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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**444 EAST GENESEE STREET LLC**

**TRANSCRIPT OF PROCEEDINGS**

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**CLOSING DATE: JUNE 3, 2021**

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**444 EAST GENESEE STREET LLC**

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## PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (the "*Project Agreement*"), made as of June 1, 2021, by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "*Agency*"), **444 EAST GENESEE STREET LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, authorized in the State of New York, with offices at 344 South Warren Street, Suite 202, Syracuse, New York 13202 (the "*Company*").

### WITNESSETH:

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

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

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

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

**WHEREAS**, the Company submitted an application (the "*Application*") to the Agency requesting the Agency's assistance with respect to a certain project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of

approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**") and together with the Land and the Facility, the "**Project Facility**"; (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 Project shall contain 100% income restricted residential units in accordance with the US Department of Housing and Urban Development ("**HUD**") requirements set forth in that certain regulatory agreement dated as of June 3, 2021 by and between the Company and New York State Housing Finance Agency related to the Project (the "**Regulatory Agreement**"), provided however that at least 20% of the units are rent restricted to 65% of the area median income ("**AMI**") rent limit for the City of Syracuse, New York, inclusive of utilities, as designated annually by HUD (the "**HUD Rates**"), in accordance with the Agency's Uniform Tax Exemption Policy ("**UTEP**") (collectively, the "**Rent Restrictions**"); and

**WHEREAS**, it has been estimated and confirmed by the Company within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project, and subject to New York State and local sales and use taxes, are estimated to cost an amount up to **\$1,892,505**; and therefore, the value of the State and local sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$151,400**; (ii) the mortgage recording tax exemption amount shall be approximately **\$29,492** (as limited by Section 874 of the General Municipal Law); and (iii) real property tax abatement benefits to be provided to the Company over the 15-year benefit period of the anticipated payment in lieu of taxes agreement are estimated to be approximately **\$529,699.01**; and

**WHEREAS**, by resolutions of its members adopted on April 27, 2021 (collectively, the "**Resolutions**"), the Agency authorized certain financial assistance for the benefit of the Project consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, construction or equipping of the Project Facility in an amount not to exceed \$151,400; (b) an exemption from mortgage recording tax; and (c) an abatement from real property taxes through a 15-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively referred to as the "**Financial Assistance**"); and

**WHEREAS**, the Company proposes to lease the Land and Facility to the Agency, and the Agency desires to lease the Land and Facility from the Company pursuant to the terms of a certain Company Lease Agreement dated as of June 1, 2021 (the "**Company Lease**"), by and between the Company and the Agency; and

**WHEREAS**, the Agency proposes to acquire an interest in the Equipment pursuant to a bill of sale dated as of June 1, 2021 from the Company (the “*Bill of Sale*”); and

**WHEREAS**, contemporaneously with the execution of this Project Agreement, the Company shall execute and deliver an environmental compliance and indemnification agreement dated as of June 1, 2021 in favor of the Agency (the “*Environmental Compliance and Indemnification Agreement*”); and

**WHEREAS**, the Agency proposes to sublease the Project Facility to the Company, and the Company desires to sublease the Project Facility from the Agency, upon the terms and conditions set forth in a certain Agency Lease Agreement dated as of June 1, 2021 (the “*Agency Lease*”); and

**WHEREAS**, in order to define the obligations of the Company regarding payments in lieu of taxes for the Project Facility, the Agency and the Company will enter into a Payment in Lieu of Tax Agreement, dated as of June 1, 2021 (the “*PILOT Agreement*”), by and between the Agency and the Company; and

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

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

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

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

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

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

## **ARTICLE I PROJECT AND TERM**

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

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

**Section 1.03 Term.** The term of this Project Agreement shall be the longer of: (a) the term of the PILOT Agreement; or (b) five years following the termination of the Agency Lease (the "**Term**"). The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the Term of this Project Agreement and the Company's reporting obligations hereunder shall continue during the Term hereof. In addition, during the Term hereof, the Company and the Project shall be subject to Article V hereof.

## ARTICLE II REAL PROPERTY TAX EXEMPTION

**Section 2.01. PILOT Agreement.** Attached hereto and made a part hereof as **Exhibit A** is a copy of the PILOT Agreement by and between the Company and the Agency. For the duration of the term hereof, the Project shall comply with the Rent Restrictions. Rental rates in the leases for these residential units must be tied to the annual HUD Rates. It is the Company's obligation to obtain the annual HUD Rates each year. Generally, the HUD Rates are published in or about June of each year.

## ARTICLE III SALES AND USE TAX EXEMPTION

**Section 3.01. Scope of Agency.** The Company agrees to limit its activities as agents for the Agency under the authority of the Resolutions and this Project Agreement to acquisition, reconstruction, installation and completion of the Project Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of June 1, 2022, or sixty days after the issuance of a certificate of occupancy, unless extended by a resolution adopted by the members of the Agency, or unless terminated early in accordance with the terms of the Agency Lease. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.03(b) unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agent for the Agency shall include the following language:

"This contract is being entered into by \_\_\_\_\_ (the "**Agent**"), as agent for and on behalf of the City of Syracuse Industrial Development Agency (the "**Agency**"), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for use in construction and/or incorporation and installation in certain premises located at 444 East Genesee Street, in the City of Syracuse, New York (the "**Premises**"). The machinery,

equipment and building materials (collectively, the “*Equipment*”) to be used in the construction and/or incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the use and/or acquisition of the Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of June 1, 2021 by and between the Agency and the Company (the “*Project Agreement*”); and the Agent represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor acknowledges and agrees to the terms and conditions set forth in this paragraph.”

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

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

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

(b) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to \$1,892,505, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$151,400.

(c) The Company further covenants and agrees to maintain the Rent Restrictions and comply with the reporting obligations set forth herein and in the Agency Lease.

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

(e) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance an “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Company and its Sub-Agents have claimed pursuant to the agency conferred on the Company with respect

to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of their filed ST-340 to the Agency, but in no event later than March 29 of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of: (1) the Company's authority to act as agents for the Agency; and (2) the authority of any Sub-Agent of the Agency appointed by the Company pursuant to Section 3.02 hereof to act as agent for the Agency.

(f) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123, a copy of which is attached to the Sub-Agent Agreement), and it shall be the responsibility of the Company and the Sub-Agent, as the case may be, (and not the Agency) to complete Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill of invoice should state, "I, [NAME OF AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Project Agreement with the City of Syracuse Industrial Development Agency." The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: 444 EAST GENESEE STREET LLC PROJECT, 444 EAST GENESEE STREET, IDA PROJECT NO. 31022101.

(g) The Company acknowledges the Agency's Local Access Policy and the Company's (and its sub-agents') obligation to comply. The Company further acknowledges that pursuant to a resolution dated April 27, 2021, at the request of the Company, the Agency provided a limited waiver of its Local Access Policy for one subcontractor; namely, Ajay Glass, a Canandaigua company with the understanding and commitment from the Company that while the subcontractor is located outside of the local region, all laborers would be local unless the Company could demonstrate, to the satisfaction of the Agency, that there was a shortage of qualified local laborers. To that end, the Company agrees that such local labor shall be included in the term "Local Labor Requirements" (as defined herein) and the Company shall provide evidence of such local labor as and when requested by the Agency.

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

#### **Section 3.04. Hold Harmless Provisions.**

(a) The Company releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and

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

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

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

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

### **Section 3.05. Insurance Required.**

(a) The Company agrees that it shall at all times maintain all insurance required under the Agency Lease as if such terms were set forth herein.

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

#### ARTICLE IV COMMITMENTS AND REPORTING

**Section 4.01. Compliance Commitments.** The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below, and report on same as provided for herein, beginning in the first year following the Completion Date of the Project and continuing for the Term (as defined herein) hereof. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to the Rent Restrictions starting on the Completion Date. The reporting of, and the commitment to, each of (a), (b) and (c) below shall continue for the Term hereof:

(a) The total investment actually made with respect to the Project at the Project's Completion Date shall equal or exceed \$4,104,846, being the total project cost as stated in the Company's Application for Financial Assistance (the "***Investment Commitment***").

(b) There were no full time equivalent ("***FTE***") employees retained by the Project Facility as of the date of the Application for Financial Assistance (the "***Baseline FTE***"). The Company's application estimated the creation of five (5) new FTEs (the "***New FTEs***") at the Project Facility within the first five (5) years following the Completion Date of the Project Facility. The Company covenants and agrees to create the New FTEs set forth in the first five (5) years following completion of the Project Facility as of and in the years set forth in the Application. The Company shall be required to meet and maintain all of the foregoing employment commitments during the Term (as defined in Section 6.07 below) hereof (the "***Employment Commitment***"). The Project is designed to provide affordable housing for the benefit of the residents of the City. To that end, the Project shall contain 100% income restricted residential units in accordance with the HUD requirements set forth in the Regulatory Agreement related to the Project; provided however, that at least 20% of the units are rent restricted to the HUD Rates, in accordance with the Agency's UTEP.

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the Investment Commitment, Rent Restrictions and other objectives of the Project during the Term hereof, including but not limited to the Local Labor Requirements set forth in the Agency Lease (the "***Reporting Commitment***").

**Section 4.02. Reporting Requirement.** As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting documentation enumerating the Investment Commitment and the Rent Restrictions all in

accordance with Section 8.5 of the Agency Lease. The Agency reserves the right to modify such forms to require additional information that the Agency must have in order to comply with its reporting requirements under the Act and/or its policies.

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

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

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

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

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

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

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

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

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

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

- b) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- c) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- d) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, Rent Restrictions and other objectives of the Project (“*Reporting Failure*”); or
- e) there otherwise occurs any event of default under any project document (each, an “*Event of Default*”) or a material violation of the terms and conditions of any project document, including but not limited to the failure to maintain and comply with the Rent Restrictions (a “*Material Violation*”).
- f) in addition to the foregoing, the Company acknowledges that if they fail at any time during the term hereof, to maintain the Rent Restrictions (as set forth in the Agency Lease), the Agency shall have the right to recapture any or all Financial Assistance obtained by the Company.

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

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

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

- iv. Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of the City of Syracuse.
- v. The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- vi. Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance.

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

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

## ARTICLE VI MISCELLANEOUS PROVISIONS

**Section 6.01. Survival.** All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency. The obligations of the Company to repay, defend and/or provide the indemnity required by Section 3.04 hereof shall survive the termination of the Agency's interest in the Project Facility and all such payments after such termination shall be made upon demand of the party to whom such payment is due. The obligations of the Company to repay, defend and/or provide the indemnity required by Section 3.04 hereof shall survive the termination of the Agency's interest in the Project Facility 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. The obligations of the Company pursuant to Article IV hereunder shall survive the Agency's interest in the Project Facility, and for the avoidance of doubt, the Agency's rights under Article V shall survive the termination of the Agency's interest in the Project Facility.

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

If to the Agency: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chair

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

and

Bousquet Holstein PLLC  
One Lincoln Center  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

If to the Company: 444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
Syracuse, New York 13202  
Attn: Graziano Zazzara, Jr.

With a copy to: Lynn, D'Elia, Temes & Stanczyk LLC  
100 Madison Street, Suite 1905  
Syracuse, New York 13202  
Attn: Michael Stanczyk, Esq.

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

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

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

**Section 6.05. Counterparts; Electronic Signature.** This Project Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed signature page counterpart hereof by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart hereof. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic association of signatures and records on electronic platforms, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, any other similar state laws based on the Uniform Electronic Transactions Act, the Uniform Commercial Code, each as amended, and the parties hereto hereby waive any objection to the contrary, provided that (x) nothing herein shall require the Agency to accept electronic signature counterparts in any form or format and (y) the Agency reserves the right to require, at any time and at its sole discretion, the delivery of manually executed counterpart signature pages to this agreement and the parties hereto agree to promptly deliver such manually executed counterpart signature pages.

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

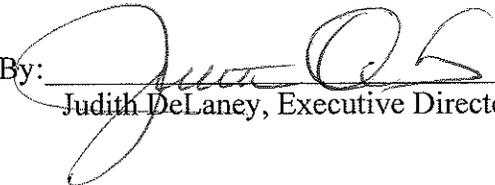
**Section 6.07. Section Headings.** The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

**Section 6.08. Defined terms.** Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Agency Lease as Exhibit “C.”

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

By: \_\_\_\_\_  
Graziano Zazzara, Jr., Its Manager

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

GRAZIANO ZAZZARA, JR., being first duly sworn, deposes and says:

1. That I am the Manager of 444 East Genesee Street LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

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

Subscribed and affirmed to me  
under penalties of perjury  
this \_\_\_ day of June, 2021.

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

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

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

By: \_\_\_\_\_  
Graziano Lazzara, Jr., Its Manager

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

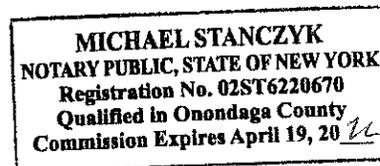
GRAZIANO ZAZZARA, JR., being first duly sworn, deposes and says:

1. That I am the Manager of 444 East Genesee Street LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

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

Subscribed and affirmed to me  
under penalties of perjury  
this 20 day of June, 2021.

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



**EXHIBIT A**

Executed Copy of PILOT Agreement

**SEE TAB 15**



**444 EAST GENESEE STREET LLC**

**AND**

**CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY**

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**COMPANY LEASE AGREEMENT**

---

**DATED AS OF JUNE 1, 2021**

## COMPANY LEASE AGREEMENT

**THIS COMPANY LEASE AGREEMENT** (the "*Company Lease*"), made and entered into as of June 1, 2021, by and between **444 EAST GENESEE STREET LLC** (the "*Company*"), a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York, with an office at 344 South Warren Street, Suite 202, 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 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202.

### WITNESSETH:

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

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

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

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

**WHEREAS**, the Agency, by resolution adopted on April 27, 2021, agreed, at the request of the Company to undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike

storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 Project shall contain 100% income restricted residential units in accordance with the US Department of Housing and Urban Development ("**HUD**") requirements set forth in that certain regulatory agreement dated as of June 3, 2021 by and between the Company and New York State Housing Finance Agency related to the Project (the "**Regulatory Agreement**"), provided however that at least 20% of the units are rent restricted to 65% of the area median income ("**AMI**") rent limit for the City of Syracuse, New York, inclusive of utilities, as designated annually by HUD (the "**HUD Rates**"), in accordance with the Agency's Uniform Tax Exemption Policy ("**UTEPP**") (collectively, the "**Rent Restrictions**"); and

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

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

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

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

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

**ARTICLE I  
RECITALS AND DEFINITIONS**

**1.0 RECITALS.**

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

**1.1 DEFINITIONS.**

For all purposes of this Company Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions which is attached to the Agency Lease Agreement dated as of June 1, 2021 between the Agency and the Company (the "*Agency Lease*") as Exhibit "A" 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 June 1, 2021 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 partnership duly organized, validly existing and in good standing under the laws of Delaware, is authorized 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.

(e) 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), the Company shall maintain and comply with all Rent Restrictions 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).

(f) 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.

(g) 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.

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

### **ARTICLE III DISPUTE RESOLUTION**

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

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

**3.2 WAIVER OF TRIAL BY JURY.**

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

**ARTICLE IV  
MISCELLANEOUS CLAUSES**

**4.1 NOTICES.**

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

(a) To the Agency: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chair

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

and

Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) If to the Company: 444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
Syracuse, New York 13202  
Attn: Graziano Zazzara, Jr.

With a copy to: Lynn, D'Elia, Temes & Stanczyk LLC  
100 Madison Street, Suite 1905  
Syracuse, New York 13202  
Attn: Michael Stanczyk, 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 Company acknowledges and agrees that this Company Lease and the Agency Lease shall be subordinate in all respects to the Mortgages.

**4.8 HOLD HARMLESS PROVISIONS.**

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

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

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

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

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

(4) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents, or employees.

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

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed signature page counterpart hereof by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic association of signatures and records on electronic platforms, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, any other similar state laws based on the Uniform Electronic Transactions Act, the Uniform Commercial Code, each as amended, and the parties hereto hereby waive any objection to the contrary, provided that (x) nothing herein shall require the Agency to accept electronic signature counterparts in any form or format and (y) the Agency reserves the right to require, at any time and at its sole discretion, the delivery of manually executed counterpart signature pages to this agreement and the parties hereto agree to promptly deliver such manually executed counterpart signature pages.

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

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

#### **4.13 REMEDIES.**

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

- 1) Terminate the Company Lease;
- 2) See to recapture all or some of the Recapture Amount; 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.

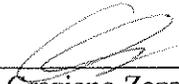
#### **4.14 AMENDMENTS, CHANGES AND MODIFICATIONS.**

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**444 EAST GENESEE STREET LLC**

By:   
Graziano Zazzara, Jr., Its Manager

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

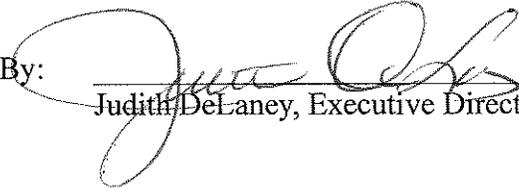
By: \_\_\_\_\_  
Judith DeLaney, Executive Director

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

**444 EAST GENESEE STREET LLC**

By: \_\_\_\_\_  
Graziano Zazzara, Jr., Its Manager

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
Judith DeLaney, Executive Director

**EXHIBIT A**

**DESCRIPTION OF REAL PROPERTY**

**Property: 444 East Genesee Street, Syracuse, New York**

**ALL THAT TRACT OR PARCEL OF LAND** located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

**BEING MORE MODERNLY DESCRIBED AS:**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

**BEGINNING** at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

**thence** S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

**thence** N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

**thence** N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

**thence** S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the **POINT OF BEGINNING. CONTAINING** 0.179 Acre of land more or less.



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
CHICAGO TITLE - EMILY

Return To :  
CHICAGO TITLE  
PICK UP BOX

Method Returned : MAIL

**First PARTY 1**

444 EAST GENESEE STREET LLC

**First PARTY 2**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2021-00025806

Book : Page :

Type of Instrument : Memorandum Of Lease

Type of Transaction : Deed Misc

Recording Fee: \$80.50

Recording Pages : 7

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

**Real Estate Transfer Tax**

RETT # : 11354  
Deed Amount : \$0.00  
RETT Amount : \$0.00  
Total Fees : \$80.50

State of New York

County of Onondaga

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

On (Recorded Date) : 06/08/2021

At (Recorded Time) : 1:37:57 PM



Doc ID - 042814470007

Lisa Dell, County Clerk



THIS IS NOT A BILL

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

Entered By: RSWEENIE Printed On : 06/09/2021 At : 10:42:31AM

6

**MEMORANDUM OF  
COMPANY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** 444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
Syracuse, New York 13202

***NAME AND ADDRESS OF LESSEE:*** City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

***DESCRIPTION OF LEASED PREMISES:***

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

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

As of June 1, 2021.

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

The term of the Company Lease shall commence on the date hereof and continue in full force and effect until **June 30, 2037**, unless earlier terminated as provided in that certain Agency Lease dated of even date herewith between the same parties hereto.

City of Chicago Tribe

#2017-0321EC

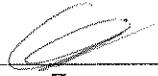
5130993\_1

Memorandum of the Company Lease

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of June, 2021.

**444 EAST GENESEE STREET LLC**

By:

  
\_\_\_\_\_  
Graziano Zazzara, Jr., Its Manager

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:

\_\_\_\_\_  
Judith DeLaney, Executive Director

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of June, 2021.

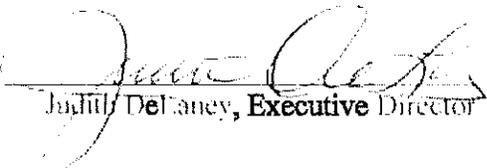
**444 EAST GENESEE STREET LLC**

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

Graziano Zazzara, Jr., Its Manager

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

  
Judith Delaney, Executive Director

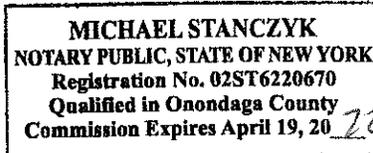
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ONONDAGA        )

On the 26 day of ~~June~~<sup>May</sup>, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **GRAZIANO ZAZZARA, Jr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



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

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



On this \_\_\_ day of June, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, 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 the \_\_\_ day of June, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **GRAZIANO ZAZZARA, Jr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

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

On this 29<sup>th</sup> day of June, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, 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

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

**Property: 444 East Genesee Street, Syracuse, New York**

**ALL THAT TRACT OR PARCEL OF LAND** located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

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**BEGINNING** at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

**thence S.00°04'30"W.**, along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

**thence N.89°48'10"W.**, along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

**thence N.00°04'30"E.**, along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

**thence S.89°28'10"E.**, along the southerly line of said East Genesee Street, a distance of 53.50 feet to the **POINT OF BEGINNING**. **CONTAINING 0.179 Acre** of land more or less.



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

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

Schedule A - Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, and Social Security number (SSN).

Location and description of property conveyed

Table with 5 columns: Tax map designation, SWIS code, Street address, City, town, or village, and County.

Type of property conveyed (mark an X in applicable box)

Form with checkboxes for property types (One- to three-family house, Residential cooperative, etc.) and a date of conveyance field.

Condition of conveyance (mark an X in all that apply)

Form with multiple checkboxes (a-s) describing conditions of conveyance such as fee interest, acquisition of controlling interest, etc.

Form for recording officer's use with fields for Amount received, Date received, and Transaction number.

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

**Part 1 – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3) .....  **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 2 – 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 1, 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 3 – Explanation of exemption claimed on Part 1, line 1 (mark an X in all 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, New York State, 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, § 1401(e) (attach documents supporting such claim) ..... k

\* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. 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 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.  
 This is to certify that: (mark an X in 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:
  - a.  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.
  - b.  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).
  - c.  The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - d.  The maximum principal amount secured by the credit line mortgage is \$3 million 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.  
  

**Note:** for purposes of determining whether the maximum principal amount secured is \$3 million 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.
  - e.  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.  A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - b.  A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's 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.)

**Signature (both the grantors and grantees 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 their 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.

444 East Genesee Street LLC

City of Syracuse Industrial Development Agency

 Grantor signature Graziano Zazzara, Jr.	Manager Title _____ Judith DeLaney	Grantee signature _____ Judith DeLaney	Executive Director 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 marked 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? If no recording is 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 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

This is to certify that: (mark an X in 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:
  - a  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.
  - b  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).
  - c  The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - d  The maximum principal amount secured by the credit line mortgage is \$3 million 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.

**Note:** for purposes of determining whether the maximum principal amount secured is \$3 million 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.

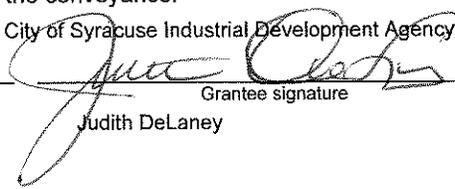
- e  Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - a  A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - b  A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's 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.)

**Signature (both the grantors and grantees 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 their 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.

444 East Genesee Street LLC

City of Syracuse Industrial Development Agency

Grantor signature Graziano Zazzara, Jr.	Manager Title	 Grantee signature Judith DeLaney	Executive Director 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 marked 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? If no recording is 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 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 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 2, mark an X in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

**Part 1 – New York State residents**

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller 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, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferors/sellers**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 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 § 685(c), but not as a condition of recording a deed.

**Part 2 – Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (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 § 663(c), mark an X in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, 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 Form TP-584-I, page 1.

**Exemption for nonresident transferors/sellers**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (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 § 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ to \_\_\_\_\_ (see instructions).  
Date Date
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of New York State, 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



**BILL OF SALE TO AGENCY**

**444 EAST GENESEE STREET LLC**, a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York, with an office to conduct business at 344 South Warren Street, Suite 202, 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 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of June 1, 2021 (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 June, 2021.

**444 EAST GENESEE STREET LLC**

By:   
Graziano Zazzara, Jr., Its Manager

## 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 **444 EAST GENESEE STREET LLC** (the "**Company**") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, racks, flagpoles, signs, waste containers, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, 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.



