to appraise assets and businesses similar to that owned or being conducted by the Company.

**"Substituted Member"** means a transferee of an Interest who has been admitted to the Company as a Substituted Member in accordance with Section 10 of the Agreement.

**"Super Majority Vote"** means the affirmative vote of Members holding ninety-five percent (95%) or more of the Membership Percentages then held by all Members.

**"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. A Transfer shall in all instances be deemed to include a Transfer of any interest in a Member (which is not an individual) if as a result of such a Transfer, any Person or Persons who

are not the current beneficial owners or members of a Member become owners or members, in one or more transactions, of thirty five percent (35%) or more of the voting power or control of the Member.

## 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 Member or Assignee, 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 Member or Assignee, 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.

(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 Manager(s) 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 Members), are computed in order to comply with such Regulations, the Manager(s) may make such modifications, provided it is not likely to have a material effect on the amounts distributed to any Member or Assignee pursuant to Section 12 of the Agreement upon the dissolution of the Company. The Manager(s) also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and Assignees 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).

In connection with the making of, but prior to the accounting for, any Capital Contribution or issuance of membership interests, the Company will adjust each Member's Capital Account, in accordance with the allocation provisions of Section 4, to reflect the manner in which the unrealized income, gain, loss and deduction inherent in the Company's property (that has not been reflected in the Members' Capital Accounts previously) would be allocated among the Members if there were a taxable disposition of such property for the fair market value thereof (taking Code Section 7701(g) into account) on the date of such Capital Contribution or issuance of membership interests hereunder.

**"Capital Contribution"** means, with respect to any Member or Assignee, 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 Member or Assignee.

**"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 Members.



**"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 Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member 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 Manager(s), as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member or Assignee of more than a de minimis amount of assets as consideration for an interest in the Company; and (iii) 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) and (ii) above shall be made only if the Manager(s) reasonably determine(s) that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members and Assignees in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Member or Assignee 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)(vi) of this Appendix "B"; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent the Manager(s) 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 Member (or Assignee) 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 Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit of such Member 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 Member (or Assignee) 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 subsection (b)(ii)) and the distribution provisions of Section 5 hereof for a particular fiscal year, any Member would have a deficit Capital Account at the end of such fiscal year in excess of the sum of (i) the amount such Member is obligated to restore and (ii) the amount such Member 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), each such Member (or Assignee) shall be specially allocated items of gross income in the amount of such excess as quickly as possible; provided, however, that an allocation pursuant to this Section (b)(ii) of this Appendix "B" shall be made if and only to the extent that such Member or Assignee would have a deficit Capital Account in excess of such sum after all other allocations provided for in Section 4 and this Appendix "B" have been tentatively made as if Section (b)(i) and this Section (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 Member and Assignee 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 Member and Assignee 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 chargeback 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)(iii) 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 Member and Assignee 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 Member or Assignee 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 Member (or Assignee) 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 Members 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 Members 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 Members (or Assignees) in proportion to their respective Membership Percentages.

(viii) All allocations to the Members 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 (b)(vii) hereof (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Members 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 Manager(s) 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 Member's Capital Account balance is, to the extent possible, equal to the Capital

Account balance such Member 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 their discretion under this Section (c) of this Appendix "B" the Manager(s) 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 (b)(vii).

**(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 Manager(s) 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 Members in the same proportions as they share Profits and Losses, as the case may be, for the year.

(iii) The Members 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.

(iv) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Members' interests in Company Profits shall be deemed equal to their Membership Percentages.

(v) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Manager(s) 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 Members (or Assignee).

(vi) Losses allocated to the Members shall not exceed the maximum amount of Losses that can be so allocated without causing the Members to have an Adjusted Capital Account Deficit at the end of any fiscal year. If some, but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses the foregoing limitation shall be applied on a Member-by-Member basis so as to allocate the maximum Loss to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

(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 Members 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.

B-7

**AMENDMENT NO. 1  
TO  
OPERATING AGREEMENT  
OF  
SYRACUSE SOMA PROJECT LLC**

**THIS AMENDMENT NO. 1 TO OPERATING AGREEMENT** (this "Agreement"), dated as of the 24<sup>th</sup> day of September, 2007, by and among **MARK J. CONGEL, DANIEL M. QUERI, JOSEPH J. QUERI, JR. and JAIME L. TUOZZOLO** (collectively, the "Members").

**WITNESSETH:**

WHEREAS, the Members heretofore formed a limited liability company (the "Company") under the name of "Syracuse Soma Project LLC" pursuant to a Certificate of Formation filed with the Delaware Secretary of State on February 24, 2004 and an Operating Agreement effective May 1, 2005 (the "Operating Agreement"); and

WHEREAS, the Members each desire to more specifically articulate the purpose for which the Company has been formed, and the parties hereto now desire to amend the Operating Agreement to reflect that specific purpose.

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

1. The Operating Agreement is hereby modified and amended to delete the text of "**Section 2.3 Purpose**" thereof and to insert the following therein:

"The business and purpose of the Company shall consist solely of the acquisition, ownership, operation and management of the real estate project known as "The Amos Building", 206-14 West Water Street, Syracuse, New York (the "Property") and such activities as are necessary, incidental or appropriate in connection therewith and to enter into a loan transaction ("Loan") with MidFirst Bank, a federally chartered savings association (the "Lender"), in which the Company shall borrow certain monies in the approximate amount of Three Million One Hundred Thousand and 00/100 Dollars (\$3,100,000.00) from the Lender.