**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**444 EAST GENESEE STREET LLC**

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**AGENCY LEASE AGREEMENT**

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**DATED AS OF JUNE 1, 2021**

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## AGENCY LEASE AGREEMENT

**THIS AGENCY LEASE AGREEMENT**, dated as of June 1, 2021 (the "*Agency Lease*"), is by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a body corporate and politic and a public instrumentality of the State of New York, having its office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "*Agency*"), and **444 EAST GENESEE STREET LLC**, a Delaware limited liability company authorized to do business in the State of New York having its office at 344 South Warren Street, Suite 202, 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**, the Agency, by resolution adopted on April 27, 2021, agreed, at the request of the Company to undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "*Facility*"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "*Equipment*" and together with the Land and the Facility,

the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 Project shall contain 100% income restricted residential units in accordance with the US Department of Housing and Urban Development ("**HUD**") requirements set forth in that certain regulatory agreement dated as of June 3, 2021 by and between the Company and New York State Housing Finance Agency related to the Project (the "**Regulatory Agreement**"), provided however that at least 20% of the units are rent restricted to 65% of the area median income ("**AMI**") rent limit for the City of Syracuse, New York, inclusive of utilities, as designated annually by HUD (the "**HUD Rates**"), in accordance with the Agency's Uniform Tax Exemption Policy ("**UTEP**") (collectively, the "**Rent Restrictions**"). The 2020 HUD Rates, inclusive of utilities, are attached hereto at **Exhibit "B"**<sup>1</sup>; and

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

**WHEREAS**, the Company is the current owner of the Land and the Facility and has leased the Land and the Facility to the Agency pursuant to the Company Lease Agreement dated as of June 1, 2021 (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 June 1, 2021 (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.

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<sup>1</sup> As of the Closing Date, the 2020 HUD Rates were the most recently published. The Company has the obligation of obtaining the most recently published HUD Rates at the time the residential units are leased. Generally, the HUD rates are published in annually in June.

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

## **ARTICLE I RECITALS AND DEFINITIONS**

### **1.0 RECITALS.**

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

### **1.1 DEFINITIONS.**

For all purposes of this Agency Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions attached hereto as **Exhibit "A"** 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 partnership duly organized, validly existing and in good standing under the laws of Delaware, is authorized to do business in the State of New York, has the power to enter into this Agency Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Agency Lease and the other Company Documents.

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

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

(d) The Company shall complete the Project Facility on or before the Completion Date;

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

(f) For the duration of the term hereof, the Company shall operate the Project Facility as the Project Facility and for the purposes presented herein, in the Application and in Plans and Specifications presented to the Agency;

(g) For the duration of the term hereof, the Project shall comply with the Rent Restrictions ; and

(h) During the Reporting Period, the Company shall provide the reporting and certifications required relative to the Rent Restrictions as more fully set forth in Section 8.5 hereof. The Company acknowledges that failure to maintain and/or report on the Rent Restrictions as set forth herein, shall give rise to the Agency's right to recapture all Recapture Amounts;

(i) 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, the Regulatory Agreement 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;

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

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

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

(3) Will help eliminate blight advance the job opportunities, health, general prosperity and economic welfare of the people of the City, to improve their standard of living and promote employment opportunities by the creation of both full and part-time jobs; and

(k) 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);

(l) 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, reconstruction, renovation, 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;

(m) 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, reconstruction, renovation 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;

(n) The Company acknowledges the Agency's Local Access Policy and the Company's (and its sub-agents') obligation to comply. The Company further acknowledges that pursuant to a resolution dated April 27, 2021, at the request of the Company, the Agency provided a limited waiver of its Local Access Policy for one subcontractor; namely, Ajay Glass, a Canandaigua company with the understanding and commitment from the Company that while the subcontractor is located outside of the local region, all laborers would be local unless the Company could demonstrate, to the satisfaction of the Agency, that there was a shortage of qualified local laborers. To that end, the Company agrees that such local labor shall be included in the term "Local Labor Requirements" (as defined herein) and the Company shall provide evidence of such local labor as and when requested by the Agency;

(o) The Company further 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;

(p) 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;

(q) The acquisition, reconstruction, renovation, equipping and completion 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;

(r) 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, reconstruction, renovation and equipping of the Project Facility and has or will have such Approvals timely for each phase of, and throughout the construction, reconstruction, renovation and equipping of the Project Facility;

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

(t) No part of the Project Facility will be located outside of the City;

(u) 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;

(v) 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;

(w) 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;

(x) 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 Sales Tax Recapture Amount (as defined in Section 8.12(g) hereof), and shall, upon the Agency's request, immediately pay to the Agency any Sales Tax Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise. The Company acknowledges and agrees that the failure of the Company to promptly pay any Sales Tax 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;

(y) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed **\$151,400**. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount;

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

(aa) The Company hereby acknowledges, agrees and covenants to timely pay all costs of construction, reconstruction, renovation, equipping and completing the Project, and its obligations hereunder including, but not limited to, Article 4 hereof;

(bb) The Company hereby represents, warrants and covenants that no properties owned or leased by the Company in the City are currently the subject of any violations, including but not limited to zoning and/or permitting, by any governmental agency nor are any such properties delinquent in any taxes or payments in lieu thereof to any municipality. The Company further represents, warrants and covenants that all Company owned or leased properties are in compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities and that there are no pending or threatened law suits against the City or County; and

(cc) 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, and shall, upon the Agency's request, immediately pay to the Agency any Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise.

**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 "C"** 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 "D"** 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 accordance with the terms of this Agency Lease and for the purposes described in the third WHEREAS clause of this Agency Lease; provided that such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act.

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

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

(a) The Company shall promptly construct, reconstruct, renovate, equip and complete the Project Facility, all in accordance with the Plans and Specifications on or before the Completion Date. Unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, the Company and its Additional Agents (as defined herein), shall utilize local labor, contractors and suppliers for the reconstruction, renovation, equipping and completion of the Project Facility. For purposes of this Agency Lease, and in particular this Section 4.1, the term "*local*" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. Failure to comply with the local labor requirements of this Section 4.1 (collectively, "*Local Labor Requirements*") may result in the revocation or recapture of all benefits provided/approved to the Project by the Agency. Failure to comply with any portion of Article 4 may result in the loss of all benefits provided or for the benefit of the Project in the Agency's sole discretion. In furtherance thereof, the Agency's Local Access Agreement has been completed and is attached hereto as **Exhibit "E"**.

(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 reconstruct, renovate, equip and complete the Project Facility and to acquire the Equipment in accordance with the terms hereof;

(2) To make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any other Persons and, in general, to do all things which may be requisite or proper, all for the reconstruction, renovation, equipping and completion of the Project Facility with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the Agency shall have no liability for the payment of any sums due thereunder;

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

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

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

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

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

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

(a) The Company will proceed with due diligence to acquire, construct, reconstruct, renovate, equip and complete the Project Facility on or before the Completion Date.

Completion of the acquisition, reconstruction, renovation, and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company and approved by the Agency, on or before the Completion Date, 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 reconstruction, renovation, equipping and completion of the Project Facility.

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

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

In the event of a default by any materialman or Additional Agent (as defined herein) under any contract made by them in connection with construction, reconstruction, renovation, equipping and completion of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company against the materialman or Additional Agent so in default and against each surety for the performance of such contract. The Company may prosecute or defend any action or proceeding

or take any other action involving any such materialman or Additional Agent or surety which the Company deems reasonably necessary. The Company shall advise the Agency of any actions or proceedings taken hereunder. No such suit shall relieve the Company of any of its obligations under this Agency Lease and the other Company Documents.

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

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

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

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

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

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

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

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

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

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

The Agency's acceptance of the leasehold interest in and to the Land and Facility pursuant to the Company Lease, and its acquisition of an interest in the Equipment pursuant to the Bill of Sale, and the holding of said interests were effected and performed solely at the request of the Company pursuant to the requirements of the Act. The Agency hereby transfers and conveys all of its beneficial and equitable interests, if any, in the Project Facility to the Company, except for its Unassigned Rights. As a result, the parties hereby acknowledge and agree that subject to the terms and conditions of this Agency Lease, the Company has all of the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), and will have all the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), such that the Company, and not the Agency, shall have an:

- (i) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Project Facility is destroyed or damaged;
- (ii) unconditional obligation to keep the Project Facility in good condition and repair;
- (iii) unconditional and exclusive right to the possession of the Project Facility, and shall have sole control of and responsibility for the Project Facility;
- (iv) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Project Facility as may be required by the Company, the Agency and the Mortgagee with respect to the Project;
- (v) unconditional obligation to pay all taxes levied on, or payments in lieu thereof, and assessments made with respect to, the Project Facility;
- (vi) subject to the Unassigned Rights, unconditional and exclusive right to receive rental and any other income and other benefits of the Project Facility and from the operation of the Project;
- (vii) unconditional obligation to pay for all of the capital investment in the Project Facility;
- (viii) unconditional obligation to bear all expenses and burdens of the Project Facility and to pay for all maintenance and operating costs in connection with the Project Facility; and
- (ix) unconditional and exclusive right to include all income earned from the operation of the Project Facility and claim all deductions and credits generated with respect to the Project Facility on its annual federal, state and local tax returns.

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

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until **June 30, 2037** (the "*Term*"), unless earlier terminated as provided

herein. Notwithstanding anything herein to the contrary, the obligations of the Company to report hereunder and the Agency's rights to recapture shall continue during the Term of this Agency Lease, but in the event of an early termination as provided for herein, the Company's obligation to report and the Agency's right to recapture shall not be less than the Reporting Period (as defined herein). As a condition to the termination of this Agency Lease, the Company shall be obligated to execute and deliver the certification attached hereto at **Schedule "1"** regarding the Company's ongoing obligations.

(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 date of the Agency's interest in the Project.

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

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

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

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

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

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

(g) The Agency shall, upon payment by the Company of the amounts pursuant hereto and to Sections 5.2(d) above and Section 5.3, deliver to the Company all documents furnished to the Agency by the Company, or prepared by the Agency at the sole expense of the Company, and reasonably necessary to evidence termination of the Company Lease and the Agency Lease, including, but not limited to, lease terminations and a bill of sale from the Agency with respect to its interest in the Equipment, without representation or warranty, subject to the following: (1) any Liens to which such Project Facility was subject when conveyed to the Agency, (2) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agency Lease.

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

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

(a) The Company shall pay basic rental payments for the Project Facility consisting of: (i) to the Agency 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. In addition, the Company acknowledges that to the extent there are any post-closing legal fees incurred by the Agency in conjunction with this Project, same are the obligation of the Company and shall be remitted upon demand.

(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, including but not limited to the Rent Restrictions, 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, reconstruction, renovation and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

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

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

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

The Company shall:

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

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

(c) Operate the Project Facility in a sound and economic manner in general accordance with the Project description as set forth herein and in the Application and the Plans and Specifications the Company previously provided to the Agency in the Application or otherwise.

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

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

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

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

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

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

(b) Subject to the terms of the PILOT Agreement, the Company may in good faith actively contest any such taxes, assessments, and other charges, provided that (1) the Company shall have first notified the Agency of such contest; (2) no Event of Default under this Agency Lease or any of the other Company Documents shall have occurred and be continuing; and (3) the Company shall have set aside adequate reserves for any such taxes, assessments and other charges. If the Company demonstrates to the reasonable satisfaction of the Agency and certifies to the Agency by delivery of a written certificate, that the non-payment of any such items will not endanger any part of the Project Facility or subject the Project Facility, or any part thereof,

to loss or forfeiture, the Company may permit the taxes, assessments, and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. Otherwise, such taxes, assessments, or charges shall be paid promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Agency.

### **6.3 INSURANCE REQUIRED.**

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

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

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

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

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

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

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

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

All premiums with respect to the insurance required by Section 6.3 shall be paid by the Company, provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

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

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

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

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

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

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

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

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

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and the Project Facility shall be damaged or destroyed, in whole or in part, then insurance proceeds

shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such insurance proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and the Project Facility shall be damaged or destroyed, in whole or in part:

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

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

(3) Except as otherwise provided in subsections 7.1(b) and 7.1(c) hereof, upon receipt of the insurance proceeds, the Company shall promptly replace, repair, rebuild, or restore the Project Facility to substantially the same condition as existed prior to such damage or destruction, with such changes, alterations, and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations, or modifications do not change the nature of the Project Facility, such that it does not constitute a "project" (as such quoted term is defined in the Act); and in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

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

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

## 7.2 CONDEMNATION.

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

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

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

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

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

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

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

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

## **ARTICLE VIII SPECIAL COVENANTS**

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

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

### **8.2 HOLD HARMLESS PROVISIONS.**

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

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

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

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

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

(5) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents or employees.

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

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

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

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

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

### 8.3 RIGHT OF ACCESS TO PROJECT FACILITY.

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

### 8.4 MAINTENANCE OF EXISTENCE.

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

### 8.5 AGREEMENT TO PROVIDE INFORMATION.

The Company shall have an obligation to report and provide information, as set forth herein during the Term hereof, but, in the event this Agency Lease is terminated early in accordance with Section 5.2 hereof, the Company shall nonetheless report and provide information for a period of five (5) years from the termination date, unless the early termination occurs less than five years from the original Term hereof, in which case the Company shall continue to provide the required information and reporting for the remaining Term hereof (the "**Reporting Period**"); 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, Rent Restrictions 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, the rent certification tenant form and annual reporting questionnaire, in substantially the form as set forth in **Exhibit "F"** attached hereto, those reports set forth in Section 8.12 hereof, as well as a copy of each report required under Section 6 of the Regulatory Agreement (a copy of which is on file with the Agency), 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 (all of the foregoing collectively, the "**Reporting Requirements**").

Notwithstanding anything herein to the contrary, the Agency's ability to recapture benefits in accordance with its policy and the terms hereof, shall be for a period of time no less than the Reporting Period.

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[1] 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.

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

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

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

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

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

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

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

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

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

## 8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS.

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

## 8.11 EMPLOYMENT OPPORTUNITIES.

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

## 8.12 SALES AND USE TAX EXEMPTION.

(a) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain State and local sales use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of State or local sales or use taxes. Any exemption from the payment of State or local sales or use taxes resulting from the involvement of the Agency with the Project shall be subject to Section 875 of the Act and shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of State sales or use tax. It is the intention of the parties hereto that the Company will receive a State and local sales and use tax exemption with respect to the Project, said sales tax exemption to be evidenced by a letter to be issued by the Agency on the date of the execution of this Agency Lease. The Company acknowledges that as an agent of the Agency, it must complete and provide to each vendor Form ST-123 for purchases. The failure to furnish a completed Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate) with each purchase will result in loss of the exemption for that purchase.

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

(c) The Company acknowledges and agrees that an Additional Agent must be appointed as an agent of the Agency in order to avail itself of the Agency's sales and use

tax exemption for purchases or rentals of equipment, tools and supplies with respect to the Project Facility.

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

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

(f) Pursuant to Section 874(9) of the Act, the Agency agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the “*Thirty-Day Sales Tax Report*”), a statement identifying the Company, or 30 days from the appointment of any Additional Agent appointed in accordance with the terms herein, as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the estimated value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

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

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

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

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

**9.1 ASSIGNMENT OF AGENCY LEASE.**

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

**9.2 TRANSFERS OF INTERESTS.**

Company shall not assign or otherwise transfer or allow an assignment or transfer, of a controlling interest in the Company, whether by operation of law or otherwise (including, without limitation, by way of a merger, consolidation or a change of control whereby the current existing equity holders of the Company, as of the date of the application to the Agency, would own, in the aggregate, less than a majority of the total combined voting power of all classes of equity interest of the Company or any surviving entity), without the prior written consent of Agency, which consent shall be in the Agency's sole and absolute discretion; provided however, that any such transfers of interests conducted solely as part of an estate planning plan, will not be considered a violation of this provision, so long as such transfer does not result in a transfer of a controlling interest (in excess of 50% or more in the aggregate) of the current existing equity holders of the Company, as of the date of the application to the Agency and prior written notice shall be provided to the Agency.

**9.3 MERGER OF AGENCY.**

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

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

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

**10.1 EVENTS OF DEFAULT DEFINED.**

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

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

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

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

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

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

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

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

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

(i) The filing by the Company of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute; the failure by the Company within sixty (60) days to lift any execution, garnishment, or attachment of such consequence as

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

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

(k) Failure by the Company to maintain and comply with the Rent Restrictions and to provide the required reporting and certifications to the Agency.

## **10.2 REMEDIES ON DEFAULT.**

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

1) Terminate this Agency Lease;

2) Terminate the Company Lease;

3) Terminate the PILOT Agreement;

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

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

6) Seek to recover all or some of the Recapture Amount in accordance with the Agency's Recapture Policy, this Agency Lease and the Project 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.

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

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

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

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

## **ARTICLE XI MISCELLANEOUS**

### **11.1 NOTICES.**

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

(a) If to the Agency, to: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attn: Chair

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

and

Bousquet Holstein PLLC  
One Lincoln Center, Suite 1000  
110 West Fayette Street  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) If to the Company: 444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
Syracuse, New York 13202  
Attn: Graziano Zazzara, Jr.

With a copy to: Lynn, D'Elia, Temes & Stanczyk LLC  
100 Madison Street, Suite 1905  
Syracuse, New York 13202  
Attn: Michael Stanczyk, 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 COUNTERPARTS; ELECTRONIC SIGNATURE.**

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed signature page counterpart hereof by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic association of signatures and records on electronic platforms, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, any other similar state laws based on the Uniform Electronic Transactions Act, the Uniform Commercial Code, each as amended, and the parties hereto hereby waive any objection to the contrary, provided that (x) nothing herein shall require the Agency to accept electronic signature counterparts in any form or format and (y) the Agency reserves the right to require, at any time and at its sole discretion, the delivery of manually executed counterpart signature pages to this agreement and the parties hereto agree to promptly deliver such manually executed counterpart signature pages.

#### **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 or information required by Sections 8.2, 8.5 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 Articles 4 and 5 and Sections 2.2, 8.4, 8.5 and 11.14 hereof shall similarly survive the termination of this Agency Lease.

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

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

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

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

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30)

days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

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

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

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

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

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

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

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

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

### **11.13 ENTIRE AGREEMENT.**

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

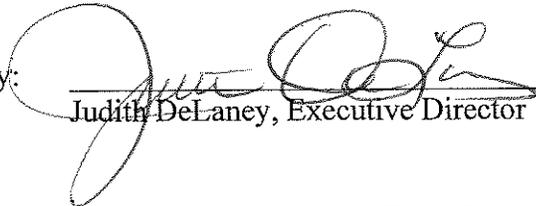
### **11.14 DISCLOSURE.**

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

By: \_\_\_\_\_  
Graziano Zazzara, Jr., Its Manager

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: \_\_\_\_\_  
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

By:  \_\_\_\_\_  
Graziano Zazzara, Jr., Its Manager

**SCHEDULE 1  
FORM OF CERTIFICATION  
REGARDING ONGOING OBLIGATIONS  
UPON TERMINATION OF LEASES**

**CERTIFICATION**

In June, 2021, at the request of **444 EAST GENESEE STREET LLC** (the "**Company**"), the City of Syracuse Industrial Development Agency (the "**Agency**") undertook a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 meaning of capitalized terms not otherwise defined herein shall have the meanings attached to them in the agency lease, dated as of June 1, 2021 between the Agency and the Company (the "**Agency Lease**").

On June 1, 2021 the Agency and the Company closed on a straight lease transaction with respect to the Project and the Financial Assistance (the "**Original Closing**") pursuant to which the parties executed and delivered the Company Documents and the Agency Documents (collectively the "**Lease Documents**").

Pursuant to the Company's request, the Agency terminated their leasehold interest in the Project Facility as of \_\_\_\_\_, 20\_\_ (the "**Termination**").

Pursuant to the terms of the Agency Lease, the Company is obligated to perform certain reporting requirements to the Agency post Termination.

The undersigned, \_\_\_\_\_, and authorized signatory of the Company, does hereby certify and confirm for each Company:

- (1) certain provisions and obligations of the Lease Documents survive the Termination, including: Article 4 of the Agency Lease and Sections 2.2, 8.2, 8.5, 8.12, 11.7 and 11.14 of the Agency Lease;
- (2) in accordance with its terms, the entire Project Agreement, and the Company's obligations thereunder, shall survive the Termination;
- (3) the Company is familiar with all of the Agency's policies, including but not limited to, its Recapture Policy, and is bound thereby; and
- (4) in furtherance of (1) above, but without limiting the foregoing, the Company continues to be obligated to comply with the following reporting obligation in accordance with Article 4 of the Project Agreement:

**Section 4.01. Compliance Commitments.** The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below, and report on same as provided for herein, beginning in the first year following the Completion Date of the Project and continuing for the Term (as defined herein) hereof. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in the Application starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs, the Company shall create, in years one (1) through five (5) following the Completion Date of the Project the new jobs set forth in and in accordance with the Company's Application. The reporting of, and the commitment to, each of (a), (b) and (c) below shall continue for the Term hereof:

(a) The total investment actually made with respect to the Project at the Project's Completion Date shall equal or exceed \$4,104,846, being the total project cost as stated in the Company's Application for Financial Assistance (the "**Investment Commitment**").

(b) There were no full time equivalent ("**FTE**") employees retained by the Project Facility as of the date of the Application for Financial Assistance (the "**Baseline FTE**"). The Company's application estimated the creation of five (5) new FTEs (the "**New FTEs**") at the Project Facility within the first five (5) years following the Completion Date of the Project Facility. The Company covenants and agrees to create the New FTEs set forth in the first five (5) years following completion of the Project Facility as of and in the years set forth in the Application. The Company shall be required to meet and maintain all of the foregoing employment commitments during the Term (as defined in Section 6.07 below) hereof (the "**Employment Commitment**").

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

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

Dated as of \_\_\_\_\_, 20\_\_

**444 EAST GENESEE STREET LLC**

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

**EXHIBIT A**  
**(to Form of Certification)**

**ANNUAL REPORTING OBLIGATIONS**

**FORM OF ANNUAL REPORTING QUESTIONNAIRE**

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202

Date

COMPAY  
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:

**A. Job Retention/Creation:**

**I. Construction Jobs:**

Provide the name of your general contractor: \_\_\_\_\_.

Provide the address (including county) of your general contractor: \_\_\_\_\_.

Is the general contractor MWBE qualified? \_\_\_\_\_.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises ( SDVOBE) qualified? \_\_\_\_\_.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

**\*Must include county**

**II. Permanent (non-construction) Jobs:**

Number of FTEs retained at the Project prior to date of application: \_\_\_\_\_.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): \_\_\_\_\_.

Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

**Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year** \_\_\_\_\_.

**Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year** \_\_\_\_\_.

**Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year** \_\_\_\_\_.

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$\_\_\_\_\_.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: \_\_\_\_\_.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: \_\_\_\_\_.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$\_\_\_\_\_.

**B. Geographical Hiring Data:**

1. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

2. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

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Signature

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Print Name

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Title

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Date

**RENT CERTIFICATION  
TENANT DATA FORM**

OWNER: \_\_\_\_\_

SUBJECT-PROPERTY ADDRESS: \_\_\_\_\_

TENANTS NAME \_\_\_\_\_

TENANT'S ADDRESS \_\_\_\_\_

TENANT'S PHONE NUMBER \_\_\_\_\_ WORK NUMBER \_\_\_\_\_

HEAD OF HOUSEHOLD: AGE \_\_\_\_\_ MALE \_\_\_\_\_ OR FEMALE \_\_\_\_\_ RACE \_\_\_\_\_  
HANDICAPPED? \_\_\_\_\_

NUMBER OF DEPENDENTS OF TENANTS LIVING WITH YOU (STATE NAME, AGE AND SEX)

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

NUMBER OF DEPENDENTS HANDICAPPED \_\_\_\_\_

ACTUAL NUMBER OF BEDROOMS WITHIN YOUR APARTMENT: \_\_\_\_\_

WHEN DID YOU BEGIN TO OCCUPY THIS APARTMENT: \_\_\_\_\_

INDICATE MONTHLY RENT \_\_\_\_\_ DOES RENT INCLUDE UTILITIES \_\_\_\_\_

IF YOU RECEIVE SECTION 8 - PLEASE STATE THE AMOUNT OF RENT YOU PAY \$ \_\_\_\_\_  
SECTION 8 \$ \_\_\_\_\_

PLEASE STATE YOUR GROSS INCOME:  
WEEKLY: \$ \_\_\_\_\_  
MONTHLY: \$ \_\_\_\_\_  
YEARLY: \$ \_\_\_\_\_

PLEASE INDICATE YOUR SOURCE OF INCOME: PUBLIC ASSISTANCE \_\_\_\_\_  
SOCIAL SECURITY \_\_\_\_\_  
PLACE OF EMPLOYMENT \_\_\_\_\_

**I/WE UNDERSTAND THAT IT MAY BE A FEDERAL CRIME PUNISHABLE BY FINE OR IMPRISONMENT TO KNOWINGLY MAKE ANY FALSE STATEMENTS CONCERNING ANY OF THE ABOVE FACTS AS APPLICABLE UNDER THE PROVISIONS OF THE UNITED STATES CRIMINAL CODE. I/WE ATTEST THAT ALL OF THE ABOVE INFORMATION IS TRUE AND ACCURATE. FURTHERMORE, I/WE CONSENT AND AUTHORIZE THE DEPARTMENT OF COMMUNITY DEVELOPMENT TO VERIFY ANY AND ALL INFORMATION CONTAINED HEREIN.**

\_\_\_\_\_  
TENANT'S SIGNATURE

\_\_\_\_\_  
DATE

## EXHIBIT "A"

### TABLE OF DEFINITIONS

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

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

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

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

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

**Agency Lease:** means the Agency Lease Agreement dated as of June 1, 2021, 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 March 3, 2021, requesting the Agency undertake the Project, as same may be amended or supplemented from time to time.

**Authorized Representative:** means for the Agency, the Chair or Vice Chair of the Agency; for the Company, its Member or its Managing Member (designated by resolution) 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 June 1, 2021 in connection with the Equipment.

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

**Closing Date:** means June 3, 2021.

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

**Company:** means 444 East Genesee Street LLC, a limited liability company, organized and existing under the laws of the State of Delaware, authorized to do business in the State of New York having an address at 344 South Warren Street, Suite 202, Syracuse, New York 13202, and its permitted successors and assigns.

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

**Company Lease:** means the Company Lease Agreement dated as of June 1, 2021 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.

**Completion Date:** means ten months following the Company's receipt of the building permit by the City of Syracuse but in no event later than September 30, 2022.

**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 June 1, 2021 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 "D"** 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.

**Financial Assistance Recapture Amount:** means any and all other components of Financial Assistance, including any payment in lieu of taxes benefits received under the PILOT Agreement or any mortgage recording tax exemptions provided to the Company.

**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 444 East Genesee Street in the City of Syracuse, County of Onondaga, State of New York, more particularly described on **Exhibit "A"** attached to the Agency Lease.

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

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

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

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

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

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

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

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

**PILOT Agreement:** means the Payment in Lieu of Taxes Agreement dated as of June 1, 2021 between the Agency and the Company, as amended or supplemented from time to time.

**Plans and Specifications:** means the representations, plans and specifications presented by the Company to the Agency in its Application and as described in the Project description in the third WHEREAS cause of this Agency Lease, and any other presentation made by the Company to the Agency relating to the construction, reconstruction, renovation, equipping and completion of the Project Facility; and any additional plans and specifications approved by the Mortgagee.

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

**Project Agreement:** means the Project Agreement dated as of June 1, 2021 between the Company and the Agency setting forth rights and obligations of the parties with respect to the Financial Assistance, as the same may be amended or supplemented from time to time.

**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.

**Recapture Amount:** means collectively, the Sales Tax Recapture Amount and the Financial Assistance Recapture Amount.

**Regulatory Agreement:** means that certain Regulatory Agreement dated as of June 3, 2021 by and between the Company and New York State Housing Finance Agency related to the Project.

**Rent Restrictions:** means 100% of the residential units will be income restricted in accordance with the Regulatory Agreement, provided however that at least 20% of the units are rent restricted to 65% of the area median income rent limit for the City, inclusive of utilities, as designated annually by HUD, in accordance with the Agency's Uniform Tax Exemption Policy.

**Resolution or Resolutions:** means the Agency's resolutions adopted on April 21, 2021 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

**Sales Tax Recapture Amount:** means that portion of the Financial Assistance consisting of State and local sales and use tax exemption provided to the Company.

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

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

**Unassigned Rights:** means:

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

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

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

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

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

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

**EXHIBIT "B"**

**HUD RATES**

**2020 HUD 65% RENT LIMITS\***  
**(\*Rent Limits Include Utilities)**

<b>EFFICIENCY</b>	<b>1 BR</b>	<b>2BR</b>	<b>3BR</b>	<b>4BR</b>	<b>5BR</b>	<b>6BR</b>
<b>\$885</b>	<b>\$950</b>	<b>\$1142</b>	<b>\$1310</b>	<b>\$1443</b>	<b>\$1573</b>	<b>\$1704</b>

**EXHIBIT "C"**

**REAL PROPERTY DESCRIPTION**

**Property: 444 East Genesee Street, Syracuse, New York**

**ALL THAT TRACT OR PARCEL OF LAND** located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

**BEING MORE MODERNLY DESCRIBED AS:**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

**BEGINNING** at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

**thence** S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

**thence** N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

**thence** N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

**thence** S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the **POINT OF BEGINNING. CONTAINING** 0.179 Acre of land more or less.

## EXHIBIT "D"

### 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 **444 EAST GENESEE STREET LLC** (the "**Company**") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, freezers, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, racks, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, 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 "E"**  
**LOCAL ACCESS AGREEMENT**

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

**Local Access Agreement**

444 East Genesee Street 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.

<b>Company</b>	444 East Genesee Street LLC					<b>General Contractor</b>	Stone Hammer Construction				
<b>Representative for Contract Bids and Awards</b>	Graziano Zazzara Jr.					<b>Contact</b>	Christopher Doran				
<b>Address</b>	344 S. Warren St., 2 <sup>nd</sup> Fl.					<b>Address</b>	6171 Airport Road				
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13209
<b>Phone</b>	315.299.6292		<b>Fax</b>			<b>Phone</b>	315.857.7619		<b>Fax</b>		
<b>Email</b>	gzazzara@theiconcompanies.com					<b>Email</b>	chris@stonehammerhomes.com				
<b>Project Address</b>	444 E. Genesee Street					<b>Construction Start Date</b>	5-1-2021				
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>Occupancy Date</b>	1Q 2022				

Project Components – Indicate those for which bids will be sought:

Item	Estimated Value	Bid Date	Contact
Site work/Demolition	\$150,265	2/17/21	Chris Doran
Foundation and footings	\$73,590	2/17/21	Chris Doran
Building	\$337,000	2/17/21	Chris Doran
Masonry	\$18,000	2/17/21	Chris Doran
Metals	\$51,270	2/17/21	Chris Doran
Wood/casework	\$140,480	2/17/21	Chris Doran
Thermal/moisture proof	\$0		
Doors, windows, glazing ***	\$349,252	2/17/21	Chris Doran
Finishes	\$682,165	2/17/21	Chris Doran
Electrical	\$319,000	2/17/21	Chris Doran
HVAC	\$300,000	2/17/21	Chris Doran
Plumbing	\$265,500	2/17/21	Chris Doran
Specialties	\$107,624	2/17/21	Chris Doran
Machinery & Equipment	\$103,545	2/17/21	Chris Doran
Furniture and Fixtures	\$0		
Utilities	\$0		
Paving	\$14,680	2/17/21	Chris Doran
Landscaping	\$0		
Other (identify)	\$64,780 sprinkler	2/17/21	Chris Doran

Date:

5/10/21

Company:

444 East Genesee Street LLC

\*\*\* - on April 27, 2021 SIDA provided a waiver of its local access policy with respect to one subcontractor, being Ajay Glass, in the amount of \$562,000 to provide for exterior metal paneling and glazing installation

**City of Syracuse**

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**Industrial Development Agency**

Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'GZazzara Jr.', written over a horizontal line.

Name: Graziano Zazzara Jr.

**EXHIBIT "F"**

**FORM OF ANNUAL REPORTING QUESTIONNAIRE**

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202

Date

COMPANY  
COMPANY ADDRESS

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

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

Sale - Leaseback Financing

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

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

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

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

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

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

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

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

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

From:

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

Re:

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

**A. Job Retention/Creation:**

**III. Construction Jobs:**

Provide the name of your general contractor: \_\_\_\_\_.

Provide the address (including county) of your general contractor: \_\_\_\_\_.

Is the general contractor MWBE qualified? \_\_\_\_\_.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises ( SDVOBE) qualified? \_\_\_\_\_.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

**\*Must include county**

**IV. Permanent (non-construction) Jobs:**

Number of FTEs retained at the Project prior to date of application: \_\_\_\_\_.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): \_\_\_\_\_.

Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

**Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year \_\_\_\_\_.**

**Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year \_\_\_\_\_.**

**Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year \_\_\_\_\_.**

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$\_\_\_\_\_.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: \_\_\_\_\_.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: \_\_\_\_\_.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$\_\_\_\_\_.

**B. Geographical Hiring Data:**

3. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

4. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

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\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE PROJECT OWNER MUST CAUSE EACH TENANT TO COMPLETE THE FOLLOWING AND PROJECT OWNER MUST SUBMIT COMPLETED FORM TO AGENCY ALONG WITH A COPY OF EACH TENANT'S LEASE.**

**RENT CERTIFICATION  
TENANT DATA FORM**

OWNER: \_\_\_\_\_

SUBJECT-PROPERTY ADDRESS: \_\_\_\_\_

TENANTS NAME \_\_\_\_\_

TENANT'S ADDRESS \_\_\_\_\_

TENANT'S PHONE NUMBER \_\_\_\_\_ WORK NUMBER \_\_\_\_\_

HEAD OF HOUSEHOLD: AGE \_\_\_\_\_ MALE \_\_\_\_\_ OR FEMALE \_\_\_\_\_ RACE \_\_\_\_\_  
HANDICAPPED? \_\_\_\_\_

NUMBER OF DEPENDENTS OF TENANTS LIVING WITH YOU (STATE NAME, AGE AND SEX)

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

NUMBER OF DEPENDENTS HANDICAPPED \_\_\_\_\_

ACTUAL NUMBER OF BEDROOMS WITHIN YOUR APARTMENT: \_\_\_\_\_

WHEN DID YOU BEGIN TO OCCUPY THIS APARTMENT: \_\_\_\_\_

INDICATE MONTHLY RENT \_\_\_\_\_ DOES RENT INCLUDE UTILITIES \_\_\_\_\_

IF YOU RECEIVE SECTION 8 - PLEASE STATE THE AMOUNT OF RENT YOU PAY \$ \_\_\_\_\_  
SECTION 8 \$ \_\_\_\_\_

PLEASE STATE YOUR GROSS INCOME:

WEEKLY: \$ \_\_\_\_\_

MONTHLY: \$ \_\_\_\_\_

YEARLY: \$ \_\_\_\_\_

PLEASE INDICATE YOUR SOURCE OF INCOME: PUBLIC ASSISTANCE \_\_\_\_\_

SOCIAL SECURITY \_\_\_\_\_

PLACE OF EMPLOYMENT \_\_\_\_\_

**I/WE UNDERSTAND THAT IT MAY BE A FEDERAL CRIME PUNISHABLE BY FINE OR IMPRISONMENT TO KNOWINGLY MAKE ANY FALSE STATEMENTS CONCERNING ANY OF THE ABOVE FACTS AS APPLICABLE UNDER THE PROVISIONS OF THE UNITED STATES CRIMINAL CODE. I/WE ATTEST THAT ALL OF THE ABOVE INFORMATION IS TRUE AND ACCURATE. FURTHERMORE, I/WE CONSENT AND AUTHORIZE THE DEPARTMENT OF COMMUNITY DEVELOPMENT TO VERIFY ANY AND ALL INFORMATION CONTAINED HEREIN.**

\_\_\_\_\_  
TENANT'S SIGNATURE

\_\_\_\_\_  
DATE

**EXHIBIT "G"**

**FORM OF SUB-AGENT AGREEMENT**

**THIS SUB-AGENT APPOINTMENT AGREEMENT** (the "**Agreement**"), dated as of \_\_\_\_\_, 20\_\_, is by and between **444 EAST GENESEE STREET LLC** (the "**Company**"), with a mailing address of 344 South Warren Street, Suite 202, Syracuse, New York 13204 (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 of its members adopted on April 27, 2021 (the "**Resolution**"), the Agency agreed to undertake a project for the benefit of the Company (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 Agency Lease Agreement by and between the Company and the Agency dated as of June 1, 2021 (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; and

**WHEREAS**, the Company and the Agency entered into a Project Agreement dated as of June 1, 2021 (the "*Project Agreement*") and an Agency Lease Agreement dated as of June 1, 2021 (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 Agency Lease, the Resolution and Section 875(3) of the Act (as if such section were fully set forth herein). Without limiting the scope of the foregoing, the Sub-Agent acknowledges and agrees to be bound by the Agency's Suspension, Discontinuation and Recapture of Benefits Policy (the "*Recapture Policy*"), a copy of which is attached hereto as **Schedule "A"**.

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

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

e. that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following Agency project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: 444 EAST GENESEE STREET LLC PROJECT, 444 EAST GENESEE STREET, IDA PROJECT NO.: 31022101.

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

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

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

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative

or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

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

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

j. The Sub-Agent agrees Local contractors and suppliers will be used for the construction and equipping of the Project unless a waiver is first received from the Agency in writing. Such waiver shall be in the Agency's sole discretion. The Sub-Agent agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project. Local shall mean, for the purposes of this Agreement, Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties. Failure to comply with the local labor requirements of this Section (j) (collectively, the "**Local Labor Requirements**") may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. [Pursuant to a resolution dated April 27, 2021, at the request of the Company, the Agency provided a limited waiver of its Local Access Policy for one subcontractor; namely, Ajay Glass, a Canandaigua company with the understanding and commitment from the Company and the subagent that while the subcontractor is located outside of the local region, all laborers would be local unless the Company and or the subagent could demonstrate, to the satisfaction of the Agency, that there was a shortage of qualified local laborers. To that end, the Company agrees that such local labor shall be included in the term "Local Labor Requirements" (as defined herein) and the Company and/or the subagent shall provide evidence of such local labor as and when requested by the Agency.<sup>2</sup>]

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

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<sup>2</sup> This section applies solely in the event that the sub-agent being appointment pursuant to this Sub-Agent Agreement is Ajay Glass. Notwithstanding, the a balance of this agreement is effective as to each and every other appointed sub-agent.

exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project on an annual basis.

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

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

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

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

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

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

Prior to the effective date of this Agreement, the general contractor shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) Certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the general contractor covering the Project Facility;

and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the general contractor shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the execution of this Agreement.

The general contractor shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraphs, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required hereby for so long as the general contractor is performing, supervising or causing work to be done on or at the Project Facility. The general contractor shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement in each such year.

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

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

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

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

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

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

**444 EAST GENESEE STREET LLC**

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

[NAME OF SUB-AGENT]

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

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

**FORM ST-123**



**IDA Agent or Project Operator  
Exempt Purchase Certificate**

Effective for projects beginning on or after June 1, 2014

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

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

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

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

**To the seller:**

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

**Project information**

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

Name of IDA		
Name of project	IDA project number (see DDC 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/yy) .....	/	/
Enter the date that agent or project operator status ends (mm/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 1833 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 date and initials)	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)(16) and 1115(a)(18). 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).

- 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.
- 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.
- 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)8, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

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

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

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

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

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

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



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

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



Sales Tax Information Center: (518) 485-2339

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

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

**RECAPTURE POLICY**

**City of Syracuse**  
**Industrial Development Agency**  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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## RECAPTURE POLICY

### **I. STATEMENT OF PURPOSE**

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

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

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

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

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

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

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

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

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

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

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

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

#### IV. ANNUAL ASSESSMENT

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

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

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

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

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

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

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

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

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

Adopted: June 21, 2016

**EXHIBIT "H"**  
**RECAPTURE POLICY**

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

---

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- h) For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

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

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- g) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
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- i) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or

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

#### IV. ANNUAL ASSESSMENT

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

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

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

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

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

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

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

Adopted: June 21, 2016



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
CHICAGO TITLE - EMILY

Return To :  
CHICAGO TITLE  
PICK UP BOX

Method Returned : MAIL

**First PARTY 1**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**First PARTY 2**

444 EAST GENESEE STREET LLC

Index Type : Land Records

Instr Number : 2021-00025805

Book : Page :

Type of Instrument : Memorandum Of Lease

Type of Transaction : Deed Misc

Recording Fee: \$80.50

Recording Pages : 7

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

**Real Estate Transfer Tax**

RETT # : 11353  
Deed Amount : \$0.00  
RETT Amount : \$0.00  
Total Fees : \$80.50

State of New York

County of Onondaga

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

On (Recorded Date) : 06/08/2021

At (Recorded Time) : 1:37:13 PM



Doc ID - 042814460007

Lisa Dell, County Clerk



THIS IS NOT A BILL

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

Entered By: RSWEENIE Printed On : 06/08/2021 At : 1:52:12PM

6

**MEMORANDUM OF  
AGENCY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

***NAME AND ADDRESS OF LESSEE:*** 444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
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 June 1, 2021

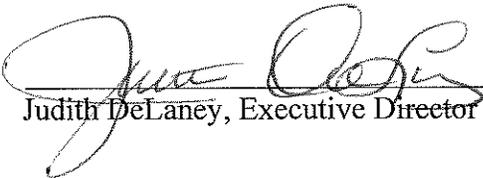
***TERM OF AGENCY LEASE AGREEMENT:***

The term of the Agency Lease shall commence on the date hereof and continue in full force and effect until **June 30, 2037**, unless earlier terminated as provided in the Agency Lease Agreement.

RE: Chicago Title  
→ 2017-0321EC

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of June, 2021.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

By: \_\_\_\_\_  
Graziano Zazzara, Jr., Its Manager

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of June, 2021.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

By:  \_\_\_\_\_  
Graziano Zazzara, Jr., Its Manager

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

On this 27<sup>th</sup> day of ~~June~~ <sup>May</sup>, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, 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.

*Louie J McRobbie*

Notary Public **McROBBIE**  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 22

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

On the \_\_\_ day of June, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **GRAZIANO ZAZZARA**, 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

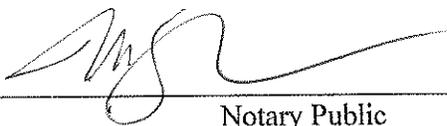
STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF ONONDAGA )

On this \_\_\_\_ day of June, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, 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 the 26 day of ~~June~~<sup>July</sup>, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **GRAZIANO ZAZZARA**, 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

**MICHAEL STANCZYK**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02ST6220670  
Qualified in Onondaga County  
Commission Expires April 19, 2022

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

**Property: 444 East Genesee Street, Syracuse, New York**

**ALL THAT TRACT OR PARCEL OF LAND** located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

**BEING MORE MODERNLY DESCRIBED AS:**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

**BEGINNING** at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

**thence** S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

**thence** N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

**thence** N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

**thence** S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the **POINT OF BEGINNING**. **CONTAINING** 0.179 Acre of land more or less.



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

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

Schedule A - Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, Social Security number (SSN), and Employer Identification Number (EIN).

Location and description of property conveyed

Table with 5 columns: Tax map designation, SWIS code, Street address, City, town, or village, and County. Row 1: 102.-08-04.0, 311500, 444 East Genesee Street, Syracuse, Onondaga.

Type of property conveyed (mark an X in applicable box)

Form with checkboxes for property types (1-9) and a date of conveyance field (06/01/2021). Includes a percentage field for residential real property.

Condition of conveyance (mark an X in all that apply)

Form with multiple checkboxes (a-s) describing conditions of conveyance, such as fee interest, acquisition of controlling interest, cooperative housing, syndication, etc.

Table for recording officer's use with columns: Amount received (Schedule B, Part 1 and 2), Date received, and Transaction number.

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

**Part 1 – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3) .....  **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 2 – 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 1, 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 3 – Explanation of exemption claimed on Part 1, line 1 (mark an X in all 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, New York State, 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, § 1401(e) (attach documents supporting such claim) ..... See Schedule "A" ..... k

\* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. 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 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

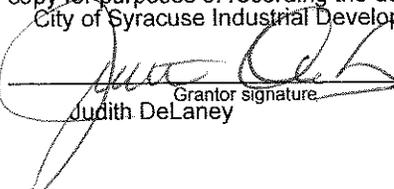
This is to certify that: (mark an X in the appropriate box)

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:
  - a  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.
  - b  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).
  - c  The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - d  The maximum principal amount secured by the credit line mortgage is \$3 million 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.

**Note:** for purposes of determining whether the maximum principal amount secured is \$3 million 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.
- e  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  A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - b  A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's 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.)

**Signature (both the grantors and grantees 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 their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

City of Syracuse Industrial Development Agency  _____ Grantor signature Judith DeLaney	Executive Director _____ Title	444 East Genesee Street LLC _____ Grantee signature Graziano Zazzara, Jr.	Manager _____ 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 marked 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? If no recording is 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 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)**

Complete the following only if the interest being transferred is a fee simple interest.

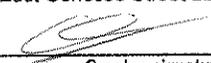
This is to certify that: (mark an X in the appropriate box)

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:
  - a  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.
  - b  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).
  - c  The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - d  The maximum principal amount secured by the credit line mortgage is \$3 million 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.

Note: for purposes of determining whether the maximum principal amount secured is \$3 million 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.
- e  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  A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - b  A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's 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.)

**Signature (both the grantors and grantees 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 their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

City of Syracuse Industrial Development Agency _____ Grantor signature Judith DeLaney	Executive Director _____ Title	444 East Genesee Street LLC  _____ Grantee signature Graziano Zazzara, Jr.	_____ Manager _____ 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 marked 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? If no recording is 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 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

**Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 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 2, mark an X in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

**Part 1 – New York State residents**

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller 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, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferors/sellers**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 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 § 685(c), but not as a condition of recording a deed.

**Part 2 – Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (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 § 663(c), mark an X in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, 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 Form TP-584-I, page 1.

**Exemption for nonresident transferors/sellers**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (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 § 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 New York State, 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.



**CERTIFICATION**

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement by and between the parties dated as of June 1, 2021.

The undersigned, Graziano Zazzara, Jr., Manager and authorized signatory of 444 East Genesee Street LLC (the "*Company*"), does hereby certify and confirm:

(1) that the Company has reviewed and understands the Agency's Local Access Policy (the "*Policy*") which states as follows:

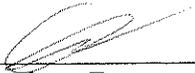
The Company understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation and equipping of the Project unless a written waiver is first received in accordance with the terms of the Policy. Failure to comply may result in the revocation or recapture of benefits awarded to the Project by the Agency.

For purposes of this Policy, the term "local" shall mean: Cayuga, Cortland, Madison, Onondaga, Oneida and Oswego Counties.

(2) except as set forth in that certain resolution dated April 27, 2021, 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: June 3, 2021

444 EAST GENESEE STREET LLC

By:   
Graziano Zazzara, Jr., Its Manager





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 05/18/2021
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**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Brown & Brown Empire State 500 Plum Street, Suite 200  Syracuse NY 13204-1480	<table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2"><b>CONTACT NAME:</b> Peri Klink</td> </tr> <tr> <td><b>PHONE (A/C, No, Ext):</b> (315) 671-8817</td> <td><b>FAX (A/C, No):</b></td> </tr> <tr> <td colspan="2"><b>E-MAIL ADDRESS:</b> PKlink@bbempirestate.com</td> </tr> </table> <table style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="text-align: center; border-bottom: 1px solid black;"><b>INSURER(S) AFFORDING COVERAGE</b></td> <td style="text-align: center; border-bottom: 1px solid black;"><b>NAIC #</b></td> </tr> <tr> <td><b>INSURER A:</b> Cincinnati Financial Corporation</td> <td>058704</td> </tr> <tr><td><b>INSURER B:</b></td><td></td></tr> <tr><td><b>INSURER C:</b></td><td></td></tr> <tr><td><b>INSURER D:</b></td><td></td></tr> <tr><td><b>INSURER E:</b></td><td></td></tr> <tr><td><b>INSURER F:</b></td><td></td></tr> </table>	<b>CONTACT NAME:</b> Peri Klink		<b>PHONE (A/C, No, Ext):</b> (315) 671-8817	<b>FAX (A/C, No):</b>	<b>E-MAIL ADDRESS:</b> PKlink@bbempirestate.com		<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>	<b>INSURER A:</b> Cincinnati Financial Corporation	058704	<b>INSURER B:</b>		<b>INSURER C:</b>		<b>INSURER D:</b>		<b>INSURER E:</b>		<b>INSURER F:</b>	
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<b>INSURED</b>  444 East Genesee Street, LLC  344 South Warren St., Ste 202 Syracuse NY 13202																					

**COVERAGES** **CERTIFICATE NUMBER:** 7/6/2020-21 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																				
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	ENP0394083	07/06/2020	07/06/2021	<table style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$ 500,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$ 10,000</td></tr> <tr><td>PERSONAL &amp; ADV INJURY</td><td style="text-align: right;">\$ 1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$ 2,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td></tr> </table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000	MED EXP (Any one person)	\$ 10,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COMP/OP AGG	\$ 2,000,000		\$						
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AGGREGATE	\$ 5,000,000																										
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	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;"></td> <td style="width: 15%;">PER STATUTE</td> <td style="width: 5%;"></td> <td style="width: 5%;">OTH-ER</td> <td style="width: 70%;"></td> </tr> <tr><td>E.L. EACH ACCIDENT</td><td colspan="4"></td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td colspan="4"></td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td colspan="4"></td></tr> </table>		PER STATUTE		OTH-ER		E.L. EACH ACCIDENT					E.L. DISEASE - EA EMPLOYEE					E.L. DISEASE - POLICY LIMIT				
	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)**

[Job #: Job Type: 444 E. Genesee St.]