Further, the Company shall not: (a) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto; (b) acquire or own any material assets other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property; (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case the Lender's prior written consent; (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of the Lender, amend, modify, terminate or fail to comply with the

provisions of the Company's Certificate of Formation and/or Operating Agreement, or similar organizational documents, as the case may be, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of the Company to perform its obligations hereunder, under the Note or under the Other Security Documents; (e) own any subsidiary or make any investment in, any person or entity without the prior written consent of Lender; (f) commingle its assets with the assets of any of its general partners, managing members, shareholders, affiliates, principals or of any other person or entity; (g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan, excepting trade payables (which must be paid when due) incurred by the Company in the ordinary course of its business of owning and operating the Property; (h) fail to maintain its records, books of account and bank accounts separate and apart from those of the general partners, managing members, shareholders, principals and affiliates of the Company, the affiliates of a general partner or managing member of Company, and any other person or entity; (i) enter into any contract or agreement with any general partner, managing member, shareholder, principal or affiliate of the Company, any guarantor or any indemnitor, or any general partner, managing member, shareholder, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any general partner, managing member, shareholder, principal or affiliate of the Company, any guarantor or any indemnitor, or any general partner, managing member, shareholder, principal or affiliate thereof; (j) seek the dissolution or winding up in whole, or in part, of the Company; (k) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any general partner, managing member, shareholder, principal or affiliate of Company, or any general partner, managing member, shareholder, principal or affiliate thereof or any other person; (l) hold itself out to be responsible for the debts of another person; (m) make any loans to any third party; (n) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (1) to mislead others as to the identity with which such other party is transacting business, or (2) to suggest that the Company is responsible for the debts of any third party (including any general partner, managing member, shareholder, principal or affiliate of the Company, or any general partner, managing member, shareholder, principal or affiliate thereof); (o) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or (p) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors."

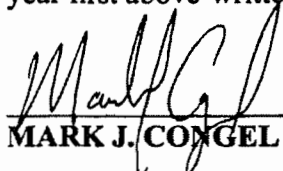
2. The amendments set forth in this Agreement shall be effective as of the date hereof.

3. As amended by the provisions of this Agreement, the parties do hereby ratify and affirm the Operating Agreement in all respects.

4. This Agreement may be executed in one or more counterparts and by exchange of facsimile signatures.


**ALL SIGNATURES ARE ON THE FOLLOWING PAGE**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above-written.

  
\_\_\_\_\_  
**MARK J. CONGEL**

  
\_\_\_\_\_  
**DANIEL M. QUERI**

\_\_\_\_\_  
**JOSEPH J. QUERI, JR,**

  
\_\_\_\_\_  
**JAIMEL. TUOZZOLO**



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above-written.

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MARK J. CONGEL

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DANIEL M. QUERI

*J. Queri*

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JOSEPH J. QUERI, JR,

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JAIME L. TUOZZOLO

**AMENDMENT NO. 1  
TO  
OPERATING AGREEMENT  
OF  
SYRACUSE SOMA PROJECT LLC**

**THIS AMENDMENT NO. 1 TO OPERATING AGREEMENT** (this "Agreement"), dated as of the ~~24<sup>th</sup>~~ day of September, 2007, by and among **MARK J. CONGEL, DANIEL M. QUERI, JOSEPH J. QUERI, JR. and JAIME L. TUOZZOLO** (collectively, the "Members").

**WITNESSETH:**

WHEREAS, the Members heretofore formed a limited liability company (the "Company") under the name of "Syracuse Soma Project LLC" pursuant to a Certificate of Formation filed with the Delaware Secretary of State on February 24, 2004 and an Operating Agreement effective May 1, 2005 (the "Operating Agreement"); and

WHEREAS, the Members each desire to more specifically articulate the purpose for which the Company has been formed, and the parties hereto now desire to amend the Operating Agreement to reflect that specific purpose.

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

1. The Operating Agreement is hereby modified and amended to delete the text of "**Section 2.3 Purpose**" thereof and to insert the following therein:

"The business and purpose of the Company shall consist solely of the acquisition, ownership, operation and management of the real estate project known as "The Amos Building", 206-14 West Water Street, Syracuse, New York (the "Property") and such activities as are necessary, incidental or appropriate in connection therewith and to enter into a loan transaction ("Loan") with MidFirst Bank, a federally chartered savings association (the "Lender"), in which the Company shall borrow certain monies in the approximate amount of Three Million One Hundred Thousand and 00/100 Dollars (\$3,100,000.00) from the Lender.