**CERTIFICATE HOLDER**

**CANCELLATION**

City of Syracuse Industrial Development Agency 201 E. Washington St., 6th Fl.  Syracuse NY 13202	<p><b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b></p> <p>AUTHORIZED REPRESENTATIVE</p> <div style="text-align: right;"> </div>
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AGENCY CUSTOMER ID: \_\_\_\_\_

LOC #: \_\_\_\_\_

# ADDITIONAL REMARKS SCHEDULE

Page \_\_\_\_ of \_\_\_\_

AGENCY Brown & Brown Empire State		NAMED INSURED 444 East Genesee Street, LLC	
POLICY NUMBER			
CARRIER	NAIC CODE	EFFECTIVE DATE:	

## ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** 25      **FORM TITLE:** Certificate of Liability Insurance: Remarks

General Liability:

CONTRACTORS ADDITIONAL INSURED - AUTOMATIC STATUS WHEN REQUIRED  
IN WRITTEN CONTRACT, AGREEMENT, PERMIT OR AUTHORIZATION - GA472 09/18

CONTRACTORS' COMMERCIAL GENERAL  
LIABILITY BROADENED ENDORSEMENT - NY - GA233 NY 09/17  
Additional Insured; Primary and Non-contributory

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONTRACTORS ADDITIONAL INSURED - AUTOMATIC STATUS AND AUTOMATIC WAIVER OF SUBROGATION WHEN REQUIRED IN WRITTEN CONTRACT, AGREEMENT, PERMIT OR AUTHORIZATION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Additional Insured - Owners, Lessees Or Contractors - Automatic Status For Other Parties When Required In Written Contract Or Agreement With You

1. **Section II - Who Is An Insured** is amended to include as an additional insured any person or organization you have agreed in writing in a contract or agreement to add as an additional insured on this Coverage Part. Such person(s) or organization(s) is an additional insured only with respect to liability for:

a. "Bodily injury", "property damage" or "personal and advertising injury" *caused, in whole or in part, by* the performance of your ongoing operations by you or on your behalf, under that written contract or written agreement. Ongoing operations does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project; and

b. "Bodily injury" or "property damage" *caused, in whole or in part, by* "your work" performed under that written contract or written agreement and in

cluded in the "products-completed operations hazard", but only if:

(1) The Coverage Part to which this endorsement is attached provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard"; and

(2) The written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for that person or organization.

If the written contract or written agreement requires you to provide additional insured coverage included within the "products-completed operations hazard" for a specified length of time for that person or organization, the "bodily injury" or "property damage" must occur prior to the expiration of that period of time in order for this insurance to apply.

If the written contract or written agreement requires you to provide additional insured coverage for a person or organization per only ISO additional insured endorsement form number **CG 20 10**, without specifying an edition date, and without specifically requiring additional insured coverage included within the "products-completed operations hazard", this Paragraph **b.** does not apply to that person or organization.

2. If the written contract or written agreement described in Paragraph **1.** above specifically requires you to provide additional insured coverage to that person or organization:

a. *Arising out of* your ongoing operations or *arising out of* "your work"; or

- b. By way of an edition of an ISO additional insured endorsement that includes *arising out of* your ongoing operations or *arising out of* "your work";

then the phrase *caused, in whole or in part, by* in Paragraph **A.1.a.** and/or Paragraph **A.1.b.** above, whichever applies, is replaced by the phrase *arising out of*.

- 3. With respect to the insurance afforded to the additional insureds described in Paragraph **A.1.**, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- 4. This Paragraph **A.** does not apply to additional insureds described in Paragraph **B.**

**B. Additional Insured - State Or Governmental Agency Or Subdivision Or Political Subdivision - Automatic Status When Required In Written Permits Or Authorizations**

- 1. **Section II - Who Is An Insured** is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision you have agreed in writing in a contract, agreement, permit or authorization to add as an additional insured on this Coverage Part. Such state or governmental agency or subdivision or political subdivision is an additional insured only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision issued, in writing, a contract, agreement, permit or authorization.

- 2. With respect to the insurance afforded to the additional insureds described in Paragraph **B.1.**, the following additional exclusions apply:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard."

- C. The insurance afforded to additional insureds described in Paragraphs **A.** and **B.**:

- 1. Only applies to the extent permitted by law; and
- 2. Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to provide for such additional insured; and
- 3. Does not apply to any person, organization, state, governmental agency or subdivision or political subdivision specifically named as an additional insured for the same project in the schedule of an endorsement added to this Coverage Part.

- D. With respect to the insurance afforded to the additional insureds described in Paragraphs **A.** and **B.**, the following is added to **Section III - Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the written contract, written agreement, written permit or written authorization described in Paragraphs **A.** and **B.**; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

- E. **Section IV - Commercial General Liability Conditions** is amended to add the following:

**Automatic Additional Insured Provision**

This insurance applies only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:

- 1. During the policy period; and

2. Subsequent to your execution of the written contract or written agreement, or the issuance of a written permit or written authorization, described in Paragraphs **A.** and **B.**

- F.** Except when **G.** below applies, the following is added to **Section IV - Commercial General Liability Conditions, 5. Other Insurance**, and supersedes any provision to the contrary:

**When Other Additional Insured Coverage Applies On An Excess Basis**

This insurance is primary to other insurance available to the additional insured described in Paragraphs **A.** and **B.** except:

1. As otherwise provided in **Section IV - Commercial General Liability Conditions, 5. Other Insurance, b. Excess Insurance**; or
2. For any other valid and collectible insurance available to the additional insured as an additional insured by attachment of an endorsement to another insurance policy that is written on an excess basis. In such case, this insurance is also excess.

- G.** The following is added to **Section IV - Commercial General Liability Conditions, 5. Other Insurance**, and supersedes any provision to the contrary:

**Primary Insurance When Required By Written Contract, Agreement, Permit Or Authorization**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to any other insurance available to the additional insured described in Paragraphs **A.** and **B.** provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization described in Paragraph **A.** or **B.** that this insurance would be primary to any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means any insurance provided by a consolidated (wrap-up) insurance program.

**Primary And Noncontributory Insurance When Required By Written Contract, Agreement, Permit Or Authorization**

Except when wrap-up insurance applies to the claim or "suit" on behalf of the additional insured, this insurance is primary to and will not seek contribution from any other insurance available to the additional insured described in Paragraphs **A.** and **B.** provided that:

1. The additional insured is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract, agreement, permit or authorization described in Paragraph **A.** or **B.** that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

As used in this endorsement, wrap-up insurance means any insurance provided by a consolidated (wrap-up) insurance program.

- H. Section IV - Commercial General Liability Conditions, 9. Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

We waive any right of recovery we may have against any additional insured under this endorsement against whom you have agreed to waive such right of recovery in a written contract, written agreement, written permit or written authorization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract, written agreement, written permit or written authorization. However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

in the investigation or defense of the claim or "suit", including actual loss of earnings up to the limit shown in Section **B. Limits of Insurance, 4.b.** Loss of Earnings of this endorsement per day because of time off from work.

**5. Medical Payments**

The Medical Expense Limit of Any One Person as stated in the Declarations is amended to the limit shown in Section **B. Limits of Insurance, 5. Medical Payments** of this endorsement.

**6. 180 Day Coverage for Newly Formed or Acquired Organizations**

**Section II - Who is an Insured** is amended as follows:

Subparagraph a. of Paragraph 4. is replaced by the following:

- a. Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

**7. Waiver of Subrogation**

**Section IV - Commercial General Liability Conditions, 9. Transfer of Rights of Recovery Against Others to Us** is hereby amended by the addition of the following:

We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract or agreement with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

**8. Automatic Additional Insured - Specified Relationships**

- a. The following is hereby added to **Section II - Who is an Insured**:

- (1) Any person(s) or organization(s) described in Paragraph 9.a.(2) of this endorsement (hereinafter re-

ferred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of a written contract, written agreement, written permit or written authorization.

- (2) Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

**(a) Managers or Lessors of Premises**

The manager or lessor of a premises leased to you with whom you have agreed per Paragraph 8.a.(1) of this endorsement to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- (i) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (ii) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**(b) Lessor of Leased Equipment**

Any person or organization from whom you lease equipment when you and such person(s) or organization(s) have agreed per Paragraph 9.a.(1) of this endorsement to provide insurance. Such person(s) or organization(s) are insureds only with respect to their liability "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organizations(s) A person's

employment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(3) Supplementary Payments**

**Section I - Coverages, Supplementary Payments - Coverages A and B** also apply to this Coverage.

**b. Who is an Insured**

As respects Employee Benefit Liability Coverage, **Section II - Who is an Insured** is replaced by the following:

**(1) If you are designated in the Declarations as:**

- (a) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- (b) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds but only with respect to the conduct of your business.
- (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

- (2) Each of the following is also an insured:

- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program".
- (b) Any persons, organizations or "employees" having

proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed.

(c) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

(3) Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. However, coverage under this provision:

(a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

(b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

#### c. Limits of Insurance

As respects Employee Benefit Liability Coverage, **Section III - Limits of Insurance** is replaced by the following:

(1) The Limits of Insurance shown in **Section B. Limits of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:

(a) Insureds;

(b) Claims made or "suits" brought;

(c) Persons or organizations making claims or bringing "suits";

(d) Acts, errors or omissions; or

(e) Benefits included in your "employee benefit program".

(2) The Aggregate Limit shown in **Section B. Limits of Insurance,**

**1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".

(3) Subject to the limit described in (2) above, the Each Employee Limit shown in **Section B. Limits of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:

(a) An act, error or omission; or

(b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions,

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program".

#### (4) Deductible Amount

(a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

(b) The deductible amount stated in **B. Limits of Insurance, 1. Employee Benefit Liability Coverage** as applicable to Each Employee applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to

which this insurance applies.

- (c) The terms of this insurance, including those with respect to:

- 1) Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim,

apply irrespective of the application of the deductible amount.

- (d) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.

**d. Additional Conditions**

As respects **Employee Benefit Liability Coverage, Section IV - Commercial General Liability Conditions** is amended as follows:

- (1) Item 2. **Duties in the Event of Occurrence, Offense, Claim or Suit** is replaced by the following:

**2. Duties in the Event of an Act, Error or Omission, or Claim or Suit**

- a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a claim. To the extent possible, notice should include:

- (1) What the act, error or omission was and when it occurred; and
- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

- (2) Item 5. **Other Insurance** is replaced by the following:

**5. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **b.** below.

**b. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has

paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**e. Additional Definitions**

As respects Employee Benefit Liability Coverage, Section V - Definitions is amended as follows:

(1) The following definitions are added:

1. "Administration" means:

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or
- d. Effecting, continuing or terminating any "employee's" participation in any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
- b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' com-

pensation and disability benefits.

2. "Cafeteria plans" means plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.

3. "Employee benefit programs" means a program providing some of all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:

- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
- b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
- c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and
- d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
05/13/2021

**THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.**

PRODUCER NAME, CONTACT PERSON AND ADDRESS Brown & Brown Empire State Peri Klink 500 Plum Street, Suite 200 Syracuse NY 13204-1480		PHONE (A/C, No, Ext): (315) 474-3374	COMPANY NAME AND ADDRESS Allianz SE 1 Progress Point Pkwy O'Fallon MO 63368	NAIC NO: 22837
FAX (A/C, No):	E-MAIL ADDRESS: PKlink@bbempirestate.com		IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODE:	SUB CODE:		POLICY TYPE Package	
AGENCY CUSTOMER ID #:	00179379		LOAN NUMBER	POLICY NUMBER MZI-93087469
NAMED INSURED AND ADDRESS 444 East Genesee Street, LLC 344 South Warren St., Ste 202 Syracuse NY 13202		EFFECTIVE DATE 05/15/2021	EXPIRATION DATE 03/01/2022	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
ADDITIONAL NAMED INSURED(S)		THIS REPLACES PRIOR EVIDENCE DATED:		

**PROPERTY INFORMATION (ACORD 101 may be attached if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTY**

LOCATION / DESCRIPTION 444 East Genesee St, Syracuse NY 13202	Blanket Premise
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 EVIDENCE OF PROPERTY INSURANCE 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.	

<b>COVERAGE INFORMATION</b>		PERILS INSURED	BASIC	BROAD	<input checked="" type="checkbox"/> SPECIAL
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ 5,000,000		DED: 5,000			
		YES	NO	N/A	
<input checked="" type="checkbox"/> BUSINESS INCOME	<input checked="" type="checkbox"/> RENTAL VALUE	<input checked="" type="checkbox"/>			If YES, LIMIT: 250,000 Actual Loss Sustained; # of months:
BLANKET COVERAGE			<input checked="" type="checkbox"/>		If YES, indicate value(s) reported on property identified above: \$
TERRORISM COVERAGE			<input checked="" type="checkbox"/>		Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?		<input checked="" type="checkbox"/>			
IS DOMESTIC TERRORISM EXCLUDED?		<input checked="" type="checkbox"/>			
LIMITED FUNGUS COVERAGE		<input checked="" type="checkbox"/>			If YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)			<input checked="" type="checkbox"/>		
REPLACEMENT COST		<input checked="" type="checkbox"/>			
AGREED VALUE		<input checked="" type="checkbox"/>			
COINSURANCE			<input checked="" type="checkbox"/>		If YES, %
EQUIPMENT BREAKDOWN (If Applicable)		<input checked="" type="checkbox"/>			If YES, LIMIT: DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg		<input checked="" type="checkbox"/>			If YES, LIMIT: DED:
- Demolition Costs		<input checked="" type="checkbox"/>			If YES, LIMIT: DED:
- Incr. Cost of Construction		<input checked="" type="checkbox"/>			If YES, LIMIT: DED:
EARTH MOVEMENT (If Applicable)		<input checked="" type="checkbox"/>			If YES, LIMIT: 1,000,000 DED: 25,000
FLOOD (If Applicable)		<input checked="" type="checkbox"/>			If YES, LIMIT: 1,000,000 DED: 25,000
WIND / HAIL INCL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:			<input checked="" type="checkbox"/>		If YES, LIMIT: DED:
NAMED STORM INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:			<input checked="" type="checkbox"/>		If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS		<input checked="" type="checkbox"/>			

**CANCELLATION**  
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

<b>ADDITIONAL INTEREST</b>	
CONTRACT OF SALE	LENDER'S LOSS PAYABLE <input checked="" type="checkbox"/> LOSS PAYEE
MORTGAGEE	LENDER SERVICING AGENT NAME AND ADDRESS
NAME AND ADDRESS City of Syracuse Industrial Development Agency 201 E. Washington St., 6th Fl. Syracuse NY 13202	
AUTHORIZED REPRESENTATIVE 	



**Allianz Global Corporate & Specialty®**

**AGCS Marine Insurance Company**

**Binder**

AGCS Marine Insurance Company  
28 Liberty Street, 25th Floor

New York, NY 10005

05/24/2021

BROWN & BROWN EMPIRE STATE  
500 PLUM STREET, SUITE 200  
SYRACUSE, NY 13204

ATTENTION: Peri Ann Klink

RE: 444 East Genesee Street , LLC POL # MZI-93087469

Dear Peri:

Thank you for the order to bind the above mentioned builder's risk. Our Binder is outlined below. Please note that the terms offered may be different than requested.

**Effective/Expiration Date** 05/15/2021 - 03/01/2022  
**Insuring Company** 54 - AGCS MARINE INSURANCE COMPANY

**BR 1.5 Qltr. Builder's Risk Declarations-BR 4000DEC 11 15**

<b>Premium for this coverage form</b>	<b>\$</b> <u>Included</u>	<b>Rate</b>	<b>\$</b> <u>Various</u>
<b>Limits of Insurance</b>			<b>Limits of Insurance</b>

**A. Construction Project Site(s)**

**Address**

444 E GENESEE STREET, SYRACUSE, NY  
13202

**\$ 5,200,000 (Includes Existing Building - \$200,000)**

**a. Description of Covered Property**

Renovation of a 27,000 square foot, noncombustible, 4 story, office building into a 1st floor office and 24 apartments(residential) on the remaining 3 floors.

- B. At any location not specified above or elsewhere in this policy \$ 250,000
  - C. Any one "Occurrence" with respect to property in transit \$ 250,000
  - D. Any one "Occurrence" whether for partial or total "Loss" or salvage charges, or all combined \$ 5,200,000 (Includes Existing Building - \$200,000)
- Deductible Amount \$ 5,000

Coinsurance 0%

Optional Additional Fungi Coverage (applies only if checked):  \$50,000  \$100,000  \$250,000

Optional Occupancy and Use Coverage (applies only if checked):

Special conditions or provisions (If any)

The following Mortgagee/Loss Payees are as follows :

CPC Funding SPE 1, LLC ISAOA/ATIMA  
 C/O The Community Preservation Corp.  
 222 East 42nd Street, 16th Floor  
 New York, NY 10017

New York State Housing Finance Agency, ISAOA,ATIMA  
 641 Lexington Avenue  
 New York, NY 10022

Loss Payees: The applicable loss payee provision is indicated with an [X] below.

Named Loss Payees

Item	Loss payee name, address and telephone number
	City of Syracuse Industrial Development Agency 201 East Washington Street, 6th Floor Syracuse, NY 13202

Blanket Loss Payees

Blanket Loss Payees are added for Covered Property under the Builder's Risk Coverage Form as their interests may appear under a written agreement with the Insured that was executed prior to any "Loss".

<u>Coverage Description Schedule</u>	<u>Limit of Insurance</u>	<u>Deductible</u>
Water	<u>\$1,000,000 Per "Occurrence"</u> <u>\$1,000,000 Annual Aggregate</u>	<u>\$25,000</u> or % of Limit of Insurance subject to a minimum of \$
Earth Movement	<u>\$1,000,000 Per "Occurrence"</u> <u>\$1,000,000 Annual Aggregate</u>	<u>\$25,000</u> or % of Limit of Insurance subject to a minimum of \$
Ordinance or Law	\$ _____	\$ _____
Earnings and Rental Value	<u>\$250,000</u>	<u>\$3 Day Waiting Period</u>
Soft Costs	<u>\$250,000</u>	<u>\$3 Day Waiting Period</u>
Existing Building	<u>\$200,000</u>	<u>\$5,000</u>
Expediting Expenses	\$ _____	\$ _____
Testing/Mechanical Breakdown	<u>\$1,000,000</u>	<u>\$5,000</u>
Contingent Builders Risk	\$ _____	\$ _____

**Deductible:**

1. Any other Deductible stated in this policy as applicable to the Coverage provided by this policy shall not apply and the Deductible shown in the Coverage Description Schedule above for this Endorsement shall apply to the coverage provided by this endorsement.
2. Each claim for "Loss" shall be adjusted separately, and from the amount of each such adjusted claim, or the applicable Limit of Insurance, whichever is less, the Deductible amount shown in the Coverage Description Schedule above shall be deducted.
3. When a percent (%) of Limit of Insurance is shown in the Coverage Description Schedule above, an amount equal to the sum of the Deductible percent specified above multiplied by the total insured values at risk at the time of the "Loss" for the Construction Project Site(s) in Section A. of the Builder's Risk Declarations shall be deducted from the amount otherwise collectible, subject to the minimum deductible indicated above.
4. If two or more Construction Project Sites are involved in a "Loss" arising out of one "Occurrence", the total amount to be deducted from the amount otherwise collectible shall not exceed the amount resulting from the multiplication of the Deductible percent by the Construction Project Site having the highest Limit of Insurance shown in Section A. of the Builder's Risk Declarations.

**Water:**

B. Exclusions, 1.f. Water is amended by deleting only those items for which an [X] is shown below. The most we will pay for "Loss" in any one "Occurrence" is the Limit of Insurance shown for Water in the Coverage Description Schedule of this endorsement for any one or all items indicated with an [X] below.

- (1) Flood, surface water, waves, tidal water, storm surge, tsunami or the overflow of a body of water, all whether or not driven by wind or not. This includes spray that results from any of these whether driven by wind or not.
- (2) Mudslide or mudflow.
- (3) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1).
- (4) Water which backs up through a sewer or drain.
- (5) Water under the surface of the ground that presses on or flows or seeps through foundations, walls, floors or paved surfaces, basements or through doors, windows or other openings.

All "Occurrences" that occur within any seventy-two (72) hour period will constitute a single "Occurrence". The expiration date of this policy will not reduce the seventy-two (72) hour period.

**Earth Movement:**

B. Exclusions, 1.b. Earth Movement is amended by deleting only those items for which an [X] is shown below. The most we will pay for "Loss" in any one "Occurrence" is the Limit of Insurance shown for Earth Movement in the Coverage Description Schedule of this endorsement for any one or all items indicated with an [X] below.

- (1) Earthquake, including any earth sinking, rising or shifting related to such event.
- (2) Landslide, including any earth sinking, rising or shifting related to such event.
- (3) Mine-subsidence, meaning subsidence of a mine, whether or not mining activity has ceased.
- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

All Earth Movement "Occurrences" that occur within any seventy-two (72) hour period will constitute a single "Occurrence". The expiration of this policy will not reduce the seventy-two (72) hour period.

**Ordinance or Law:**

B. Exclusions, 1. a. Ordinance or Law is deleted.

Ordinance or Law coverage is provided for "Loss" caused by or resulting from the enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any Covered Property; or
- (2) Requiring the tearing down of any Covered Property, including the cost of removing its debris; and
- (3) That is in force at the time of the "Loss".

This extension of coverage does not apply to the following:

- (1) An ordinance or law that is in force even if the Covered Property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of Covered Property, or removal of its debris, following a physical loss or damage to that Covered Property.

**Earnings and Rental Value:**

We cover "Loss of Earnings" and "Rental Value" you lose over and above the projected cost of the covered Construction Project Site which occurs because of a Covered Cause of Loss which delays the project.

"Loss of Earnings" means the actual loss of net earnings which result from the project's delay.

"Rental Value" means the actual loss of net rental income from signed leases which result from the project's delay.

**Soft Costs:**

We cover "Soft Costs" you incur because of a Covered Cause of Loss under the Policy. "Soft Costs" means additional expense over and above the projected cost of the covered Construction Project Site which occurs because of a Covered Cause of Loss which delays the project, and is limited to only the following:

1. Additional interest expense on money you borrow to finance construction or repair;
2. Additional realty taxes and real estate assessments which you incur for the period of time that construction has been extended beyond the projected completion date that existed before the "Loss" occurred;
3. Additional advertising and promotional expenses which become necessary as a result of a "Loss";
4. Additional commissions, which result from renegotiation of leases following an interruption to the project; and
5. Additional reasonable and necessary legal, accounting, architectural, artisan or archival consultation expenses which you incur because of a "Loss";

**Existing Building:**

Paragraph A.6.c. is deleted.

The following is added to A.1. Covered Property:

We provide coverage for Real Property, Machinery, Equipment and Fixtures which existed prior to the construction or improvements, alterations or repairs. However, we do not provide coverage for such Real Property, Machinery, Equipment and Fixtures that will be demolished or permanently removed in the course of construction of additions, alterations or repairs.

Only for this existing Building Coverage, Paragraph E.11, How Covered Property Will Be Valued in the Event of Loss or Damage, is deleted and replaced with:

The value of the Covered Property will be the Actual Cash Value, exclusive of any artistic, antiquarian, landmark or historical value, as of the time of "Loss".

The second sentence of Section E.28 is deleted and replaced with:

If the Actual Cash Value, exclusive of any artistic, antiquarian, landmark or historical value, at the time of the "Loss" is greater than the Provisional Amount of Insurance for the Covered Property, we will not pay the full amount of the "Loss".

**Expediting Expenses:**

Subject to the limits shown in the Coverage Description Schedule, we cover the "Reasonable Extra Costs" to make temporary repairs and to expedite the permanent repair or replacement of your equipment, tools and machinery that you own or for which you are liable in the event of a Covered Cause of Loss. The most we will pay is the actual expense you incur, but not more than the Limit of Insurance shown in the Declarations.

"Reasonable Extra Costs" means additional wages for overtime, night work, and work on public holidays; and the extra costs of express freight or other rapid means of transportation. "Reasonable Extra Costs" excludes increased costs of construction materials and labor you incur due to a delay in completing previously undamaged or unfinished portions of a construction project resulting from a Covered Cause of Loss to Covered Property.

**Testing/Mechanical Breakdown:**

Exclusions, B.2.e.; B.2.j; and B.2.k are hereby deleted.

But we will not pay for any "Loss" that results due to testing which exceeds manufacturer's specifications resulting in mechanical breakdown.

**Contingent Builder's Risk:**

Under A.1 Covered Property, coverage is extended to include your interest in buildings or structures in the course of construction, including property used in or incidental to construction at a Construction Project Site. This coverage applies only when the contract requires another party to obtain the insurance covering your interest but fails to do so.

**Additional Endorsements: The following Additional Endorsements apply only if selected as shown by an [X] in the corresponding box below:**

**Unintentional Errors or Omissions:**

Your failure to disclose all hazards existing on the effective date of this policy shall not prejudice you with respect to the coverage afforded by this policy provided such failure or omission is not intentional.

**Rain, Snow, Sleet, Sand or Dust:**

We will provide coverage for "Loss" from rain, snow, sleet, sand or dust to property while in the open and unprotected and awaiting installation or construction.

**Increased Costs of Labor and Construction Materials Coverage:**

We will provide coverage for increased costs of labor and construction materials in the event that you suffer a total "Loss" to Covered Property. We will also provide coverage for the costs of changes to specifications of the construction project you must make following a total "Loss" to Covered Property.

The most we will pay for this coverage is five percent (5%) of the Construction Project Site Limits of Insurance listed in item A. of the Builder's Risk Declarations or \$500,000, whichever is less.

This Coverage does not apply to any other Limits of Insurance, including but not limited to Expediting Expenses, Loss of Earnings, Rental Value or Soft Costs or Optional Green Plus Coverage.

All other matters not provided for in this Endorsement shall be governed by the terms and conditions of the policy to which this Endorsement is attached. If a condition of the policy directly conflicts with a condition of this Endorsement, the condition of this Endorsement will supersede the condition of the policy.

This Form must be attached to the Change Endorsement when issued after the policy is written.

**Premium Summary**

<b>Premium Excluding Terrorism</b>	<b>\$10,500</b>
<b>Terrorism Coverage</b>	2 % If terrorism coverage is purchased, there will be either an additional or return premium equal to the percentage shown above on all monetary endorsements and adjustments.
<b>Terrorism Premium</b>	<b>\$210</b> (Dollar amount that equates to the percentage above)

**Total Policy Premium with Terrorism (Excluding Applicable Surcharges) \$10,710**

Estimated Surcharges Florida \$  
Estimated Surcharges Kentucky \$  
Estimated Surcharges Louisiana \$  
Estimated Surcharges Minnesota \$  
Estimated Surcharges New Jersey \$  
Estimated Surcharges New York \$  
Estimated Surcharges West Virginia \$

**Total Estimated Policy Surcharge (non-Terrorism) \$**

The premium(s) listed above may vary from the actual premium(s) shown on the policy due to additional charges that have not been included for installment charges, taxes, surcharge fees and premium rounding that may apply when issuing the policy.

**Total Estimated Policy Premium with Terrorism (Including Applicable Surcharges) \$10,710**

**Direct Bill Plan**

We can offer the following: Direct Bill Plan

<b>Bill Code</b>	<b>Bill Plan</b>	<b>Down Payment</b>	<b>Installment Amount</b>	<b>Day Billed</b>
SB	Four Pay	25% of Premium	3 Installments of 25% with \$10 per Installment charge	60/120/180 days after Effective Date

**Special Conditions**

**This quotation includes the following forms as approved by the applicable state:**

- Fungi Limitation Endorsement
- Limited Fungus and Related Perils Coverage Endorsement

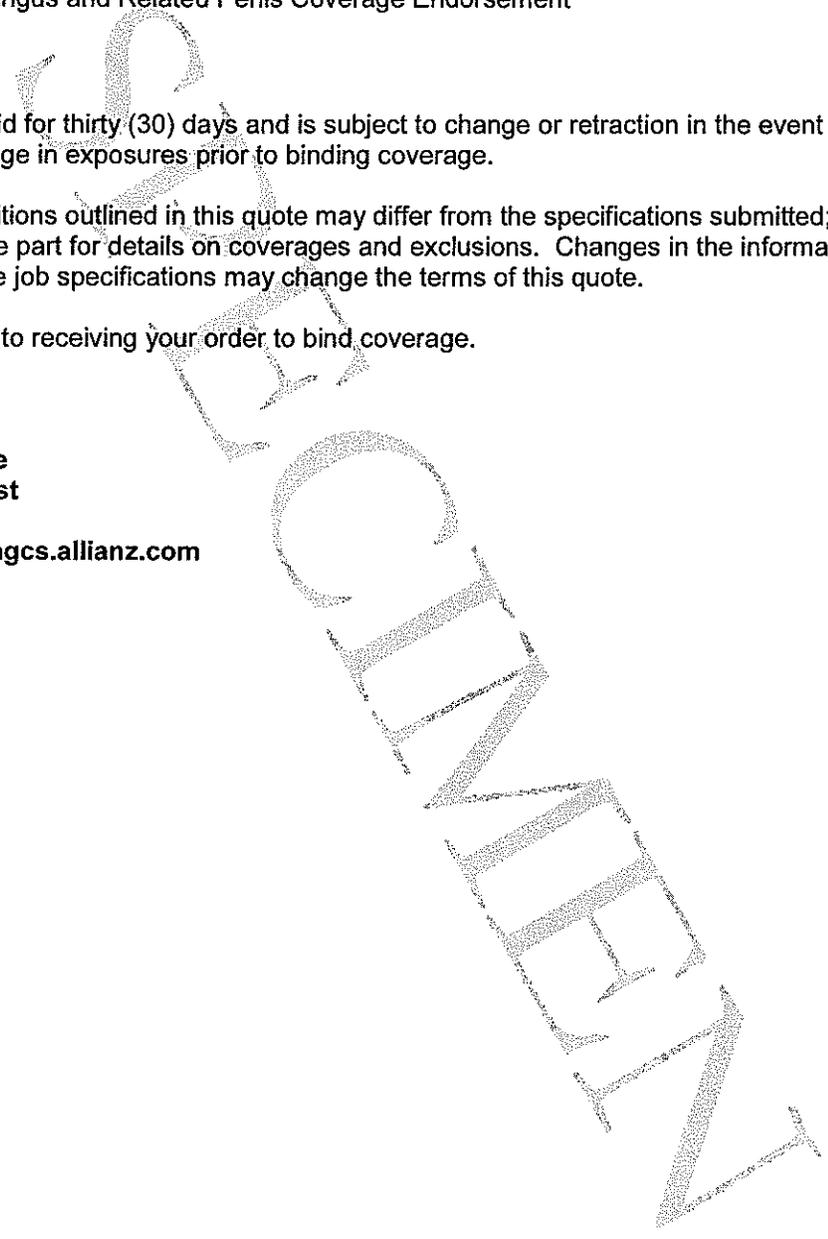
This quote is valid for thirty (30) days and is subject to change or retraction in the event of claim activity or an increase or change in exposures prior to binding coverage.

Terms and conditions outlined in this quote may differ from the specifications submitted; please review the specific coverage part for details on coverages and exclusions. Changes in the information in your submission or changes in the job specifications may change the terms of this quote.

We look forward to receiving your order to bind coverage.

Sincerely,

**Robert H. Pierce**  
**Marine Specialist**  
**(781) 934-0711**  
**robert.pierce@agcs.allianz.com**





Allianz Global Corporate & Specialty®

AGCS Marine Insurance Company

**IMPORTANT NOTICE REGARDING TERRORISM COVERAGE  
(Subject to Standard Fire Policy Statute)**

Insured:	444 East Genesee Street , LLC	Policy Number:	MZI93087469
		Effective Date:	05/15/2021
Producer:	BROWN & BROWN EMPIRE STATE	Expiration Date:	03/01/2022

This notice applies to the type(s) of insurance provided under this policy that are subject to the Terrorism Risk Insurance Act, as amended ("The Act"). You are hereby notified that under The Act you have a right to purchase insurance coverage for losses arising out of "**Certified Acts of Terrorism**", as defined in Section 102(1) of The Act. The term "**Certified Act of Terrorism**" means an act or acts that are certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, as amended, to be an act of terrorism to be a violent act or an act that is dangerous to human life, property; or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHEN COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM "**CERTIFIED ACTS OF TERRORISM**", SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019; AND 80% BEGINNING ON JANUARY 1, 2020 OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURER'S LIABILITY FOR LOSSES RESULTING FROM "**CERTIFIED ACTS OF TERRORISM**" WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEEDS \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

If a "Certified Act of Terrorism" results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements that apply to those coverage forms, or to Legal Liability coverage forms or endorsements.

This quotation includes an offer of coverage for losses due to "**Certified Acts of Terrorism**", as defined by The Act, and, if accepted, will be subject to the limit(s), terms and conditions of any policy subsequently issued. The quoted premium for this terrorism coverage is \$ .

If you have any questions about this or any other insurance matter, please contact your agent or broker representing the AGCS Marine Insurance Company.

**TERRORISM COVERAGE ELECTION:**

To Accept this offer, please:

Mark the "Accept" option below and return this document to your agent or broker representing AGCS Marine Insurance Company; and pay the premium by the due date shown on your premium billing.

I ACCEPT THIS OFFER OF TERRORISM COVERAGE.

To Reject this offer, please:

Mark the "Reject" option below, sign and date below, and return the original signed document to your agent or broker representing AGCS Marine Insurance Company.

I REJECT COVERAGE FOR LOSSES DUE TO TERRORIST ACTS, AS DEFINED IN THE ACT.

Applicant

Applicant's Signature

Title

Date

Insurance Company 54 - AGCS MARINE INSURANCE COMPANY

Please return to your agent or broker representing AGCS Marine Insurance Company.



## Allianz Global Corporate & Specialty®

### Electronic Data Exclusion Endorsement

Commercial Inland Marine

Insured	444 East Genesee Street , LLC	Policy Number	MZI93087469
		Effective Date	05/15/2021
Producer	BROWN & BROWN EMPIRE STATE,	Expiration Date	03/01/2022

Notwithstanding any provision to the contrary within the policy or any endorsements thereto, it is understood and agreed that this endorsement will apply to all coverage forms, coverage extensions, supplemental coverage options, and endorsements that may be attached to this policy, including, but not limited to those that provide coverage for property, earnings, business income, extra expense, or interruption by civil authority.

This policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of "Electronic Data" from any cause whatsoever (including but not limited to "Computer Virus") or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting there from, regardless of any other cause or event contributing concurrently or in any other sequence of loss.

#### Exceptions to Endorsement

- 1) Fire and/or Explosion that results from any of the items described above, this policy, subject to all its terms, conditions, and exclusions, will cover direct physical loss or damage to property insured caused by or resulting from such Fire and/or Explosion.
- 2) Virus and Hacking coverage as provided for under the Supplemental Inland Marine Coverage Section of the Commercial Output policy, if attached
- 3) Hacking coverage as provided for under the Electronic Data Processing policy, if attached.

#### Definitions

**Electronic Data** includes but is not limited to facts, concepts and information converted to a form useable for communications, interpretation or processing of electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for the "processing" and manipulation of data or the direction and manipulation of such equipment.

**Computer Virus** includes but is not limited to a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. Computer Virus includes but is not limited to Trojan Horses, worms, and time or logic bombs.

**Hacking** includes but is not limited to an unauthorized intrusion by an individual or group of individuals, whether employed by you or not, into a computer, a Web site, or a computer network and that results in but is not limited to deletion, destruction, generation, or modification of software; alteration, contamination, corruption, degradation, or destruction of the integrity, quality, or performance of software; observation, scanning, or copying of data records, programs and applications, and proprietary programs; damage, destruction, inadequacy, malfunction, degradation, or corruption of any hardware or media used with hardware; or denial of access to or denial of services from computers, computer network, or Web site including related software.

**Processing** includes but is not limited to any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**All other terms and conditions remain unchanged.**

SPENCER



Allianz Global Corporate & Specialty®

**MINIMUM EARNED PREMIUM ENDORSEMENT**  
Commercial Inland Marine

Insured	444 East Genesee Street , LLC	Policy Number	MZI93087469
Producer	BROWN & BROWN EMPIRE STATE	Effective Date	05/15/2021

This endorsement modifies insurance provided under the Commercial Inland Marine Coverage Forms.

The full minimum earned premium(s) shown below shall be applied as indicated to the following coverage form(s) and/or endorsement(s), regardless of coverage term or subsequent coverage cancellation.

Coverage Form/Endorsement Title and Form Number	Minimum Earned Premium
BR 4010 11 15	\$10,500

(If no entry appears above, information required to complete this Endorsement will be shown in the Declarations as applicable to this Endorsement.)

This Form must be attached to Change Endorsement when issued after the policy is written.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

05/21/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Crowley Insurance Agency, Inc. 202 North Center Street East Syracuse NY 13057		<b>CONTACT NAME:</b> Mike Crowley <b>PHONE (A/C. No. Ext):</b> (315) 437-2983 <b>E-MAIL ADDRESS:</b> mike@crowleyinsurance.com <b>FAX (A/C. No):</b> (315) 437-0063	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Admiral Insurance Company	<b>NAIC #</b> 24856
		<b>INSURER B:</b> National Union Fire Insurance Company of Pittsburg	19445
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	
<b>INSURED</b> Stone Hammer Constructors LLC 6171 Airport Road Syracuse NY 13209			

**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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b>			CA000030384-04	05/16/2021	05/16/2022	EACH OCCURRENCE	\$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:								
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$	
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b>			EBU045651644	05/16/2021	05/16/2022	EACH OCCURRENCE	\$ 3,000,000
	<input checked="" type="checkbox"/> <b>EXCESS LIAB</b>						AGGREGATE	\$ 3,000,000
DED RETENTION \$								
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below								

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

City of Syracuse Industrial Development Agency along with all other parties required by written contract are listed as an additional insured per the blanket additional insured endorsement including ongoing and completed operations. Insurance is written on a primary and non-contributing basis. Waiver of subrogation applies

**CERTIFICATE HOLDER****CANCELLATION**

City of Syracuse Industrial Development Agency 201 East Washington Street, 6th Floor 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 
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**CERTIFICATE OF WORKERS' COMPENSATION INSURANCE (RENEWED)**



SCAN TO VALIDATE  
AND SUBSCRIBE

^ ^ ^ ^ ^ ^ ^ ^ 824134195  
CROWLEY INSURANCE AGENCY INC  
202 NORTH CENTER STREET  
EAST SYRACUSE NY 13057

<b>POLICYHOLDER</b> STONE HAMMER CONSTRUCTORS LLC 6171 AIRPORT RD SYRACUSE NY 13209		<b>CERTIFICATE HOLDER</b> CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY 201 EAST WASHINGTON ST, 6TH FL SYRACUSE NY 13202	
<b>POLICY NUMBER</b> S2477 552-0	<b>CERTIFICATE NUMBER</b> 558822	<b>POLICY PERIOD</b> 06/25/2021 TO 06/25/2022	<b>DATE</b> 5/21/2021

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 2477 552-0, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW, AND, WITH RESPECT TO OPERATIONS OUTSIDE OF NEW YORK, TO THE POLICYHOLDER'S REGULAR NEW YORK STATE EMPLOYEES ONLY.

**IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT [HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP](https://www.nysif.com/cert/certval.asp). THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.**

THIS POLICY DOES NOT COVER THE SOLE PROPRIETOR, PARTNERS AND/OR MEMBERS OF A LIMITED LIABILITY COMPANY.

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

BY CAUSING THIS CERTIFICATE TO BE ISSUED TO THE CERTIFICATE HOLDER, THE POLICYHOLDER UNDERTAKES TO PROVIDE THE CERTIFICATE HOLDER 30 CALENDAR DAYS' NOTICE OF ANY CANCELLATION OF THE POLICY.

NEW YORK STATE INSURANCE FUND



DIRECTOR, INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 736586141

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any person or organization that is an owner or manager of real property or personal property on which you are performing ongoing operations, or a contractor on whose behalf you are performing ongoing operations, but only if coverage as an additional insured is required by a written contract or written agreement that is an "insured contract", and provided the "bodily injury" or "property damage" first occurs, or the "personal and advertising injury" offense is first committed, subsequent to the execution of the contract or agreement.	All locations at which the Named Insured is performing ongoing operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- 1. Your acts or omissions; or
- 2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

- 1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- 1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

2. That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.  
 ADDITIONAL INSURED – OWNERS, LESSEES OR  
 CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
 SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any person or organization that is an owner or manager of real property or personal property for whom you work or have worked, or a contractor on whose behalf you work or have worked, but only if coverage as an additional insured extending to "bodily injury" or "property damage" included in the "products-completed operations hazard" is required by a written contract or written agreement that is an "insured contract" and provided that the "bodily injury" or "property damage" first occurs subsequent to the execution of the contract or agreement.	All locations except locations where "your work" is or was related to a job or project involving single-family dwellings, multi-family dwellings (other than rental apartments in an apartment building: (a) originally constructed and at all times used for such purpose, or (b) converted from a commercial building), condominiums, townhomes, townhouses, time-share units, fractional-ownership units, cooperatives and/or any other structure or space used or intended to be used as a residence.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by “your work” at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the “products-completed operations hazard”.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**3. Limits of Insurance**

- a. The amount we will pay for damages is limited as described below with respect to damages covered under this endorsement:
  - (1) The Aggregate Limit shown in the Schedule is the most we will pay for the sum of all damages because of “property damage”;
  - (2) The Each Occurrence Limit shown above is the most we will pay for the sum of all damages because of “property damage” arising out of any one “occurrence”;
  - (3) Supplementary Payments will reduce the Each Occurrence and Aggregate Limits of Insurance shown in the Schedule; and
  - (4) All sums we pay for damages or Supplementary Payments under this endorsement will reduce the Each Occurrence Limit and the General Aggregate Limit shown in the Declarations.

**4. Other Insurance**

This insurance is excess over any other valid and collectible Property or Inland Marine insurance available to you, either as a Named Insured or an Additional Insured, whether primary, excess, contingent or any other basis.

**PRIMARY AND NONCONTRIBUTORY –  
OTHER INSURANCE CONDITION**

(Insurance Services Office Endorsement CG 20 01 04 13)

The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

(Insurance Services Office Endorsement CG 24 04 05 09)

**SCHEDULE**

**Name Of Person Or Organization:**

Any person or organization, but only if the following conditions are met:

- (1) You have expressly agreed to the waiver in a written contract; and
- (2) The injury or damage first occurs subsequent to the execution of the written contract.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or “your work” done under a contract with that person or organization and included in the “products-completed operations hazard”. This waiver applies only to the person or organization shown in the Schedule above.



## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

**THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT** (the “*Agreement*”) is made as of the 1<sup>st</sup> day of June, 2021, between **444 EAST GENESEE STREET LLC** (the “*Indemnitor*” or the “*Company*”), for the benefit of the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the “*Agency*”).

### RECITALS

**WHEREAS**, the Agency has undertaken at the request of the Indemnitor, a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York, as more fully described on **Schedule A** annexed hereto (the “*Land*”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

**NOW, THEREFORE**, in consideration of the premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **Recitals; Definitions.**

(a) The foregoing recitals are incorporated into this Agreement by this reference.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Agency Lease as Exhibit “C.”

2. **Representations and Warranties.**

(a) Except as disclosed in **Schedule B** annexed hereto, Indemnitor represents and warrants that it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (collectively, "***Hazardous Substances***"), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "***Hazardous Waste Laws***"), at, upon, under or within the Project Facility or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Project Facility or on any contiguous real estate.

(b) Except as disclosed in the reports listed on **Schedule B** annexed hereto, Indemnitor further represents and warrants that (i) it has not been nor will be involved in operations at or near the Project Facility which operations could lead to (A) the imposition of liability on Indemnitor or on any subsequent or former owner of the Project Facility or (B) the creation of a lien on the Project Facility under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) it has not permitted, and will not permit, any tenant or occupant of the Project Facility to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on Agency, the Indemnitor or on any other owner of any of the Project Facility.

3. **Covenants.**

(a) Indemnitor shall comply strictly and in all respects with the requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations and shall notify Agency immediately in the event of any discharge or discovery of any Hazardous Substance at, upon, under or within the Project Facility which is not otherwise already disclosed in **Schedule B**. Indemnitor shall promptly forward to Agency copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge or the presence of any Hazardous Substance or any other matters relating to the Hazardous Waste Laws or any similar laws or regulations, as they may affect the Project Facility.

(b) Promptly upon the written request of Agency, Indemnitor shall provide Agency, at Indemnitor's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to the requesting Person, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Project Facility.

4. **Indemnity.**

(a) Indemnitor shall at all times indemnify and hold harmless Agency against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges, and expenses, of any nature whatsoever suffered or incurred by Agency, whether as contract vendor, owner, mortgagee, as mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

(1) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility whether or not the same originates or emanates from the Project Facility or any contiguous real estate including any loss of value of the Project Facility as a result of any of the foregoing;

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

(3) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Project Facility; and/or

(4) any other environmental matter affecting the Project Facility within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local agency.

The obligations of Indemnitor under this Agreement shall arise whether or not the Environmental Protection Agency, any other federal agency or any state or local agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(b) In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility, whether or not the same originates or emanates from the Project Facility or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Agency may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Project Facility and/or take any and all other actions as Agency shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure the noncompliance of Indemnitor.

(c) Indemnitor acknowledges that Agency has relied upon the representations, warranties, covenants and indemnities of Indemnitor in this Agreement. All of the representations, warranties, covenants and indemnities of this Agreement shall survive the repayment of Indemnitor's obligations under the Agency Lease or other Company Documents.

5. **Attorney's Fees.** If Agency retains the services of any attorney in connection with the subject of the indemnity herein, Indemnitor shall pay Agency's costs and reasonable attorneys' fees thereby incurred. Agency may employ an attorney of its own choice.

6. **Interest.** In the event that Agency incurs any obligations, costs or expenses under this Agreement, Indemnitor shall pay such Person immediately on demand, and if such payment is not received within ten (10) days, interest on such amount shall, after the expiration of the ten-day period, accrue at the interest rate set forth in the Agency Lease until such amount, plus interest, is paid in full.

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

8. **Waiver by Indemnitor.** Indemnitor waives any right or claim of right to cause a marshalling of Indemnitor's assets or to cause Agency to proceed against any of the security for the Agency Lease before proceeding under this Agreement against Indemnitor or to proceed against Indemnitor in any particular order; Indemnitor agrees that any payments required to be made hereunder shall become due on demand; Indemnitor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

9. **Releases.** Any one or more of Indemnitor and any other party liable upon or in respect of this Agreement or the Agency Lease may be released without affecting the liability of any party not so released.

10. **Amendments.** No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Joint and Several Liability.** In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each Indemnitor, whether or not an

action is brought against any other person or whether or not any other person is joined in such action or actions.

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

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

(a) If to the Agency, to: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chair

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

and

Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) If to the Company: 444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
Syracuse, New York 13202  
Attn: Graziano Zazzara, Jr.

With a copy to: Lynn, D'Elia, Temes & Stanczyk LLC  
100 Madison Street, Suite 1905  
Syracuse, New York 13202  
Attn: Michael Stanczyk, 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.

444 EAST GENESEE STREET LLC

By:   
Graziano Zazzara, Jr., Its Manager

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

On the 26 day of <sup>my</sup> ~~June~~, in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared **Graziano Zazzara, Jr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**MICHAEL STANCZYK**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02ST6220670  
Qualified in Onondaga County  
Commission Expires April 19, 2022

**SCHEDULE "A"**

**LEGAL DESCRIPTION**

**Property: 444 East Genesee Street, Syracuse, New York**

**ALL THAT TRACT OR PARCEL OF LAND** located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

**BEING MORE MODERNLY DESCRIBED AS:**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

**BEGINNING** at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

**thence** S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

**thence** N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

**thence** N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

**thence** S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the **POINT OF BEGINNING. CONTAINING** 0.179 Acre of land more or less.

## **SCHEDULE “B”**

### **EXCEPTIONS**

Those items set forth in that certain Phase I Environmental Site Assessment, prepared by LaBella Associates, D.P.C., (Project Number 2191692), dated June 28, 2019; and that certain Phase I Environmental Site Assessment, prepared by LaBella Associates, D.P.C., (Project Number 221055), dated January 22, 2021.