Further, the Company shall not: (a) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto; (b) acquire or own any material assets other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property; (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case the Lender's prior written consent; (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of the Lender, amend, modify, terminate or fail to comply with the

provisions of the Company's Certificate of Formation and/or Operating Agreement, or similar organizational documents, as the case may be, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of the Company to perform its obligations hereunder, under the Note or under the Other Security Documents; (e) own any subsidiary or make any investment in, any person or entity without the prior written consent of Lender; (f) commingle its assets with the assets of any of its general partners, managing members, shareholders, affiliates, principals or of any other person or entity; (g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan, excepting trade payables (which must be paid when due) incurred by the Company in the ordinary course of its business of owning and operating the Property; (h) fail to maintain its records, books of account and bank accounts separate and apart from those of the general partners, managing members, shareholders, principals and affiliates of the Company, the affiliates of a general partner or managing member of Company, and any other person or entity; (i) enter into any contract or agreement with any general partner, managing member, shareholder, principal or affiliate of the Company, any guarantor or any indemnitor, or any general partner, managing member, shareholder, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any general partner, managing member, shareholder, principal or affiliate of the Company, any guarantor or any indemnitor, or any general partner, managing member, shareholder, principal or affiliate thereof; (j) seek the dissolution or winding up in whole, or in part, of the Company; (k) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any general partner, managing member, shareholder, principal or affiliate of Company, or any general partner, managing member, shareholder, principal or affiliate thereof or any other person; (l) hold itself out to be responsible for the debts of another person; (m) make any loans to any third party; (n) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (1) to mislead others as to the identity with which such other party is transacting business, or (2) to suggest that the Company is responsible for the debts of any third party (including any general partner, managing member, shareholder, principal or affiliate of the Company, or any general partner, managing member, shareholder, principal or affiliate thereof); (o) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or (p) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors."

2. The amendments set forth in this Agreement shall be effective as of the date hereof.

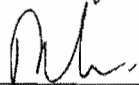
3. As amended by the provisions of this Agreement, the parties do hereby ratify and affirm the Operating Agreement in all respects.

4. This Agreement may be executed in one or more counterparts and by exchange of facsimile signatures.

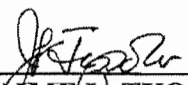
**ALL SIGNATURES ARE ON THE FOLLOWING PAGE**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above-written.

  
\_\_\_\_\_  
**MARK J. CONGEL**

  
\_\_\_\_\_  
**DANIEL M. QUERI**

\_\_\_\_\_  
**JOSEPH J. QUERI, JR,**

  
\_\_\_\_\_  
**JAIMEL. TUOZZOLO**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above-written.

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MARK J. CONGEL

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DANIEL M. QUERI



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JOSEPH J. QUERI, JR,

---

JAIME L. TUOZZOLO

**AMENDMENT NO. 1  
TO THE  
OPERATING AGREEMENT  
OF  
SYRACUSE SOMA PROJECT LLC**

**THIS AMENDMENT NO. 1** to the Operating Agreement of SYRACUSE SOMA PROJECT LLC, a Delaware limited liability company (the "**Company**"), is made effective as of the 31<sup>st</sup> day of December, 2008 by and among the individuals set forth below, constituting all of the members (the "**Members**") and managers (the "**Managers**") of the Company. K-11

**WHEREAS**, the undersigned entered into an Operating Agreement dated as of May 1, 2005 (the "**Operating Agreement**"), to govern the business and affairs of the Company; and

**WHEREAS**, pursuant to a Bill of Sale and Assignment of Membership Interest dated the date hereof, Jaime L. Tuozzolo ("**JLT**") will transfer, assign and convey her five percent (5%) membership interest in the Company (the "**Transferred Interest**") to Mark J. Congel ("**MJC**"); and

**WHEREAS**, the Members and Managers desire to consent to the conveyance of the Transferred Interest to MJC and desire to amend Exhibit "A" and Exhibit "B" to the Operating Agreement to reflect such transfer.

**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 hereto agree as follows:

1. The Members and Managers do hereby consent to the conveyance and assignment by JLT of the Transferred Interest to MJC and do hereby further consent to the admission of MJC as a Member in the Company with respect to the Transferred Interest.

2. The Members and Managers hereby admit MJC as a Member in the Company with respect to the Transferred Interest. The Members and Managers agree that all of the requirements in the Operating Agreement relating to the transfer of the Transferred Interest to MJC have been met, are met by this Amendment, or are hereby waived.

3. Section 2.4 of the Operating Agreement is hereby amended in its entirety to read as follows:

**"2.4 Principal Place of Business**, The principal place of business of the Company shall be 4 Clinton Square, Suite 102, Syracuse, New York 13202 or such other place as the Manager(s) shall determine."

4. Exhibit "A" and Exhibit "B" to the Operating Agreement are hereby deleted in their entirety and shall be replaced with Exhibit "A" and Exhibit "B" attached hereto.

5. Except as otherwise provided in this Amendment, every covenant, term and provision of this Amendment shall be binding upon and inure to the benefit of the Members and Managers and their respective heirs, legatees, legal representatives, successors, transferees and assigns.

6. The laws of the State of Delaware shall govern the validity of this Amendment, the construction of its terms, and the interpretation of the rights and duties of the Members and Managers.

7. This Amendment may be executed in any number of counterparts with the same effect as if all of the Members and Managers had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

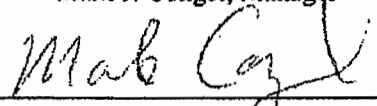
8. As modified herein, the Operating Agreement shall remain in full force and effect and is hereby ratified and confirmed in all respects.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment effective as of the day and year first above written.

**SYRACUSE SOMA PROJECT LLC**

By: 

Mark J. Congel, Manager

  
Mark J. Congel, Manager and Member

  
Daniel M. Queri, Manager and Member

\_\_\_\_\_  
Joseph J. Queri, Jr., Member

5. Except as otherwise provided in this Amendment, every covenant, term and provision of this Amendment shall be binding upon and inure to the benefit of the Members and Managers and their respective heirs, legatees, legal representatives, successors, transferees and assigns.

6. The laws of the State of Delaware shall govern the validity of this Amendment, the construction of its terms, and the interpretation of the rights and duties of the Members and Managers.

7. This Amendment may be executed in any number of counterparts with the same effect as if all of the Members and Managers had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

8. As modified herein, the Operating Agreement shall remain in full force and effect and is hereby ratified and confirmed in all respects.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment effective as of the day and year first above written.

**SYRACUSE SOMA PROJECT LLC**

By: \_\_\_\_\_  
Mark J. Congel, Manager

\_\_\_\_\_  
Mark J. Congel, Manager and Member

\_\_\_\_\_  
Daniel M. Queri, Manager and Member

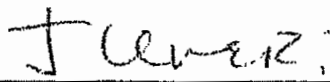
  
\_\_\_\_\_  
Joseph J. Queri, Jr., Member



EXHIBIT "A"

Operating Agreement  
of  
Syracuse Soma Project LLC

**MEMBERS**

(a) **Members**

<u>Name</u>	<u>Address</u>
Mark J. Congel	4584 Bamerick Road Jamesville, New York 13078
Daniel M. Queri	18 Pittman Lane Syracuse, New York 13224

(b) **Non-Manager Members**

<u>Name</u>	<u>Address</u>
Joseph J. Queri, Jr.	4700 Elsworth Avenue, #7 Pittsburgh, Pennsylvania 15213

K-111

EXHIBIT "B"

Operating Agreement  
of  
Syracuse Soma Project LLC

(a) Manager(s)

<u>Name</u>	<u>Membership Percentage</u>	<u>Management Votes</u>
Mark J. Congel	75%	1
Daniel M. Queri	15%	1

(b) Non-Manager Members

<u>Name</u>	<u>Membership Percentage</u>
Joseph J. Queri, Jr.	10%

K-101

**BILL OF SALE AND ASSIGNMENT**

**OF**

**MEMBERSHIP INTEREST**

KNOW ALL MEN BY THESE PRESENTS THAT for good and valuable consideration, receipt of which is hereby acknowledged, **JAIME L. TUOZZOLO**, an individual residing at 116 E. Genesee Street, Skaneateles, New York 13152 ("**Assignor**") does hereby assign, transfer, convey, grant, set over, release, deliver and confirm a five percent (5%) membership interest (the "**Membership Interest**") in **SYRACUSE SOMA PROJECT LLC**, a Delaware limited liability company with a place of business at 4 Clinton Square, Suite 102, Syracuse, New York 13202 (the "**Company**") to **MARK J. CONGEL**, an individual residing at 4584 Bamerick Road, Jamesville, New York 13078 (the "**Assignee**"), his successors and assigns, free and clear of all liens and encumbrances of every kind or nature whatsoever.

Assignor represents and warrants to Assignee that (i) she has good and valid title to the Membership Interest and the Membership Interest represents Assignor's entire ownership interest in the Company, (ii) the Membership Interest is free and clear of all liens, charges, security interests and encumbrances whatsoever, (iii) there are no existing impediments to the sale and assignment of the Membership Interest to Assignee, (iv) she has the full right, power, legal capacity and authority to execute and deliver this Bill of Sale and Assignment, and (v) she has not filed any petition in bankruptcy or insolvency, or has any petition in bankruptcy been filed against her which is now pending.

Assignor agrees to indemnify and hold Assignee harmless against and in respect of any and all losses, costs, liabilities, damages and expenses (including reasonable attorneys' fees and disbursements) resulting from any breach of the foregoing representations and warranties.

**TO HAVE AND TO HOLD** said Membership Interest unto the Assignee, his successors and assigns for their benefit forever.

Assignor, for herself and her successors and assigns, hereby covenants and agrees that at any time and from time to time upon the request of the Assignee, Assignor will do, execute, acknowledge, and deliver or will cause to be done, executed, acknowledged or delivered, all such further acts, deeds, assignments and transfers requested by the Assignee in order to better assign, transfer, convey, grant, bargain, set over, release, deliver and confirm unto and vest in the Assignee, his successors and assigns, the Membership Interest.

**IN WITNESS WHEREOF**, Assignor has caused this Bill of Sale and Assignment to be duly executed effective as of the 31<sup>st</sup> day of December, 2008.

  
\_\_\_\_\_  
**Jaime L. Touzzolo**

**ASSIGNMENT OF MEMBERSHIP INTERESTS**

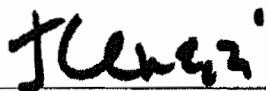
**KNOW ALL MEN BY THESE PRESENTS**, that in consideration of the sum of \$10.00 and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the undersigned, **JOSEPH J. QUERI** ("Assignor") does hereby assign and transfer to **LISA L. SCALLY** (the "Assignee"), all of Assignor's right, title and interest in and to Assignor's 10% membership interest in **SYRACUSE SOMA PROJECT LLC**, a Delaware limited liability company (the "Company").

Assignee hereby accepts the foregoing Assignment subject to the terms of the Company's Operating Agreement effective May 1, 2005 as modified on September 24, 2007 and, in consideration thereof, Assignor hereby represents and warrants to Assignee that Assignor has no knowledge of any outstanding claims against the Assignor's interest in the Company being assigned to Assignee.