## CLOSING RECEIPT

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION 444 EAST GENESEE STREET LLC

**CLOSING RECEIPT** executed June 3, 2021 by the City of Syracuse Industrial Development Agency (the "**Agency**") and **444 EAST GENESEE STREET LLC** (the "**Company**") in connection with a certain project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

#### WITNESSETH:

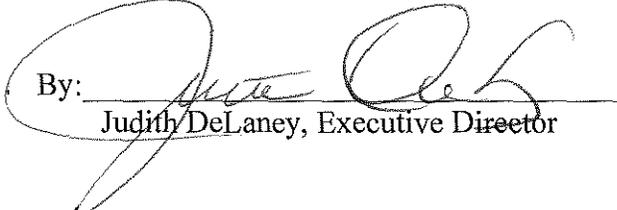
(1) The Agency has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party, and acknowledges receipt from the Company of its administrative fee.

(2) The Company has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party. The Company acknowledges that it is responsible for remitting, at closing, all of the Agency's legal fees associated with the Project and the Company Documents to date.

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

  
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

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

Graziano Zazzara, Jr., Its Manager

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

By: \_\_\_\_\_  
  
Graziano Zazzara, Jr., Its Manager



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**City of Syracuse**  
**Industrial Development Agency**  
City Hall Commons, 6<sup>th</sup> Floor  
201 East Washington Street  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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June 1, 2020

444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
Syracuse, New York 13202  
Attn: Graziano Zazzara, Jr.

Re: City of Syracuse Industrial Development Agency  
444 East Genesee Street LLC  
Sales Tax Appointment Letter

Dear Mr. Zazzara:

Pursuant to a resolution duly adopted on April 27, 2021, the City of Syracuse Industrial Development Agency (the “**Agency**”) appointed 444 East Genesee Street LLC (the “**Company**”) the true and lawful agent of the Agency to undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the “**Land**”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the “**Facility**”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 **\$151,400**.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any renovation, improvement, equipping and completion of any of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with renovation, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

This agency appointment includes the power to delegate such agency, in whole or in part, to a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***"). Additional Agents must be specifically appointed by the Company in accordance and compliance with the terms of the Agency Lease dated as of June 1, 2021 by and between the Agency and the Company (the "***Agency Lease***"). The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Additional Agent who provide materials, equipment, supplies or services to the Project Facility and deliver said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment. The Agency's obligation to execute any Form ST-60 relative to an Additional Agent is subject to the satisfaction of the conditions in the Agency Lease relative to such appointments.

The Company agrees, whenever requested by the Agency, to provide, or cause its Additional Agents to provide and certify, or cause to be certified, such information regarding use of local labor, job creation, exemptions from State and local sales and use tax, real property taxes and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation, including but not limited to those required by §875 of the Act.

The Company acknowledges and agrees that pursuant to Section 875(3) of the Act, and in conjunction with the Agency's Recapture of Benefits Policy (the "***Recapture Policy***") dated as of June 21, 2016, the Project Agreement between the Agency and the Company dated as of June 1, 2021 and the Agency Lease, the Agency shall, and in some circumstances may, recover,

recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**").

Each supplier or vendor should identify the Project Facility on each bill or invoice and indicate thereon which of the Company or its Additional Agents acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you and each Additional Agent should present to the supplier or other vendor of materials for the Project Facility, a completed "IDA Agent or Project Operator Exempt Purchase Certificate" (Form ST-123).

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance ("**NYSDTF**") on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you and your Additional Agents have claimed pursuant to the agency we have conferred on you with respect to this Project. The penalty for failure to file such statement is the removal of your authority to act as our agent. In addition, you must provide a copy of the completed Form ST-340 to the Agency within ten (10) days of the date it is due to be filed with the NYSDTF.

The agency created by this letter is limited to the Project Facility and will expire on the earlier of: (i) sixty (60) days after the issuance of a certificate of occupancy or similar document by the applicable municipality in which the Project Facility is located; or (i) **May 1, 2022**; unless the Agency Lease is terminated early in accordance with its terms in which case this appointment shall terminate at that time.

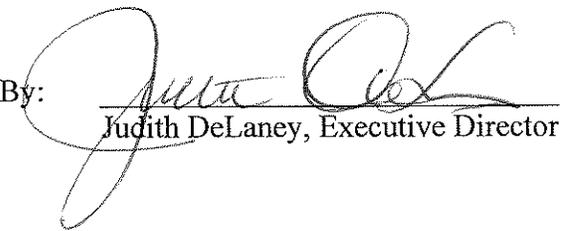
This letter is provided for the sole purpose of evidencing, in part, the exemption from New York State Sales and Use Taxes **for this project only**. No other principal/agent relationship is intended or may be implied or inferred by this letter.

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

Very truly yours,

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:

  
Judith DeLaney, Executive Director





# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(1/18)

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**

### IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31022101
Street address 201 E. Washington Street, 6th Floor			Telephone number (315 ) 473-3275
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent 444 East Genesee Street LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number 91-1945744
Street address 344 South Warren Street, Suite 202		Telephone number ( 315 ) 299-6292	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Syracuse	State NY	ZIP code 13204	Email address (optional)

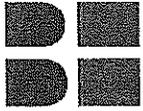
### Project information

Name of project 444 East Genesee Street LLC Project			
Street address of project site 444 East Genesee Street			
City Syracuse	State NY	ZIP code 13202	Email address (optional)
Purpose of project other - commercial			

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 and around the Project Facility			
Date project operator or agent appointed (mmddyy) 060121	Date project operator or agent status ends (mmddyy) 050122	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: 1,892,505.00		Estimated value of New York State and local sales and use tax exemption provided: 151,400.00	

**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 Judith DeLaney		Print title Executive Director	
Signature 		Date 5-27-21	Telephone number ( 315 ) 448-8127



# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

June 4, 2020

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
7010 0780 0002 1722 1309

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  
444 East Genesee Street LLC and Stone Hammer Constructors, LLC  
IDA Project No. 31022101

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency, please find a form ST-60 in connection with the appointment by the IDA of 444 East Genesee Street LLC and Stone Hammer Constructors, LLC as its agents for sales tax purposes in connection with the IDA project identified therein.

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

Very truly yours,

Susan R. Katzoff

SRK:llm  
Enclosure

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ALBANY, NY 12227

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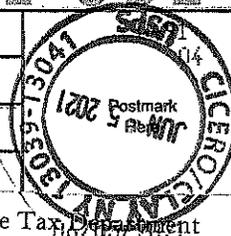
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Albany, NY 12227

**OFFICIAL USE**

Postage	\$2.85
Certified Fee	\$0.00
Return Receipt Fee (Endorsement Required)	\$0.00
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage	\$0.55



7010 0780 0002 1722 1309

New York State Tax Department  
IDA Unit  
Building 8, Room 738  
W.A. Harriman Campus  
Albany, New York 12227

Sent To  
Street, Apt. No.,  
or PO Box No.  
City, State, ZIP



## SUB-AGENT AGREEMENT

**THIS SUB-AGENT APPOINTMENT AGREEMENT** (the "**Agreement**"), dated as of May 20, 2021, is by and between **444 EAST GENESEE STREET LLC** (the "**Company**"), with a mailing address of 344 South Warren Street, Suite 202, Syracuse, New York 13204 (the "**Company**"), and **STONE HAMMER CONSTRUCTORS, LLC**, a limited liability company of the State of New York, having an office for the transaction of business at 6171 Airport Road, Syracuse New York 13209 (the "**Sub-Agent**").

### W I T N E S S E T H:

**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 of its members adopted on April 27, 2021 (the "**Resolution**"), the Agency agreed to undertake a project for the benefit of the Company (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 Agency Lease Agreement by and between the Company and the Agency dated as of May 1, 2021 (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; and

**WHEREAS**, the Company and the Agency entered into a Project Agreement dated as of May 1, 2021 (the “*Project Agreement*”) and an Agency Lease Agreement dated as of May 1, 2021 (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 Agency Lease, the Resolution and Section 875(3) of the Act (as if such section were fully set forth herein). Without limiting the scope of the foregoing, the Sub-Agent acknowledges and agrees to be bound by the Agency’s Suspension, Discontinuation and Recapture of Benefits Policy (the “*Recapture Policy*”), a copy of which is attached hereto as **Schedule “A”**.

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

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

e. that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, STONE HAMMER CONSTRUCTORS, LLC, 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: 444 EAST GENESEE STREET LLC PROJECT, 444 EAST GENESEE STREET, IDA PROJECT NO.: 31022101.

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

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

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

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative

or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

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

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

j. The Sub-Agent agrees Local contractors and suppliers will be used for the construction and equipping of the Project unless a waiver is first received from the Agency in writing. Such waiver shall be in the Agency's sole discretion. The Sub-Agent agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project. Local shall mean, for the purposes of this Agreement, Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties. Failure to comply with the local labor requirements of this Section (j) (collectively, the "**Local Labor Requirements**") may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. [Pursuant to a resolution dated April 27, 2021, at the request of the Company, the Agency provided a limited waiver of its Local Access Policy for one subcontractor; namely, Ajay Glass, a Canandaigua company with the understanding and commitment from the Company and the subagent that while the subcontractor is located outside of the local region, all laborers would be local unless the Company and or the subagent could demonstrate, to the satisfaction of the Agency, that there was a shortage of qualified local laborers. To that end, the Company agrees that such local labor shall be included in the term "Local Labor Requirements" (as defined herein) and the Company and/or the subagent shall provide evidence of such local labor as and when requested by the Agency.<sup>1</sup>]

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

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<sup>1</sup> This section applies solely in the event that the sub-agent being appointment pursuant to this Sub-Agent Agreement is Ajay Glass. Notwithstanding, the a balance of this agreement is effective as to each and every other appointed sub-agent.

exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project on an annual basis.

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

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

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

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

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

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

Prior to the effective date of this Agreement, the general contractor shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) Certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the general contractor covering the Project Facility;

and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the general contractor shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the execution of this Agreement.

The general contractor shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraphs, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required hereby for so long as the general contractor is performing, supervising or causing work to be done on or at the Project Facility. The general contractor shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement in each such year.

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

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

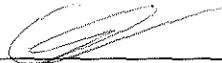
4. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Agency Lease or of any other agreement entered into by the Company in connection with the Project.

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

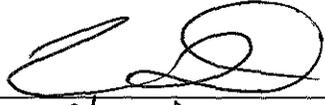
6. This Agreement shall be in effect until the earlier of: (i) the completion of the work on the Project by the Sub-Agent; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c), 2(f), 2(g), 2(j), and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

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

**444 EAST GENESEE STREET LLC**

By:   
Name:  
Title:

**STONE HAMMER CONSTRUCTORS, LLC**

By:   
Name: Chris Doran  
Title: Co-Owner

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

**FORM ST-123**



**IDA Agent or Project Operator  
Exempt Purchase Certificate**

Effective for projects beginning on or after June 1, 2014

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

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

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

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

**To the seller:**

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

**Project information**

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

Name of IDA		
Name of project	IDA project number (see 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/SS/yy) .....	/	/
Enter the date that agent or project operator status ends (mm/SS/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).

- 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.
- 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.
- 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

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



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

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



Sales Tax Information Center: (518) 485-2669

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

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

**RECAPTURE POLICY**

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**City of Syracuse**  
**Industrial Development Agency**  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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**RECAPTURE POLICY**

**I. STATEMENT OF PURPOSE**

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

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

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

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

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

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

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

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

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

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

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

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

#### IV. ANNUAL ASSESSMENT

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

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

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

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

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

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

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

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

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

Adopted: June 21, 2016





# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(1/18)

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**

### IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31022101
Street address 201 E. Washington Street, 6th Floor			Telephone number (315 ) 473-3275
City Syracuse	State NY	ZIP code 13202	Email address (optional)

### Project operator or agent information

Name of IDA project operator or agent Stone Hammer Constructors, LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number 82-4134195
Street address 6171 Airport Road		Telephone number ( 315 ) 857-7619	Primary operator or agent? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
City Syracuse	State NY	ZIP code 13209	Email address (optional)

### Project information

Name of project 444 East Genesee Street LLC Project			
Street address of project site 444 East Genesee Street			
City Syracuse	State NY	ZIP code 13202	Email address (optional)
Purpose of project other - commercial			

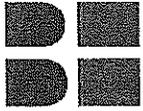
Description of goods and services intended to be exempted from New York State and local sales and use taxes

building materials, equipment, fixtures and furnishings installed in and around the Project Facility

Date project operator or agent appointed (mmddyy) 060121	Date project operator or agent status ends (mmddyy) 050122	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: 1,892,505.00		Estimated value of New York State and local sales and use tax exemption provided: 151,400.00

**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 Judith DeLaney	Print title Executive Director
Signature 	Date 5-27-21
Telephone number ( 315 ) 448-8127	



# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

June 4, 2020

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
7010 0780 0002 1722 1309

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  
444 East Genesee Street LLC and Stone Hammer Constructors, LLC  
IDA Project No. 31022101

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency, please find a form ST-60 in connection with the appointment by the IDA of 444 East Genesee Street LLC and Stone Hammer Constructors, LLC as its agents for sales tax purposes in connection with the IDA project identified therein.

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

Very truly yours,

Susan R. Katzoff

SRK:llm  
Enclosure

5186273\_1



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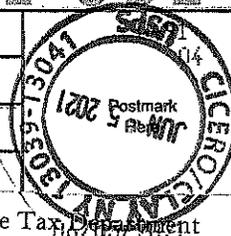
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Albany, NY 12227

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New York State Tax Department  
IDA Unit  
Building 8, Room 738  
W.A. Harriman Campus  
Albany, New York 12227

Sent To  
Street, Apt. No.,  
or PO Box No.  
City, State, ZIP



**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**and**

**444 EAST GENESEE STREET LLC**

**PAYMENT IN LIEU OF TAX AGREEMENT**

**Dated as of: June 1, 2021**

444 East Genesee Street LLC

Federal Tax ID #: 81-194744

**THIS PAYMENT IN LIEU OF TAX AGREEMENT**, (this *“Agreement”*) dated as of June 1, 2021 by and among the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized and existing under the laws of the State of New York (hereinafter referred to as the *“Agency”*), having an office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 and **444 EAST GENESEE STREET LLC**, a limited liability company organized under the laws of the State of Delaware, authorized in the State of New York, with offices at 344 South Warren Street, Suite 202, Syracuse, New York 13202 (hereinafter referred to as the *“Company”*).

## WITNESSETH:

**WHEREAS**, the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the *“Enabling Act”*) authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among others, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease and to sell its projects, to charge and collect rent therefor, to issue its bonds or notes for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds or notes, to mortgage any or all of its facilities and to pledge the revenues and receipts therefrom to the payment of such bonds or notes; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 641 of the 1979 Laws of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the *“Act”*) created the Agency for the benefit of the City of Syracuse (hereinafter referred to as the *“Municipality”*) and the inhabitants thereof; and

**WHEREAS**, by Resolution adopted on April 27, 2021 (the *“Resolution”*), the Agency, resolved to undertake the *“Project”* consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the *“Land”*); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces

(collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 Project shall contain 100% income restricted residential units in accordance with the US Department of Housing and Urban Development ("**HUD**") requirements set forth in that certain regulatory agreement dated as of June 3, 2021 by and between the Company and New York State Housing Finance Agency related to the Project (the "**Regulatory Agreement**"), provided however that at least 20% of the units are rent restricted to 65% of the area median income ("**AMI**") rent limit for the City of Syracuse, New York, inclusive of utilities, as designated annually by HUD (the "**HUD Rates**"), in accordance with the Agency's Uniform Tax Exemption Policy ("**UTEF**") (collectively, the "**Rent Restrictions**"); and

**WHEREAS**, the Agency will lease the Land and Facility from the Company pursuant to that certain Company Lease Agreement dated as of June 1, 2021 (the "**Company Lease Agreement**"), between the Company and the Agency, obtain an interest in the Equipment pursuant to a bill of sale dated as of June 1, 2021 from the Company (the "**Bill of Sale**"), and sublease the Project Facility back to the Company pursuant to that certain Agency Lease Agreement dated as of June 1, 2021 (the "**Agency Lease Agreement**"), between the Agency and the Company (the Company Lease Agreement, the Bill of Sale and the Agency Lease Agreement are hereinafter collectively referred to as the "**Lease Agreements**"); and

**WHEREAS**, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

**NOW, THEREFORE**, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

**ARTICLE I**  
**REPRESENTATIONS AND WARRANTIES**

**Section 1.00 Recitals.**

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

**Section 1.01. Representations and Warranties by Agency**

The Agency does hereby represent and warrant as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) Intentions. The Agency intends to acquire a leasehold interest in the Project Facility from the Company and to sublease the Project Facility back to the Company, all pursuant to the provisions of the Lease Agreements.

(c) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(d) Validity. The Agency is not prohibited from entering into this Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound, and this Agreement is a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

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

The Company does hereby represent and warrant as follows:

(a) Existence. The Company is a New York limited liability company duly organized, validly existing and in good standing under the laws of the State of New York.

(b) Authorization. The Company is authorized and has the power under the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. The Company has duly authorized the execution, delivery and performance of

the Lease Agreements, this Agreement, and the other Company Documents (as that term is defined in the Agency Lease Agreement), and the consummation of the transactions therein and herein contemplated. The Company is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Certificate of Formation, Operating Agreement or any other restriction or any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement will neither be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, nor result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Agreement is a legal, valid and binding obligation of the Company enforceable in accordance with its terms.

(c) Title. The Company has valid and marketable fee title to the Project Facility, free and clear of all liens and encumbrances except for Permitted Encumbrances (as defined in the Lease Agreements).

(d) Restrictions. For the term hereof, the Project shall comply with the Rent Restrictions; namely, the Project shall contain 100% income restricted residential units in accordance with the HUD requirements set forth in the Regulatory Agreement related to the Project; provided however, that at least 20% of the units are rent restricted to the HUD Rates, in accordance with the Agency's UTEP. Rental rates in the leases for these residential units must be tied to the annual HUD Rates. It is the Company's obligation to obtain the annual HUD Rates each year. Generally, the HUD Rates are published in or about June of each year.

(e) The Company acknowledges the Agency's Local Access Policy and the Company's (and its sub-agents') obligation to comply. The Company further acknowledges that pursuant to a resolution dated April 27, 2021, at the request of the Company, the Agency provided a limited waiver of its Local Access Policy for one subcontractor; namely, Ajay Glass, a Canandaigua company with the understanding and commitment from the Company that while the subcontractor is located outside of the local region, all laborers would be local unless the Company could demonstrate, to the satisfaction of the Agency, that there was a shortage of qualified local laborers. To that end, the Company agrees that such local labor shall be included in the term "Local Labor Requirements" (as defined in the Agency Lease) and the Company shall provide evidence of such local labor as and when requested by the Agency.

(f) Governmental Consent. No further consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the

Company or as a condition to the validity of this Agreement.

## **ARTICLE II**

### **COVENANTS AND AGREEMENTS**

#### **Section 2.01. Tax-Exempt Status of the Project Facility**

(a) Assessment of the Project Facility. Pursuant to the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of ownership or control of the Project Facility by the Agency, and for so long thereafter as the Agency shall own or control the Project Facility, the Project Facility shall be entitled to an exemption upon the first available assessment roll of the Municipality prepared subsequent to the acquisition by the Agency of ownership or control of the Project Facility. The time of commencement of the Agency's exemption shall be controlled by the Municipality's taxable status date, in conformity with Section 412-a of the Real Property Tax Law. The Company will be required to pay to the Municipality all taxes and assessments lawfully levied and/or assessed against the Project Facility, in spite of the Agency's actual ownership or control of the Project Facility, until the Project Facility shall be entitled to exempt status on the tax roll of the Municipality.

(b) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company will be required at all times to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

#### **Section 2.02. Payments in Lieu of Taxes**

(a) Agreement to Make Payments. The Company agrees that it shall make periodic payments in lieu of real property taxes in the amounts hereinafter provided. The said payments due to the Agency hereunder shall be paid by the Company, to the Municipality, on behalf of the Agency, by check made payable to "*Commissioner of Finance*". Upon receipt of the Company's payment, the Municipality, on behalf of the Agency, will disburse the appropriate portion of the said payment to the County of Onondaga and the Municipality, or such other taxing jurisdiction, pursuant to the Act. This Company obligation shall exist for so long as the Agency retains an interest in the Project Facility. Notwithstanding the appearance of the Agency's exemption on the Municipality's tax roll for some or all of the 2021/2022 City and School portion of the real property tax due on the Land and Facility, the year 1 payment due for the City and School portion of the year 1 payment under **Exhibit "A"** shall commence on July 1, 2022. The year 1 payment due for the County and Water District portion of the year 1 payment under **Exhibit "A"** shall commence on January 1, 2023. Without regard to the Agency exemption, the Company shall continue paying real property tax through June 30, 2022 with respect to the City and School portion of the real property tax and through December 31, 2022 with respect to the County and Water District portion of the real property tax, based upon the assessment and the combined real property tax rate in effect for that period as if the Project Facility were privately owned and the Agency had no interest in the same.

(b) Amount of Payments in Lieu of Taxes. Unless otherwise stated, the Company's agreed upon annual payment in lieu of tax hereunder shall be an amount determined by reference to **Exhibit "A"**, attached hereto and made a part hereof. The payments in lieu of tax due, as set forth in **Exhibit "A"**, include any real property tax exemptions that might be afforded to the Company if the Project Facility were owned by the Company and not the Agency. As consideration for the benefits conferred on the Company pursuant to this Agreement, the Company hereby agrees to be bound by any determination by the City of Syracuse Board of Assessment Review resulting from a review of the assessment pertaining to the Project Facility and/or Additional Property throughout the term of this Agreement. The Company hereby agrees to waive any and all right to challenge or contest in a court of law (a "**Legal Challenge**"), those payments or the basis for those payments due pursuant to Exhibit "A." It shall also be an event of default under Article IV of this Agreement should the Company bring a Legal Challenge on the Project Facility and/or Additional Property.

(c) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Facilities, or any new or additional building shall be constructed on the real property described in **Exhibit "B"** that is in addition to the Facilities (such structural additions and additional buildings being hereinafter referred to as "**Additional Property**"), the Company agrees to make additional periodic payments in lieu of real property taxes (such additional payments being hereinafter collectively referred to as "**Additional Payments**") to the Municipality on behalf of the Agency with respect to such Additional Property. Such Additional Payments shall be computed as follows:

By multiplying (1) the value placed on such Additional Property, as value is determined by the Municipality's assessor by (2) the tax rate or rates of the Municipality that would be applicable to such Additional Property if such Additional Property were owned or controlled by the Company and not the Agency; and (3) then reducing the amount so determined by the amounts of any properly acquired tax exemptions that would be afforded to the Company by the Municipality for such Additional Property as if it was owned or controlled by the Company and not the Agency.

(d) Revaluation. In the event of a real property assessment revaluation by the Municipality, the Company shall continue to make its payments in accordance with this Agreement; however, in the event that Exhibit "A" is no longer in effect, but payments are still being made hereunder for any reason, (including, but not limited to, the Agency still having an interest in the Project Facility), and would be effected by revaluation, each year's payments subsequent to such revaluation shall be adjusted to properly reflect revaluation, it being the intent of the parties that the level of payments following revaluation shall be equal to those payments contemplated by this Agreement.

(e) Damage or Destruction. In the event that all or substantially all of the Project Facility is damaged or destroyed, the Company shall continue to make the payments required by this Agreement for as long as the Agency shall own or control the Project Facility, without regard to such damage or destruction.

(f) Time of Payments. The Company agrees to pay the amounts due the Agency

hereunder to the Municipality for each year of this Agreement, within the period that the Municipality allows payment of taxes levied in such calendar year without penalty. The Company shall be entitled to receive receipts from the Municipality for such payments.

(g) Method of Payment. All payments by the Company hereunder shall be paid to the Municipality in lawful money of the United States of America, cash, money order or check.

### **Section 2.03. PILOT Statements**

The Municipality and/or the Agency shall submit to the Company written semi-annual statements specifying the amount and due date or dates of any payments due to the Agency hereunder. Each semi-annual PILOT statement shall be submitted to the Company at the same time that tax statements/bills are mailed by the Municipality to the owners of privately owned property. Failure to receive a PILOT statement shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate PILOT Statement, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Municipality and the Agency and to have such a statement issued, and thereafter to make payment of the same no later than the due dates provided herein.