This Assignment may be executed in any number of counterparts and by exchange of facsimile or e-mail signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment to be effective as of the 1st day of January, 2012.

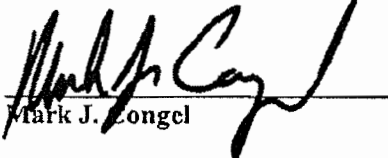
**ASSIGNOR:**

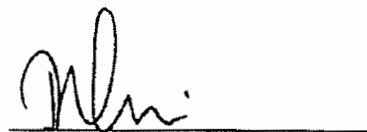
  
\_\_\_\_\_  
Joseph J. Queri

**ASSIGNEE:**


  
\_\_\_\_\_  
Lisa L. Scally

**APPROVED BY THE MANAGERS :**

  
\_\_\_\_\_  
Mark J. Longel

  
\_\_\_\_\_  
Daniel M. Queri

ASSIGNMENT OF MEMBERSHIP INTERESTS

 KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of \$50,000.00 and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the undersigned, **LISA L. SCALLY**, having an address of 92 North Country Club Drive, Rochester, New York 14618 ("Assignor") does hereby sell, assign and transfer to **PAOLO CASINELLI, JR.**, having an address of 6805 Woodchuck Hill Road, Fayetteville, New York 13066 (the "Assignee"), all of Assignor's right, title and interest in and to Assignor's 10% membership interest in **SYRACUSE SOMA PROJECT LLC**, a Delaware limited liability company (the "Company").

Assignee hereby accepts the foregoing Assignment subject to the terms of the Company's Operating Agreement effective May 1, 2005 as modified on September 24, 2007 and, in consideration thereof, Assignor hereby represents and warrants to Assignee that Assignor has no knowledge of any outstanding claims against the Assignor's interest in the Company being assigned to Assignee.

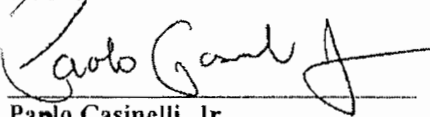

This Assignment may be executed in any number of counterparts and by exchange of facsimile or e-mail signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment to be effective as of the 1st day of July, 2013.

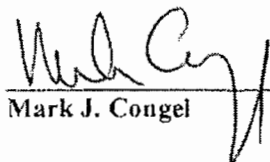
ASSIGNOR:

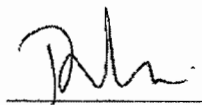
  
\_\_\_\_\_  
Lisa L. Scally

ASSIGNEE:

  
\_\_\_\_\_  
Paolo Casinelli, Jr.  


APPROVED BY THE MANAGERS :

  
\_\_\_\_\_  
Mark J. Congel

  
\_\_\_\_\_  
Daniel M. Queri

**EXHIBIT "C"**

**GOOD STANDING CERTIFICATES**

**(See attached)**

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "SYRACUSE SOMA PROJECT LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTIETH DAY OF JULY, A.D. 2015.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "SYRACUSE SOMA PROJECT LLC" WAS FORMED ON THE TWENTY-FOURTH DAY OF FEBRUARY, A.D. 2004.

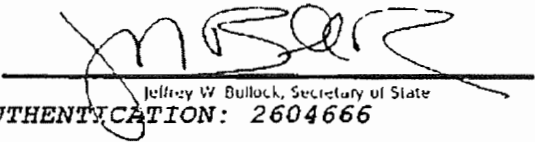
AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.

3768733 8300

151115918

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 2604666

DATE: 07-30-15

**State of New York  
Department of State } ss:**

*I hereby certify, that SYRACUSE SOMA PROJECT LLC a DELAWARE Limited Liability Company filed an Application for Authority pursuant to the Limited Liability Company Law on 05/24/2004. I further certify that so far as shown by the records of this Department, such Limited Liability Company is still authorized to do business in the State of New York. I further certify the following:*

*An Affidavit of Publication of SYRACUSE SOMA PROJECT LLC was filed on 11/12/2004.*

*An Affidavit of Publication of SYRACUSE SOMA PROJECT LLC was filed on 11/12/2004.*

*A Biennial Statement was filed 09/17/2007.*

*A Biennial Statement was filed 05/20/2008.*

*A Biennial Statement was filed 06/07/2010.*

*A Biennial Statement was filed 07/12/2012.*

*A Biennial Statement was filed 06/11/2014.*

*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 29th day of July  
two thousand and fifteen.*

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State



**EXHIBIT “D”**  
**RESOLUTION**  
**(See attached)**

**UNANIMOUS WRITTEN CONSENT  
OF THE  
MANAGERS  
OF  
SYRACUSE SOMA PROJECT LLC**

The undersigned, constituting the only two (2) Managers of **SYRACUSE SOMA PROJECT LLC**, a Delaware limited liability company (the “**Company**”), DO HEREBY ratify, confirm and adopt the following as and for the Resolutions of the Company:

**WHEREAS**, the Company has requested James A. Tuozzolo, Timothy P. Ahern, and Michael A. Mammolito, or their successors, as Trustees of the MJC Family Trust, with a principal address of The Clinton Exchange, 4 Clinton Square, Syracuse, New York 13202 (the “**Lender**”) provide one of its Members, Mark J. Congel (“**Congel**”), with a construction loan in the principal amount of Three Million Four Hundred Fifty-Five Thousand and 00/100 Dollars (\$3,455,000.00) (the “**Loan**”) for the purpose of financing the construction of an addition to certain real property and improvements owned by the Company and commonly known as “The Amos Building” located at 204 and 208 West Water Street situate in the City of Syracuse, Onondaga County, New York (the “**Property**”); and

**WHEREAS**, by application dated April 10, 2015 (the “**Application**”), the Company, requested that the City of Syracuse Industrial Development Agency, (“**SIDA**”) undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in the 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 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 Lender is willing to provide the Loan to Congel on the terms and conditions set forth in the following documents: (i) a Multiple Disbursement Construction Loan Note by Congel in favor of the Lender in the principal amount of Three Million Four Hundred Fifty-Five Thousand and 00/100 Dollars (\$3,455,000.00); (ii) a Pledge Agreement (Crystal Run and West Nyack Notes); (iii) an Assignment of Interest in Syracuse Soma Project LLC; (iv) a Pledge Agreement (Syracuse Soma Project LLC Membership Interest) and pursuant to the following documents to be executed by the Company: (i) Pledge Agreement (Syracuse Soma Project LLC, Free Cash Flow and Related Assets); and (ii) such other documents as may be required by the Lender in order to effectuate the Loan (the forgoing items (i) and (ii) shall be known as the “**Company Documents**”).

**NOW, THEREFORE**, be it:

**RESOLVED**, that each and all of the transactions contemplated by the Company Documents pursuant to which, among other things, the Lender will provide the Loan to Congel, be, and the same hereby is and are, approved; and be it further

**RESOLVED**, that Congel, one of the two (2) Managers of the Company, is hereby authorized, directed and empowered to execute and deliver the Company Documents in the name and on behalf of the Company; and be it further

**RESOLVED**, that Congel is hereby authorized and empowered to make such changes, additions, modifications, amendments and deletions to the Company Documents as he, with the advice of counsel, shall deem necessary or advisable; and be it further

**RESOLVED**, that Congel is also authorized and empowered to execute and deliver on behalf of the Company any and all documents with and to SIDA in order to facilitate SIDA providing certain financial assistance with respect to the Company's construction of its addition to the Property in accordance with Resolutions adopted by SIDA on June 16, 2015 including, but not limited to, an Amended and Restated Payment in Lieu of Taxes Agreement, an Amended and Restated Company Lease, an Amended and Restated Agency Lease, Environmental Compliance and Indemnification Agreement and any other documents of any kind or nature as may be necessary or required to effectuate and consummate such financial assistance (the "**SIDA Documents**"); and be it further

**RESOLVED**, that Congel is also hereby authorized and empowered to execute and deliver any and all documents requested by the holder of the first mortgage against the Property, MidFirst Bank, a federally chartered savings association having an address of P.O. Box 26750, Oklahoma City, Oklahoma, 73126 ("**MidFirst**") in order to obtain MidFirst's consent to the construction on the Property and to the Loan including, but not limited to, an amendment to MidFirst's first mortgage and a Subordination and Standstill Agreement by and among Congel, the Company, Lender and MidFirst; and be it further

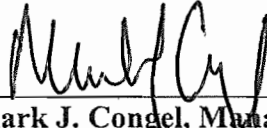
**RESOLVED**, that Congel is hereby authorized, directed and empowered to take such other steps and actions as may be necessary to effectuate the above Resolutions; and any and all prior actions taken with respect to the Project are hereby ratified and approved; and be it further

**RESOLVED**, upon the execution of the SIDA Documents and the Company Documents, such documents shall be binding upon the Company.

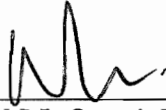
This Consent may be relied upon by the Lender, its counsel, Bond Schoeneck & King PLLC, SIDA, its counsel Barclay Damon LLP, MidFirst and its counsel Rubin Ehrlich & Buckley, P.C. and Chicago Title Insurance Company.

This Consent may be executed in multiple counterparts and by e-mailed or faxed signatures.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent this 28<sup>th</sup> day of September, 2015.



\_\_\_\_\_  
**Mark J. Congel, Manager**



\_\_\_\_\_  
**Daniel M. Queri, Manager**

**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**  
**(See attached)**

**City of Syracuse**  
**Industrial Development Agency**

**Local Access Agreement**

Syracuse Soma Project 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		Syracuse Soma Project, LLC				General Contractor		Burke Contracting, LLC			
Representative for Contract Bids and Awards		Wayne, LaFrance, AIA				Contact		Rick Capozzi			
Address		24 Maple Street				Address					
City	Marcellus	ST	NY	Zip	13108	City	Fayetteville	ST	NY	Zip	13066
Phone	(315) 673-9333		Fax	(315) 673-9938		Phone	(515) 446-9978		Fax		
Email		wayne@lakearchitectural.com				Email		burkecontracting@twcny.rr.com			
Project Address		204 and 208 West Water Street				Construction Start Date		06/15/2015			
City	Syracuse	ST	NY	Zip	13202	Occupancy Date		02/01/2017			

Project Components – Indicate those for which bids will be sought:

Item	Estimated Value	Bid Date	Contact
Site work/Demolition	36,900	3/12/15	Rick Capozzi (315) 446-9978
Foundation and footings	106,630	3/12/15	Rick Capozzi (315) 446-9978
Building	33,574	3/12/15	Rick Capozzi (315) 446-9978
Masonry	46,000	3/12/15	Rick Capozzi (315) 446-9978
Metals	636,000	3/12/15	Rick Capozzi (315) 446-9978
Wood/casework	45,250	3/12/15	Rick Capozzi (315) 446-9978
Thermal/moisture proof	90,300	3/12/15	Rick Capozzi (315) 446-9978
Doors, windows, glazing	228,300	3/12/15	Rick Capozzi (315) 446-9978
Finishes	257,650	3/12/15	Rick Capozzi (315) 446-9978
Electrical	155,000	3/12/15	Rick Capozzi (315) 446-9978
HVAC	218,000	3/12/15	Rick Capozzi (315) 446-9978
Plumbing	255,000	3/12/15	Rick Capozzi (315) 446-9978
Specialties	141,700	3/12/15	Rick Capozzi (315) 446-9978
Machinery & Equipment	20,000	3/12/15	Rick Capozzi (315) 446-9978
Furniture and Fixtures	595,000	3/12/15	Rick Capozzi (315) 446-9978
Utilities	20,000	3/12/15	Rick Capozzi (315) 446-9978
Paving			
Landscaping			
Other (identify)			

Date: September 29, 2015

Company: Syracuse Soma Project LLC

Signature: 

Name: Mark J. Congel

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September 30, 2015

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

Syracuse Soma Project LLC  
4 Clinton Square, Suite 102  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Amos Building Addition Project (Syracuse Soma Project 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 Syracuse Soma Project LLC (the “**Company**”) consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “**Expanded Land**” and together with the Original Land<sup>1</sup> the “**Land**”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “**Expanded Facility**” and together with the Original Facility, the “**Facility**”); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the “**Expanded Equipment**” and together with the Original Equipment, the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting and/or continuation 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**

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<sup>1</sup> The Agency, at the request of the Company, previously undertook a project (the “**Original Project**”) which consisted of: (1)(A) the Agency’s acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the “**Original Land**”), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the “**Original Facility**”), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the “**Original Equipment**” and, together with the Original Land and the Original Facility, the “**Original Project Facility**”) for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking.



*Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction 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, the Company and the City of Syracuse, New York will enter into an Amended and Restated Payment in Lieu of Taxes Agreement dated as of September 1, 2015 (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 Amended and Restated Agency Lease Agreement dated as of September 1, 2015 (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.

Very truly yours,

BARCLAY DAMON, LLP

*Barclay Damon, LLP*

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SHULMAN GRUNDNER ETOLL & DANAHER, P.C.

Attorneys at Law

C. Daniel Shulman  
Charles H. Grundner  
Stephen G. Etoll  
Christian J. Danaher

250 South Clinton Street, Suite 502  
Syracuse, New York 13202-1262  
(315) 424-8944 FAX: (315) 424-8205  
www.shulmanlawpc.com

September 30, 2015

Syracuse Soma Project LLC  
4 Clinton Square, Suite 102  
Syracuse, New York 13202

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Amos Building Addition Project (Syracuse Soma Project LLC)

Ladies and Gentlemen:

We have acted as counsel to Syracuse Soma Project 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 or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “**Expanded Land**” and together with the Original Land<sup>1</sup> the “**Land**”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “**Expanded Facility**” and together with the Original Facility, the “**Facility**”); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures

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<sup>1</sup> The Agency, at the request of the Company, previously undertook a project (the “**Original Project**”) which consisted of: (1)(A) the Agency’s acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the “**Original Land**”), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the “**Original Facility**”), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the “**Original Equipment**” and, together with the Original Land and the Original Facility, the “**Original Project Facility**”) for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking.

and equipment (the “**Expanded Equipment**” and together with the Original Equipment, the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting and/or continuation 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 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 Amended and Restated Company Lease Agreement dated as of September 1, 2015 (the “**Company Lease**”) and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of September 1, 2015 (the “**Bill of Sale**”) and the Agency will sublease the Project Facility back to the Company pursuant to an Amended and Restated Agency Lease Agreement dated as of September 1, 2015 (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 an Amended and Restated Payment in Lieu of Taxes Agreement dated September 1, 2015 (the “**PILOT Agreement**”) with respect to the Project.

In that regard, we have examined 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 Delaware limited liability company and qualified to conduct business in New York and possesses full 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 Certificate of Formation, 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.

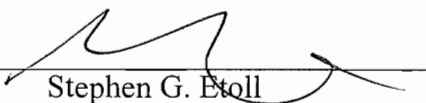
This opinion is only for the benefit of and may be relied upon only by the Agency, its successors and assigns. The opinions set forth in this letter are limited to those expressly stated and no other opinion may be inferred nor is any implied. No other use of this opinion may be made without prior written consent. This opinion is given as of the date hereof and we undertake

Syracuse Soma Project, LLC  
City of Syracuse Industrial Development Agency  
September 30, 2015  
Page 4

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,

SHULMAN GRUNDNER ETOLL  
& DANAHER, P.C.