### **Section 2.04. Obligations of Agency**

Requirement that Mortgagees Subordinate to Payments. The Agency and the Company agree that any mortgages on the Project Facility, given by either of them, shall provide that the rights of the mortgagees thereunder shall be subordinate to this Agreement and to the right of the Municipality to receive payments in lieu of taxes pursuant to Article II hereof.

### **Section 2.05. Company to Furnish Information**

The Company agrees to promptly comply with the reporting and information requirements of the Agency and the Act, and to promptly furnish the applicable information required or requested by the Agency and/or the State of New York, including but not limited to the reporting and certifications required relative to the Rent Restrictions as more fully set forth in Section 8.5 of the Agency Lease Agreement. The Company further agrees to assist the Agency with the preparation of any reports, or answer any inquiries, required by the State of New York in connection with the Act or the Agency's participation in the Project.

### **Section 2.06. Interest**

(a) Agreement to Pay Interest on Missed Payments. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest thereon, to the extent permitted by law, at the greater of: **(i) eighteen per cent (18%) per annum; or (ii) the rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.**

(b) Maximum Legal Rate. It is the intent of the Agency, the Municipality, and Company that in no event shall interest be payable at a rate in excess of the maximum rate permitted by applicable law (the "*Maximum Legal Rate*"). Solely to the extent necessary to prevent interest under this Agreement from exceeding the Maximum Legal Rate, any amount that would be treated as excessive under a final judicial interpretation of applicable law shall be deemed to have been a mistake and automatically canceled, and, if received by the Agency or Municipality, shall be refunded to the Company.

### **ARTICLE III**

#### **LIMITED OBLIGATION OF THE AGENCY**

##### **Section 3.01. No Recourse; Limited Obligation of the Agency**

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, director, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Agreement, or otherwise based on or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, director, officer, agent, servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement. It is expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, director, officer, agent, servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom. Any and all such personal liability of, and any and all such rights and claims against, every such member, director, officer, agent, servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Limited Obligation. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the Municipality, and neither the State of New York nor the Municipality shall be liable thereon. Furthermore, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (i) the Agency shall have been requested to do so in writing by the Company and (ii) if

compliance with such request is expected to result in the incurrence by the Agency (or any of its members, directors, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

#### **ARTICLE IV** **EVENTS OF DEFAULT**

##### **Section 4.01. Events of Default**

Any one or more of the following events shall constitute an event of default under this Agreement, and the terms “*Event of Default*” or “*Default*” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement, the Lease Agreements or the Company Documents.

(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 by the Company to maintain and comply with the Rent Restrictions and to provide the required reporting and certifications to the Agency as set forth herein and in the Agency Lease Agreement.

(d) 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), the Lease Agreements, or any other Company Document and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure hereunder, or with respect to the Lease Agreements, continuance of such failure for the duration of any applicable cure period set forth therein after receipt of any required notice thereunder.

(e) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Lease Agreements 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 Agreements.

(f) 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 Agreements or within the terms and conditions of a permit, certificate, license or other written approval of an authorized governmental body, and fails to remedy such violation within thirty (30) days; or if such failure cannot be cured within thirty (30) days, fails to commence a cure within thirty (30) days and thereafter diligently prosecute the cure thereof.

(g) The occurrence of any Event of Default or Default under this Agreement, the Lease Agreements or any other Company Documents.

(h) Failure of the Company to commence and complete the Project Facility on or before the Completion Date as set forth in the Agency Lease.

#### **Section 4.02. Remedies on Company Default**

Whenever any Event of Default under Section 4.01 shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Agreements, 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 Agreements, including but not limited to recapture of all Recapture Amounts (as defined in the Agency Lease Agreement). Notwithstanding anything herein to the contrary, if the Lease Agreements is terminated for any reason, this Agreement shall automatically terminate without any further notice or action required hereunder and the Project Facility shall immediately become taxable and revert to the tax roll.

The payment schedule contained in Exhibit "A" is for the benefit of the Company and its Project Facility. In the event that the Company defaults hereunder, and the Lease Agreements cannot be terminated, and/or the Agency's participation in the Project and this Agreement is not or cannot be terminated, the Company, or any assignee, or successor shall no longer be entitled to make payments under this Agreement pursuant to Exhibit "A". In such an event, payments shall be made hereunder, for any remaining term of this Agreement, as if the Project Facility was privately owned and assessed and without any further regard to Exhibit "A".

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

Whenever any Event of Default under Sections 4.01 shall have occurred and be continuing with respect to this Agreement or the Lease Agreements, the Agency may, upon notice to the Company provided for in this Agreement or the Lease Agreements, if any, terminate the Lease Agreements and record such termination or other necessary documents in the Onondaga County Clerk's Office, terminating the Agency's interest in the Project Facility thereby terminating this Agreement.

The recording of such a termination and any other documentation shall constitute delivery to, and acceptance of such, by the Company. In order to facilitate such a termination, the Company hereby appoints the Chairman or the Vice Chairman of the Agency as its agent for the purpose of executing and delivering all documents necessary to allow such termination by the Agency.

In the event that the Lease Agreements, for any reason, are extended by their terms, or for any reason this Agreement expires or terminates, but the Agency retains an interest or remains in title to the Project Facility, the Company shall continue to make payments in lieu of taxes to the

Municipality, on behalf of the Agency, for as long as the Agency retains an interest in, or remains in title to, the Project Facility in accordance with Exhibit "A". Those payments shall be the equivalent of the real property taxes that would be due on the Project Facility if it were owned by the Company and the Agency had no interest therein. It is the intention of the parties hereto, that for so long as the Agency shall possess title to, or an interest in, the Property, the Company, or any permitted successors or assigns, shall make payments in lieu of taxes to the Municipality, on behalf of the Agency, that are either based upon Exhibit "A", or if Exhibit "A" is no longer applicable for any reason, are the equivalent of the real property taxes that would be due and owing if the Project Facility were privately owned and the Agency had no interest therein.

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

If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Agency or the Municipality should employ attorneys (whether in-house or outside counsel) or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency and/or the Municipality the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

Furthermore, should the Company bring a Legal Challenge on the Project Facility and/or Additional Property during the term of this Agreement, and the Agency and/or the Municipality waives its right to declare a default under this Agreement in regard to such Legal Challenge, or such Legal Challenge is determined not to be a default of this Agreement by any Court of competent jurisdiction, the Company agrees that in the event that the Company is unsuccessful in its Legal Challenge, it will, on demand, pay to the Agency and/or the Municipality the reasonable fees and disbursements of any attorneys employed (whether in-house or outside counsel) for the defense of such Legal Challenge as well as such other reasonable expenses so incurred.

#### **Section 4.05. Remedies; Waiver and Notice**

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

(e) Recapture. Seek to recover all or some of the Recapture Amount in accordance with the Agency's Recapture Policy, the Agency Lease, the Project Agreement and this PILOT Agreement.

## **ARTICLE V** **MISCELLANEOUS**

### **Section 5.01. Term of Agreement**

(a) General. This Agreement shall become effective and the obligations of the Agency and the Company shall arise absolutely and unconditionally upon the execution and delivery of this Agreement. This Agreement shall terminate on the earliest to occur of: (i) the same date that the Agency Lease Agreement terminates; (ii) on any earlier date permitted under the Agency Lease Agreement; or (iii) upon the expiration on **June 30, 2037**, of the PILOT Schedule set forth in **Exhibit "A"** hereto. In the event of a termination of the Agency's interest in the Project Facility, the Company's payments due hereunder shall be pro-rated to the extent necessary to allow the Municipality to issue a supplemental PILOT Statement based upon the Agency's transfer of ownership or control of the Project Facility to the Company, and the loss of the Agency's tax exemption on the said Project Facility.

(b) Conflict. In the event of a conflict between this Agreement or any of its terms on the one hand, and the Lease Agreements or any other Project documents on the other hand, the provisions most favorable to the Agency shall govern. The Agency and the Company agree that the Agency's participation in this Agreement is for the benefit of the Company and that the Municipality must receive payments from the Company hereunder, during the entire term of this Agreement and/or the Agency's ownership or control of the Project Facility.

### **Section 5.02. Company Acts**

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

### **Section 5.03. Amendment of Agreement**

This Agreement may not be amended, changed, modified or altered unless such amendment, change, modification or alteration is in writing and signed by the Agency and the Company.

**Section 5.04. Notices**

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

- (a) To the Agency:  
City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chair

With a copy to:  
Bousquet Holstein PLLC  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

And to:  
Corporation Counsel  
City of Syracuse  
233 East Washington Street, Room 300  
Syracuse, New York 13202

- (b) To the Company:  
444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
Syracuse, New York 13202  
Attn: Graziano Zazzara, Jr.

With a copy to:  
Lynn, D'Elia, Temes & Stanczyk LLC  
100 Madison Street, Suite 1905  
Syracuse, New York 13202  
Attn: Michael Stanczyk, Esq.

The Agency and Company may, by notice given hereunder to each of the others, designate any further or different addresses to which the subsequent notices, certificates or other communications to them shall be sent.

#### **Section 5.05. Binding Effect**

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

#### **Section 5.06. Severability**

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

#### **Section 5.07. Counterparts; Electronic Signatures**

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed signature page counterpart hereof by telecopy, emailed .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart hereof. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic association of signatures and records on electronic platforms, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, any other similar state laws based on the Uniform Electronic Transactions Act, the Uniform Commercial Code, each as amended, and the parties hereto hereby waive any objection to the contrary, provided that (x) nothing herein shall require the Agency to accept electronic signature counterparts in any form or format and (y) the Agency reserves the right to require, at any time and at its sole discretion, the delivery of manually executed counterpart signature pages to this agreement and the parties hereto agree to promptly deliver such manually executed counterpart signature pages.

#### **Section 5.08. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue of any action or proceeding brought hereunder shall be in the State or Federal Courts located in Onondaga County, New York.

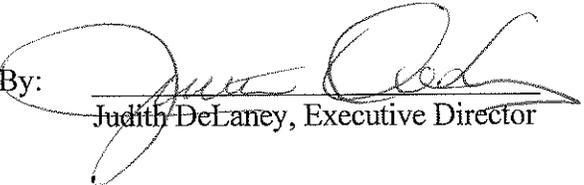
**Section 5.09. Assignment**

This Agreement may not be assigned by the Company without the prior written consent of the Agency.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Agency and Company have caused this Agreement to be executed in their respective names on the date first above written and the Company hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

By: \_\_\_\_\_  
Graziano Zazzara, Jr., Its Manager

**IN WITNESS WHEREOF**, the Agency and Company have caused this Agreement to be executed in their respective names on the date first above written and the Company hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

By: \_\_\_\_\_  
Graziano Zazzara, Jr., Its Manager

**EXHIBIT "A"**

**PILOT SCHEDULE**

<i>Year</i>	<i>Amount</i>
1	\$24,354.67
2	\$24,841.77
3	\$25,338.60
4	\$25,845.38
5	\$26,362.28
6	\$26,889.53
7	\$27,427.32
8	\$27,975.87
9	\$28,535.38
10	\$29,106.09
11	\$39,299.02
12	\$49,888.02
13	\$60,884.87
14	\$72,301.63
15	\$84,150.71
Total	\$573,201.15

**EXHIBIT "B"**

**LEGAL DESCRIPTION**

**Property: 444 East Genesee Street, Syracuse, New York**

**ALL THAT TRACT OR PARCEL OF LAND** located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

**BEING MORE MODERNLY DESCRIBED AS:**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

**BEGINNING** at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

**thence** S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

**thence** N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

**thence** N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

**thence** S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the **POINT OF BEGINNING**. **CONTAINING** 0.179 Acre of land more or less.





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 Agency  
Street 201 East Washington Street, 6th Floor  
City Syracuse  
Telephone no. Day (315) 448-8127  
Evening ( ) N/A  
Contact Judith DeLaney  
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name 444 East Genesee Street LLC  
Street 344 South Warren Street, Suite 202  
City Syracuse, NY 13202  
Telephone no. Day ( 315 ) 299-6292  
Evening ( ) N/A  
Contact Graziano Zazzara, Jr.  
Title Manager

RECEIVED  
JUL 1 2 2021  
DEPT. OF ASSESSMENT

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 102.-08-04.0/2021
- b. Street address 444 East Genesee Street
- c. City, Town or Village Syracuse
- d. School District Syracuse
- e. County Onondaga
- f. Current assessment \$400,000
- g. Deed to IDA (date recorded; liber and page)  
N/A lease/leaseback agreement -  
see Schedule A

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

- a. Brief description (include property use) reconstruction and renovation of a mixed-use building containing income restricted apartments and retail space
- b. Type of construction steel/wood
- c. Square footage 53.5 x 142.51
- d. Total cost \$4,104,846
- e. Date construction commenced 2021
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA)  
June 30, 2037

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, 2037

c. Municipal corporations to which payments will be made

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

d. Person or entity responsible for payment

Name 444 East Genesee Street LLC  
 Title \_\_\_\_\_  
 Address 344 S. Warren St., Suite 202  
Syracuse, NY 13202

e. Is the IDA the owner of the property?  Yes  No (check one)

If "No" identify owner and explain IDA rights or interest in an attached statement. See Schedule A

Telephone \_\_\_\_\_

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one)  Yes  No

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

7. A copy of this application, including all attachments, has been mailed or delivered on 7-9-21 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

**CERTIFICATION**

I, Judith DeLaney, Executive Director \_\_\_\_\_ 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.

6-3-21  
Date

  
Signature

**FOR USE BY ASSESSOR**

1. Date application filed \_\_\_\_\_

2. Applicable taxable status date \_\_\_\_\_

3a. Agreement (or extract) date \_\_\_\_\_

3b. Projected exemption expiration (year) \_\_\_\_\_

4. Assessed valuation of parcel in first year of exemption \$ \_\_\_\_\_

5. Special assessments and special as valorem levies for which the parcel is liable:

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

\_\_\_\_\_  
Date

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

## SCHEDULE "A"

**Response to Item 3.g *Deed to IDA:*** Memorandum of Company Lease and Memorandum of Agency Lease, both dated as of June 1, 2021, were each recorded in the office of the Clerk of Onondaga County on June 8, 2021 as Instrument No. 2021-00025806 and Instrument No. 2021-00025805, respectively.

**Response to Item 5.e. *Is the IDA the owner of the property?***

No. The City of Syracuse Industrial Development Agency has a leasehold interest in the subject premises pursuant to a lease/leaseback arrangement as set forth in a certain Agency Lease and Company Lease each dated as of June 1, 2021, memorandums of which were filed as set forth above.



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

### Onondaga County Clerk Recording Cover Sheet

Received From :  
CHICAGO TITLE - EMILY

Return To :  
CANNON HEYMAN & WEISS LLP  
726 EXCHANGE STREET STE 500  
BUFFALO, NY 14210

Method Returned : MAIL

**First PARTY 1**

444 EAST GENESEE STREET LLC

**First PARTY 2**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2021-00025808

Book : Page :

Type of Instrument : Mortgage

Type of Transaction : Mtg Type A

Recording Fee: \$385.50

Recording Pages : 68

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

**Mortgage Taxes**

Property Located : Syracuse

Serial Number : DM3748

Mortgage Amount : \$1,932,744.00

Basic Tax : \$0.00

Local Tax : \$0.00

Additional Tax : \$4,831.75

Transportation Auth Tax : \$0.00

SONYMA : \$0.00

County Tax : \$0.00

Total : \$4,831.75

Total Fees : \$5,217.25

State of New York

County of Onondaga

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

On (Recorded Date) : 06/08/2021

At (Recorded Time) : 1:41:22 PM



Doc ID - 042814490068

*Lisa Dell*  
Lisa Dell, County Clerk



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

Entered By: RSWEENIE Printed On : 06/08/2021 At : 1:52:17PM

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Cannon Heyman & Weiss, LLP  
726 Exchange Street, Suite 500  
Buffalo, New York 14210  
Attn: Steven J. Weiss, Esq.  
CPC # 70664

**FIRST MULTIFAMILY CONSTRUCTION LOAN MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

**LOCATION OF PREMISES:**

444 East Genesee Street  
Syracuse, New York

SBL No.: 102.-08-04.0 of the  
Tax Map of the City of Syracuse, Onondaga County, State of New York

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EXHIBITS

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**FIRST MULTIFAMILY CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF  
RENTS, SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

This **FIRST MULTIFAMILY CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Instrument") is dated for reference purposes only as of the 3rd day of June, 2021, but will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), by **444 EAST GENESEE STREET LLC**, a Delaware limited liability company, whose address is 344 S. Warren Street, Syracuse, New York 13202 (the "Borrower"), and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation having an address at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "Agency"), for the benefit of **CPC FUNDING SPE 1 LLC**, a New York limited liability company, whose address is c/o The Community Preservation Corporation, 220 East 42<sup>nd</sup> Street, 16th Floor, New York, New York 10017, as beneficiary, and its successors and assigns ("Lender").

The Loan is made and the Indebtedness is evidenced by the Note in the maximum principal amount of One Million Nine Hundred Thirty-Two Thousand Seven Hundred Forty Four and 00/100 Dollars (\$1,932,744.00), maturing on July 1, 2023 (the "Maturity Date") and secured by this Instrument.

WHEREAS, Agency and Borrower previously entered into (i) a certain Company Lease (as hereafter defined), (a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith), wherein the Mortgaged Property was leased by the Borrower to the Agency; and (ii) a certain Agency Lease (as hereafter defined), (a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith), wherein the Mortgaged Property was leased by the Agency back to the Borrower.

**NOW THEREFORE:**

Borrower and Agency, each for themselves and not the other, as security for the repayment of the Indebtedness (as hereafter defined) hereby irrevocably mortgage, warrant (solely as to the Borrower), grant, convey and assign to Lender the Mortgaged Property, including the Land located in the City of Syracuse, Onondaga County, New York, and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER and its successors and assigns the repayment of the Indebtedness evidenced by the Note executed by Borrower and maturing on the Maturity Date, and all renewals, extensions and modifications of the Indebtedness, including, without limitation, the payment of all sums advanced by or on behalf of Lender to protect the security of this Instrument under Section 12 and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower represents and warrants that Borrower is lawfully seized of the fee estate and sub-leasehold estate in the Mortgaged Property and the Agency is lawfully seized of the leasehold estate in the Mortgaged Property and the Borrower has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is

unencumbered except for the Permitted Encumbrances. Agency represents that it has the right, power and authority to grant and convey its interest in the Mortgaged Property. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any Permitted Encumbrances.

This Instrument is also a financing statement and a fixture filing under the Uniform Commercial Code of the Property Jurisdiction and the information set forth on Exhibit C is included for that purpose.

**Covenants.** Borrower and Lender covenant and agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person. The term "control" for these purposes means, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

(b) "Agency" shall mean the City of Syracuse Industrial Development Agency, a body corporate and politic and a public instrumentality of the State of New York, having its office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202.

(c) "Agency Lease" shall mean that certain agency lease agreement dated as of June 1, 2021 by and between the Agency and the Borrower.

(d) "Agency Leases" shall mean, collectively, the Agency Lease and the Company Lease.

(e) "Bankruptcy Event" means any one or more of the following:

(i) (A) the commencement of a voluntary case under one or more of the Insolvency Laws by the Borrower; (B) the acknowledgment in writing by the Borrower that it is unable to pay its debts generally as they mature; (C) the making of a general assignment for the benefit of creditors by the Borrower; (D) the commencement of an involuntary case under one or more Insolvency Laws against the Borrower; or (E) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over the Borrower or any substantial part of the assets of the Borrower provided that any proceeding or case under (D) or (E) above is not dismissed within 90 days after filing;

- (ii) Any Guarantor or any Affiliate of a Guarantor files an involuntary petition against Borrower under one or more of the Insolvency Laws; or
- (iii) Both (A) an involuntary petition under any one or more of the Insolvency Laws is filed against Borrower or Borrower directly or indirectly becomes the subject of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or in equity, and (B) Borrower or any Affiliate of Borrower has acted in concert or conspired with such creditors of Borrower (other than Lender) to cause the filing thereof with the intent to interfere with enforcement rights of Lender after the occurrence of an Event of Default.

(f) “Beneficiary Parties” means Lender, Servicer and their respective successors and assigns, together with any lawful owner, holder or pledgee of the Note.

(g) “Borrower” means all persons or entities identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

(h) “Borrower’s Organizational Documents” means, collectively: (i) the certificate of formation of Borrower filed with the Office of the Secretary of State of Delaware on March 17, 2016, as the same may be amended and/or restated from time to time; and (ii) the operating agreement of Borrower dated as of March 17, 2016, as the same may be amended and/or restated from time to time.

(i) “Business Day” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(j) “Closing Date” has the meaning ascribed thereto in the Loan Agreement.

(k) “Collateral Agreement” means any separate agreement between Borrower and Lender for the purpose of establishing tax, repair or replacement reserve or escrow accounts for the Mortgaged Property or granting Lender a security interest in any such accounts, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(l) “Collateral Assignments” means, collectively, (i) the Assignment of Construction Contract dated as of the date hereof by Borrower to Lender and any consents relating thereto, (ii) the Assignment of Architect’s Agreement and Plans and Specifications dated as of the date hereof by Borrower to Lender and any consents relating thereto, (iii) the Assignment of Project Documents dated as of the date hereof by Borrower to Lender, and (iv) the Assignment of Management, Maintenance, Service, Operating, Brokerage and Leasing Contracts dated as of the date hereof by Borrower to Lender.

(m) "Commitment" has the meaning ascribed thereto in the Loan Agreement.

(n) "Company Lease" shall mean that certain company lease agreement, dated as of June 1, 2021, by and between the Borrower and the Agency.

(o) "Credit Enhancer" means a government sponsored enterprise that at any time, directly or indirectly, purchases the Loan or provides credit enhancement with respect to the Loan.

(p) "Environmental Agreement" means that certain Agreement of Environmental Indemnification dated as of the date hereof by Borrower and Guarantor for the benefit of Beneficiary Parties.

(q) "Environmental Permit" means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(r) "First Project Loan Mortgage" shall mean that certain First Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, in the amount of the First Project Loan Note, made by Borrower and the Agency for the benefit of Lender.

(s) "First Project Loan Note" shall mean that certain First Multifamily Project Note, dated as of the date hereof, in the original maximum principal amount of \$177,256.00, made by Borrower and payable to Lender, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(t) "Event of Default" means the occurrence of any event listed in Section 22.

(u) "Fixtures" means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(v) "Governmental Authority" means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(w) "Guarantor" means collectively, GRAZIANO ZAZZARA, SR., an individual, GRAZIANO ZAZZARA, JR., an individual, and I. MICHAEL VELLA, an individual, or any other person or entity which may hereafter become a guarantor of any of Borrower's obligations under the Loan.

(x) "Hazardous Materials" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; radon; Mold; toxic or mycotoxin spores; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance (whether or not naturally occurring) now or in the future that (i) is defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "solid waste", "pesticide", "contaminant," or "pollutant", or otherwise classified as hazardous or toxic by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

(y) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, rule of common law (including, without limitation, nuisance and trespass), consent order, administrative rulings and court judgments and decrees or other government directive in effect now or in the future and including all amendments, that relate to Hazardous Materials or to the protection or conservation of the environment or human health and apply to Borrower or to the Mortgaged Property, including, without limitation, those relating to industrial hygiene, or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation, or remediation of Hazardous Materials. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, and their state analogs.

(z) "HFA" shall mean the New York State Housing Finance Agency.

(aa) "Impositions" and "Imposition Deposits" shall have the meanings ascribed thereto in Section 7.

(bb) "Improvements" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(cc) "Indebtedness" means collectively, the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument, and any fees or expenses paid by Lender on behalf of Borrower to Lender, or any other party for the Loan or other amounts relating to the Loan Documents which are paid by Lender;

(dd) "Initial Owners" means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note, directly or indirectly, own in the aggregate 100% of the ownership interests in Borrower or that entity.

(ee) "Insolvency Laws" means the United States Bankruptcy Code, 11 U.S.C. § 101, et seq., together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding, as amended from time to time, to the extent applicable to the Borrower.

(ff) "Land" means the land described in Exhibit A.

(gg) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals, excepting therefrom the Agency Leases.

(hh) "Lender" means the entity identified as "Lender" in the first paragraph of this Instrument, or any subsequent holder of the Note.

(ii) "Loan" means the loan made by Lender to Borrower in an amount not to exceed the original principal amount of the Note, which loan is evidenced by the Note and secured by, among other things, this Instrument.