By:   
Stephen G. Etoll

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**CLOSING MEMORANDUM**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AMOS BUILDING ADDITION PROJECT  
(SYRACUSE SOMA PROJECT LLC)**

**DATE AND TIME OF CLOSING:** September 30, 2015

**PLACE OF CLOSING:** Barclay Damon, LLP  
One Park Place  
300 South State Street  
Syracuse, New York 13202

**I. Action Taken Prior to Closing**

At the request of Syracuse Soma Project 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, previously undertook a project (the "**Original Project**") consisting of: (1)(A) the Agency's acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the "**Original Land**"), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the "**Original Facility**"), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the "**Original Equipment**" and, together with the Original Land and the Original Facility, the "**Original Project Facility**") for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking; and (2) the lease of the Original Project Facility to the Company.

Thereafter, at the request of the Company, the Agency has undertaken an expansion of the Original Project (the "**Project**") consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the "**Expanded Land**" and together with the Original Land the "**Land**"); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the existing approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through four (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the

“**Expanded Facility**” and together with the Original Facility, the “**Facility**”); (iii) the acquisition and installation in the Expanded Facility of furniture, fixtures and equipment (the “**Expanded Equipment**” and together with the Original Equipment, the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting and/or continuation 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 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 the owner of the Land, the Facility and the Equipment.

The Agency will acquire a leasehold interest in the Land and Facility from the Company pursuant to an Amended and Restated Company Lease Agreement dated as of September 1, 2015 (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 August 1, 2015 (the “**Bill of Sale**”). The Agency will sublease the Project Facility back to the Company, pursuant to an Amended and Restated Agency Lease Agreement dated as of September 1, 2015 (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:

- |                |   |
|----------------|---|
| April 10, 2015 | The Company submitted an application for financial assistance for the project.  |
| April 21, 2015 | A resolution determining that the acquisition, construction 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 (the “ <b>Public Hearing Resolution</b> ”). |
| May 6, 2015    | 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.   |
| May 7, 2015    | Notice of the Public Hearing was published in the <u>Post-Standard</u> pursuant to Section 859-a of the Act.  |

May 19, 2015	The Agency conducted the Public Hearing pursuant to Section 859-a of the Act.
May 19, 2015	A resolution consenting to the City of Syracuse Planning Commission acting as Lead Agency for purposes of a coordinated review pursuant to SEQRA (the “ <b>Lead Agency Resolution</b> ”).
June 10, 2015	Notice of Deviation was mailed to the Mayor and the County Executive (the “ <b>Deviation Notice</b> ”).
June 16, 2015	A resolution authorizing the undertaking of the acquisition, construction and equipping of a certain project; appointing the Company 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 “ <b>Inducement Resolution</b> ”).
June 16, 2015	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 “ <b>PILOT Resolution</b> ”).
June 16, 2015	A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the “ <b>Final Approving Resolution</b> ”).

## **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) and Company's Counsel (CC) as follows:

<b>A. Basic Documents</b>	<b>Responsible Party</b>	<b>Signatories</b>
1. Amended and Restated Company Lease Agreement	AC	C, A
2. Memorandum of Amended and Restated Company Lease Agreement with TP-584	AC	C, A
3. Bill of Sale		
4. Amended and Restated Agency Lease Agreement	AC	C, A
5. Memorandum of Amended and Restated Agency Lease Agreement with Form TP-584	AC	C, A
6. Company Certification re: Local Labor Policy	AC	C
7. Certificates of casualty, liability, workers' compensation and other required insurance	AC	
8. Environmental Compliance and Indemnification Agreement	AC	C
9. Closing Receipt	AC	C, A
10. Sales Tax Exemption Letter	AC	A
11. Form ST-60 indicating appointment of the Company to act as the agent of the Agency	AC	A
12. Amended and Restated PILOT Agreement	CC	A, C, City (Mayor)
13. 412 a	CC	A

14.	Ordinance No. 563 of 2015 approving the PILOT schedule		
15.	First Amendment to Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing	LC	C, A
16.	255 Affidavit	CC	

**B. Items To Be Delivered By The Agency**

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
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Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended	A
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Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members	A
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Exhibit "C" - By-laws	A
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Exhibit "D" - Public Hearing Resolution	AC
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Exhibit "E" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions	AC
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Exhibit "F" – Lead Agency Resolution	AC
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Exhibit "G" – Inducement Resolution	AC
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Exhibit "H" – Deviation Notice	
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Exhibit "I" – PILOT Resolution AC

Exhibit "J" – Final Approving Resolution AC

**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" - Certificate of Formation C

Exhibit "B" - Operating Agreement C C

Exhibit "C" Certificates of Good Standing (DE and NY) C

Exhibit "D" Company Resolution C

Exhibit "E" Local Access Agreement C

**D. Opinions of Counsel C**

1. Opinion of Barclay Damon, LLP, counsel to the Agency, addressed to the Company and the Agency AC AC

2. Opinion of Shulman, Grundner, Etoll & Danaher, P.C., 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 and Memorandum of Agency Lease Agreement are to be filed with the Onondaga County Clerk.

**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: Syracuse Soma Project, LLC  
Mark Congel, Managing Member

Company Counsel: Shulman, Grundner, Etoll & Danaher, P.C.  
Stephen G. Etoll, Esq.

Agency's Counsel: Barclay Damon, LLP  
Susan R. Katzoff, Esq.