(jj) "Loan Agreement" means that certain Construction and Project Loan Agreement dated as of the date hereof by and between Borrower and Lender relating to the Loan, as the same may be amended, modified or supplemented from time to time.

(kk) "Loan Documents" means collectively, the Loan Agreement, the Note, the Second Construction Loan Note, the First Project Loan Note, , this Instrument, the Second Construction Loan Mortgage, the First Project Loan Mortgage, the Commitment, the Permanent Loan Commitment, the Environmental Agreement, all guaranties, all indemnity agreements, all Collateral Agreements, all Collateral Assignments, all O&M Programs, the MMP, and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the Loan, as such documents may be amended from time to time.

(ll) "Material Property Agreements" means any agreement which, in Lender's sole discretion, acting in good faith, materially affects the Mortgaged Property, the use

thereof or otherwise materially affects the rights of Borrower or Beneficiary Parties in, to, and with respect to the Mortgaged Property or the proceeds therefrom, including, without limitation, each of the following: (i) the PILOT Agreement, (ii) all covenants, conditions and restrictions, including, without limitation, any declaration subjecting the Mortgaged Property to an association of owners or other community governance, (iii) any agreement regarding the abatement or exemption of real estate taxes, (iv) any easement pursuant to which the Mortgaged Property is granted access to a public right of way, (v) any material lease of all or any portion of the Mortgaged Property, (vi) any operating agreements relating to the Land or the Improvements, and (vii) any regulatory agreements, declarations, land use restriction agreements or similar instruments affecting the Mortgaged Property including the operation or use thereof.

(mm) "Maturity Date" has the meaning ascribed thereto in the recitals to this Instrument.

(nn) "MMP" means an operations and maintenance plan, moisture management program and/or microbial operations and maintenance program approved by Lender to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property throughout the term of this Instrument. If required by Lender, the MMP shall contain a provision for (i) staff training, (ii) information to be provided to tenants, (iii) documentation of the plan, (iv) the appropriate protocol for incident response and remediation and (v) routine, scheduled inspections of common space and unit interiors.

(oo) "Mold" means mold, fungus, microbial contamination or pathogenic organisms.

(pp) "Mortgage Insurer" means SONYMA, REMIC or such other insurer of the mortgage lien created hereby, during such time as such insurer provides such insurance.

(qq) "Mortgaged Property" means all of Borrower's and Agency's present and future right, title and interest in and to all of the following, which for the avoidance of doubt does not include the Unassigned Rights, as that term is defined in the Agency Leases:

- (i) the Land;
- (ii) the Improvements;
- (iii) the Fixtures;
- (iv) the Personalty;
- (v) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

- (vi) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirements;
- (vii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (ix) all Rents and Leases;
- (x) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, whether the foregoing are now due, past due, or to become due, all undisbursed proceeds of the loan secured by this Instrument, deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (xi) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
- (xii) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits;
- (xiii) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;
- (xiv) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether now existing or hereafter created; and

(xv) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds, and all other cash and non-cash proceeds and products of any of the foregoing.

(rr) "Note" means that certain First Multifamily Construction Note dated as of the date of this Instrument, executed and delivered by the Borrower, payable to Lender in an amount not to exceed the original maximum principal amount of the Loan set forth in the recitals to this Instrument, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(ss) "O&M Program" has the meaning ascribed thereto in Section 18(d).

(tt) "Permanent Loan Commitment" has the meaning ascribed thereto in the Loan Agreement.

(uu) "Permitted Encumbrances" means any easements, encumbrances or restrictions listed on the schedule of exceptions in the title insurance policy issued to Lender as of the date of recordation of this Instrument insuring Lender's interest in the Mortgaged Property, together with the Second Construction Loan Mortgage, and the First Project Loan Mortgage.

(vv) "Permitted Transfer" has the meaning ascribed thereto in Section 21(b).

(ww) "Person" shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(xx) "Personalty" means all:

(i) accounts (including deposit accounts) of Borrower related to the Mortgaged Property;

(ii) Imposition Deposits;

(iii) equipment, goods, supplies and inventory owned by Borrower that are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements (other than Fixtures), including furniture, furnishings, machinery, building materials, tools, books, records (whether in written or electronic form), computer equipment (hardware and software);

(iv) other tangible personal property owned by Borrower which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or in the Improvements (other than Fixtures), including ranges,

stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances;

- (v) any operating agreements relating to the Land or the Improvements;
- (vi) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;
- (vii) documents, instruments, chattel paper, claims, deposits, deposit accounts, payment intangibles, other intangible property, general intangibles, and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a governmental authority; and
- (viii) any rights of Borrower in or under letters of credit.

(yy) "PILOT Agreement" shall mean that certain payment in lieu of taxes agreement dated as of June 1, 2021 by and among the Agency and Borrower.

(zz) "Project" means that multifamily mixed-use project with twenty-four (24) residential units, approximately 1,813 square feet of commercial space and covered parking known as 444 East Genesee Street and located in the City of Syracuse, Onondaga County, New York.

(aaa) "Property Jurisdiction" means the State of New York.

(bbb) "Rental Achievement Requirement" means legally collectible rents at least equal to (i) \$304,243.00 annually in respect of residential units, and (ii) \$18,630.00 annually in respect of commercial units, or such higher amount as shall be sufficient to provide coverage of not less than one hundred twenty-five percent (125%) of the Loan and the loan secured by the First Project Loan Mortgage combined. Such coverage shall mean the ratio of net collectible rents (assuming vacancy and collection loss), less building operating expenses divided by the debt service (including mortgage insurance premiums and loan servicing fees) and shall be based on the most current actual maintenance and operation expenses as adjusted for projected inflation during the two-year lease period following rent setting and as documented to the satisfaction of Lender at the time rents are established.

(ccc) "Rents" means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract or similar agreements), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits

forfeited by tenants, excepting therefrom any monies due the Agency under the Agency Leases.

(ddd) "Second Construction Loan Mortgage" shall mean that certain Second Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, in the amount of the Second Construction Loan Note, made by Borrower and the Agency for the benefit of Lender.

(eee) "Second Construction Loan Note" shall mean that certain Second Multifamily Construction Loan Note, dated as of the date hereof, in the original maximum principal amount of \$1,866,464, made by Borrower and payable to Lender.

(fff) "Servicer" means the servicing party that is designated by Lender to service the Loan, together with its successors in such capacity.

(ggg) "SONYMA" means the State of New York Mortgage Agency or any successor agency or entity.

(hhh) "Taxes" means, collectively, all taxes or payments in lieu thereof, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(iii) "Transfer" means (i) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (ii) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (iii) the issuance or other creation of a direct or indirect ownership interest; or (iv) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

(jjj) "United States Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

## **2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file any and all financing statements, continuation statements and financing statement amendments, in such form as Lender may require to perfect or continue the perfection of this security interest without execution by Borrower. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an

Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

(b) Unless Borrower gives at least thirty (30) days' prior written notice to Lender and subject to Section 21 hereof, Borrower shall not: (i) change its name, identity, or structure of organization; (ii) change its state of organization through dissolution, merger, transfer of assets or otherwise; (iii) change its principal place of business (or chief executive office if more than one place of business); or (iv) add to or change any location at which any of the Mortgaged Property is stored, held or located. Such notice shall be accompanied by new financing statements and/or financing statement amendments in the same form as the financing statements delivered to Lender on the date hereof. Without limiting the foregoing, Borrower hereby authorizes and irrevocably appoints Lender and each of its officers attorneys-in-fact for Borrower to execute, deliver, and file, as applicable, such financing statements, continuation statements or amendments deemed necessary by Lender in its sole discretion for and on behalf of Borrower, without execution by Borrower. Borrower shall also execute and deliver to Lender modifications or supplements of this Instrument as Lender may require in connection with any change described in this Section.

**3: ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments of Rents as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument

(b) Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit

of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. Upon the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid (such license shall be reinstated upon Borrower's cure of the Event of Default to the satisfaction of Lender). Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the occurrence of an Event of Default, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the right of Lender to collect, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the Loan), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month's rent). Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month's rent).

(d) If an Event of Default has occurred and is continuing, Lender may, but shall in no event be required, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an

Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, except for the gross negligence or willful misconduct of Lender or its agents.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

#### **4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of

Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower, and Agency that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Unless an Event of Default has occurred and is continuing, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. During the continuance of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property, except to the extent arising from the gross negligence or willful misconduct of Lender. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time during the continuance of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or

proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall (i) be on forms approved by Lender, (ii) be for initial terms of at least one (1) year and not more than two (2) years, (iii) not include options to purchase, (iv) be legally valid, binding, and enforceable obligations of the tenants, (v) contain language expressly stating that such Lease is subordinate to the lien of this Instrument and (vi) comply with all applicable laws.

(f) Except for laundry facilities and cable television services for tenants on market terms and conditions, Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance (other than a security deposit not in excess of one month's rent).

(h) The Borrower agrees that it will not agree with any person to accept rent in an amount below the maximum rent permitted by law for any rent-regulated apartment at the Mortgaged Property, without, in each instance, the prior written consent of the Lender.

(i) Intentionally Omitted.

(j) All residential rentals and Lease renewals will be subject to all applicable rules and regulations of HCR ("HCR Regulations").

(k) Intentionally Omitted.

(l) The Borrower agrees to use its best efforts to lease the Mortgaged Property so as to attain and maintain the Rental Achievement Requirement.

**5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.** Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents.

**6. EXCULPATION.** The personal liability of Borrower for payment of the Note and for performance of the other obligations to be performed by Borrower under this Instrument is limited in the manner, and to the extent, provided in the Note.

**7. PAYMENT OF TAXES, INSURANCE AND OTHER CHARGES.**

(a) Borrower shall pay directly to the appropriate public office of insurance company, until the Indebtedness is paid in full, the entire sum required to pay, when due (i) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (ii) the premiums for fire and other hazard insurance, rental loss insurance and such other insurance as Lender may require under Section 19, (iii) Taxes, and (iv) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests. The obligations of Borrower for which the payments referenced above are required are collectively referred to in this Instrument as "Impositions".

(b) On or before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower shall, if required by Lender, provide Lender with proof of payment of each such Imposition. Lender may, at any time and in Lender's discretion require Borrower to deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due, the Impositions, as reasonably estimated from time to time by Lender plus one-twelfth of such estimate (the "Imposition Deposits").

**8. COLLATERAL AGREEMENTS.** Borrower shall deposit with Lender such amounts as may be required by the Loan Agreement and any Collateral Agreement and shall perform all other obligations of Borrower under the Loan Agreement and each Collateral Agreement.

**9. APPLICATION OF PAYMENTS.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the

application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. **COMPLIANCE WITH LAWS.** Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, disability accommodation, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

11. **USE OF PROPERTY.** Unless required by applicable law, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, except for any change in use approved by Lender, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate a change in the zoning classification of the Mortgaged Property or acquiesce in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property; (e) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, or (f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender.

12. **PROTECTION OF LENDER'S SECURITY; INSTRUMENT SECURES FUTURE ADVANCES.**

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document after the expiration of any applicable notice and cure period, or if any action or proceeding (including a Bankruptcy Event) is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (i) payment of fees, expenses and reasonable fees of attorneys, accountants, inspectors and consultants, (ii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iii) procurement of the insurance required by Section 19 (specifically including, without limitation, flood insurance if required by Section 19), and (iv) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be secured by this Instrument, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Note.

(c) If the Lender shall elect to pay any sum due with reference to the Project or the Mortgaged Property, the Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by this Instrument and/or the other Loan Documents, the Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same.

(d) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

### 13. INSPECTION.

(a) Lender and its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests to the extent permitted under Section 18) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Borrower shall not be required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

(b) If Lender determines that Mold has developed as a result of a water intrusion event or leak, Lender, at Lender's discretion, may require that a professional inspector inspect the Mortgaged Property as frequently as Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Lender's satisfaction. Such inspection shall be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower shall be responsible for the cost of such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold, water intrusion or leaks is remedied to Lender's satisfaction, Lender shall not require a professional inspection any more frequently than once every three years unless Lender is otherwise aware of Mold as a result of a subsequent water intrusion event or leak.

(c) If Lender determines not to conduct an annual inspection of the Mortgaged Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect: that Borrower represents and warrants that Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities

regarding odors, indoor air quality, Mold or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property, or if Borrower has received any such written complaint, notice, letter or other written communication, that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the MMP for the Mortgaged Property. If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

**14. BOOKS AND RECORDS; FINANCIAL REPORTING.**

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender upon reasonable advance oral notice.

(b) Borrower shall furnish to Lender all of the following:

- (i) (1) except as provided in clause (2) below, within 45 days after the end of each fiscal quarter of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each fiscal quarter, (2) within 120 days after the end of each fiscal year of Borrower, (A) a statement of income and expenses for Borrower's operation of the Mortgaged Property for such fiscal year, (B) a statement of changes in financial position of Borrower relating to the Mortgaged Property for such fiscal year, and (C) when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of such fiscal year; and (3) any of the foregoing at any other time upon Lender's request;
- (ii) Within 45 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
- (iii) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the

name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;

- (iv) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;
- (v) upon Lender's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender;
- (vi) upon Lender's request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year; and
- (vii) if required by Lender, within 30 days of the end of each calendar month, a monthly statement of income and expenses for such calendar month on a year-to-date basis for Borrower's operation of the Mortgaged Property.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower and shall be in such form and contain such detail as Lender may require. Lender also may require that any statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

15. **TAXES; OPERATING EXPENSES.**

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes and/or PILOT payments when due and before the imposition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall pay (i) the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

(c) If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits, to the extent Lender is collecting same, without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly furnish to Lender on or before the date this Instrument requires such Impositions to be paid, copies of receipts evidencing that such payments were made.

(f) All payments made by Borrower to Lender pursuant to this Instrument or any of the Loan Documents shall be free and clear of any and all tax liabilities whatsoever (other than United States federal income taxation payable by Lender) and, to the extent Lender is required to pay any such tax liabilities, Borrower shall reimburse Lender in respect of any such payment of taxes and, immediately upon request from Lender, shall deliver to Lender copies of receipts evidencing the payment of such taxes.

16. **LIENS; ENCUMBRANCES.** Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Instrument and the Permitted Encumbrances) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "Transfer" which constitutes an Event of Default and subjects Borrower to personal liability under the Note. Borrower shall maintain the

lien created by this Instrument as a first mortgage lien upon the Mortgaged Property, subject to no other Liens or encumbrances other than Permitted Encumbrances.

**17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.**

(a) Borrower shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Borrower shall not abandon the Mortgaged Property.

(c) Borrower shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair.

(d) Borrower shall keep the Mortgaged Property in good repair (normal wear and tear excepted), including the replacement of Personalty and Fixtures with items of equal or better function and quality.

(e) Borrower shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender at all times, under a contract approved by Lender, in writing, which contract must be terminable upon not more than thirty (30) days notice without the necessity of establishing cause and without payment of a penalty or termination fee by Borrower or its successors. There shall be no change in the property manager or any contract for the management of the Mortgaged Property without Lender's prior written approval. Lender shall have the right to require that Borrower and any new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. "Affiliate of Borrower" means any Person controlled by, under common control with, or which controls Borrower (the term "control" for these purposes means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(f) Borrower shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish

or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except (i) in connection with the replacement of tangible Personalty and (ii) repairs and replacements in connection with making an individual unit ready for a new occupant.

(g) Unless otherwise waived by Lender in writing, Borrower must have or must establish and must adhere to the MMP. If Borrower is required to have an MMP, Borrower must keep all MMP documentation at the Mortgaged Property or at the management agent's office and available for Lender or its agents to review during any annual assessment or inspection of the Mortgaged Property that is required by Lender.

#### 18. ENVIRONMENTAL HAZARDS.

(a) Except for matters described in Section 18(b), Borrower shall not cause or permit any of the following:

- (i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property;
- (ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties);
- (iii) any occurrence or condition on the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;
- (iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property;
- (v) the imposition of any environmental lien against the Mortgaged Property; or
- (vi) any violation or noncompliance with the terms of any O&M Program.

The matters described in clauses (i) through (vi) above, except as otherwise provided in Section 18(b), are referred to collectively in this Section 18 as "Prohibited Activities or Conditions".

(b) Prohibited Activities or Conditions shall not include lawful conditions permitted by an O&M Program or the safe and lawful use and storage of quantities of (i) pre-packaged supplies, cleaning materials, petroleum products, household products, paints, solvents, lubricants and other materials customarily used in the construction, renovation, operation, maintenance or use of comparable multifamily and mixed-use properties, (ii) cleaning materials, household products, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (iii) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If and as required by Lender, Borrower shall also establish a written operations and maintenance program with respect to certain Hazardous Materials. Each such operations and maintenance program and any additional or revised operations and maintenance programs established for the Mortgaged Property pursuant to this Instrument must be approved by Lender and shall be referred to herein as an "O&M Program." Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with each O&M Program. Borrower shall pay all costs of performance of Borrower's obligations under any O&M Program, and any Beneficiary Party's out-of-pocket costs incurred by such Beneficiary Party in connection with the monitoring and review of each O&M Program and Borrower's performance shall be paid by Borrower upon demand by such Beneficiary Party. Any such out-of-pocket costs of such Beneficiary Party which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Without limitation of the foregoing, (i) Borrower hereby agrees to implement and maintain during the entire term of the Loan the O&M Program(s) described in that certain Borrower's Certificate and Agreement dated as of the date hereof, and (ii) if asbestos-containing materials are found to exist at the Mortgaged Property, the O&M Program with respect thereto shall be undertaken consistent with the Guidelines for Controlling Asbestos-Containing Materials in Buildings (USEPA, 1985) and other relevant guidelines and applicable Hazardous Materials Laws.

(f) With respect to any O&M Program, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify; (ii) amendments to such O&M Program to address changing circumstances, laws or other matters, including, without limitation, variations in response to reports provided by

environmental consultants; and (iii) execution of an Operations and Maintenance Agreement relating to such O&M Program satisfactory to Lender.

(g) Borrower represents and warrants to Beneficiary Parties that, except as otherwise disclosed in the Environmental Reports (as defined in the Environmental Agreement):

- (i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (ii) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed, and Borrower has provided Lender with copies of all reports and information acquired in such inquiries;
- (iii) the Mortgaged Property does not now contain any underground storage tanks, and, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been disclosed in Exhibit A to the Environmental Agreement, that tank complies with all requirements of Hazardous Materials Laws;
- (iv) Borrower has complied with and will continue to comply with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (v) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit or Hazardous Materials Law;
- (vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition;
- (vii) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;

- (viii) no prior Remedial Work (as defined below) has been undertaken, and no Remedial Work is ongoing, with respect to the Mortgaged Property during Borrower's ownership thereof or, to the best of Borrower's knowledge, at any time prior to Borrower's ownership thereof; and
- (ix) Borrower has disclosed in the Environmental Agreement all material facts known to Borrower or contained in Borrower's records the nondisclosure of which could cause any representation or warranty made herein or any statement made in the Environmental Agreement to be false or materially misleading.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until the Indebtedness has been paid in full or otherwise discharged.

(h) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (i) Borrower's discovery of any Prohibited Activity or Condition;
- (ii) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (iii) Borrower's receipt of or knowledge of any personal injury claim, proceeding or cause of action directly or indirectly arising as a result of the presence of asbestos or other hazardous materials on or from the Mortgaged Property;
- (iv) Borrower's discovery that any representation or warranty in this Section 18 has become untrue after the date of this Instrument; and
- (v) Borrower's breach of any of its obligations under this Section 18.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(i) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("Environmental Inspections") required by Lender or any Beneficiary Party in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a

determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including, without limitation, fees and expenses of attorneys, expert witnesses, engineers, technical consultants and investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with such Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(j) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with or cure a violation of any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower shall, by the earlier of (i) the applicable deadline required by such Hazardous Materials Law or (ii) thirty (30) days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by such Hazardous Materials Law. Borrower shall promptly provide Lender with a cost estimate from an environmental consultant acceptable to Lender to complete any required Remedial Work. If required by Lender, Borrower shall promptly establish with Lender a reserve fund in the amount of such estimate. If in Lender's opinion the amount reserved at any time during the Remedial Work is insufficient to cover the work remaining to complete the Remediation or achieve compliance, Borrower shall increase the amount reserved in compliance with Lender's written request. All amounts so held in reserve, until disbursed, are hereby pledged to Lender as security for payment of Borrower's obligations under this Instrument. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(k) Borrower shall comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Borrower shall (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (ii) cooperate with any inquiry by any Governmental Authority; and (iii) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(l) BORROWER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND BENEFICIARY PARTIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, EMPLOYEES, AGENTS, ATTORNEYS, TRUSTEES, HEIRS AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST ALL LOSSES, PROCEEDINGS, CLAIMS, DAMAGES, PENALTIES AND COSTS (WHETHER INITIATED OR SOUGHT BY GOVERNMENTAL AUTHORITIES OR PRIVATE PARTIES), INCLUDING, WITHOUT LIMITATION, FEES AND OUT-OF-POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, ENGINEERING FEES, ENVIRONMENTAL CONSULTANT FEES, INVESTIGATORY FEES, AND REMEDIATION COSTS (INCLUDING, WITHOUT LIMITATION, ANY FINANCIAL ASSURANCES REQUIRED TO BE POSTED FOR COMPLETION OF REMEDIAL WORK AND COSTS ASSOCIATED WITH ADMINISTRATIVE OVERSIGHT), AND ANY OTHER LIABILITIES OF WHATEVER KIND AND WHATEVER NATURE, WHETHER INCURRED IN CONNECTION WITH ANY JUDICIAL OR ADMINISTRATIVE PROCESS OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY FROM ANY OF THE FOLLOWING:

- (i) ANY BREACH OF ANY REPRESENTATION OR WARRANTY OF BORROWER IN THIS SECTION 18;
- (ii) ANY FAILURE BY BORROWER TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS SECTION 18;
- (iii) THE EXISTENCE OR ALLEGED EXISTENCE OF ANY PROHIBITED ACTIVITY OR CONDITION;
- (iv) THE PRESENCE OR ALLEGED PRESENCE OF HAZARDOUS MATERIALS ON OR UNDER THE MORTGAGED PROPERTY (WHETHER AS A RESULT OF ACTIVITIES ON THE MORTGAGED PROPERTY OR ON SURROUNDING PROPERTIES) OR IN ANY OF THE IMPROVEMENTS OR ON OR UNDER ANY PROPERTY OF BORROWER THAT IS ADJACENT TO THE MORTGAGED PROPERTY;
- (v) THE ACTUAL OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW;
- (vi) ANY LOSS OR DAMAGE RESULTING FROM A LOSS OF PRIORITY OF THIS INSTRUMENT OR ANY OTHER LOAN

DOCUMENT DUE TO AN IMPOSITION OF AN ENVIRONMENTAL LIEN AGAINST THE MORTGAGED PROPERTY; AND

(vii) ANY PERSONAL INJURY CLAIM, PROCEEDING OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING AS A RESULT OF THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS ON OR FROM THE MORTGAGED PROPERTY.

(m) COUNSEL SELECTED BY BORROWER TO DEFEND INDEMNITEES SHALL BE SUBJECT TO THE APPROVAL OF THOSE INDEMNITEES. IN ANY CIRCUMSTANCES IN WHICH THE INDEMNITY UNDER THIS SECTION 18 APPLIES, ANY BENEFICIARY PARTY MAY EMPLOY ITS OWN LEGAL COUNSEL AND CONSULTANTS TO PROSECUTE, DEFEND OR NEGOTIATE ANY CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING AT BORROWER'S EXPENSE, AND SUCH BENEFICIARY PARTY, WITH THE PRIOR WRITTEN CONSENT OF BORROWER (WHICH SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED) MAY SETTLE OR COMPROMISE ANY ACTION OR LEGAL OR ADMINISTRATIVE PROCEEDING. BORROWER SHALL REIMBURSE SUCH BENEFICIARY PARTY UPON DEMAND FOR ALL COSTS AND EXPENSES INCURRED BY SUCH BENEFICIARY PARTY, INCLUDING, WITHOUT LIMITATION, ALL COSTS OF SETTLEMENTS ENTERED INTO IN GOOD FAITH, AND THE FEES AND OUT OF POCKET EXPENSES OF SUCH ATTORNEYS AND CONSULTANTS.

(n) BORROWER SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THOSE INDEMNITEES WHO ARE NAMED AS PARTIES TO A CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING (A "CLAIM"), SETTLE OR COMPROMISE THE CLAIM IF THE SETTLEMENT (1) RESULTS IN THE ENTRY OF ANY JUDGMENT THAT DOES NOT INCLUDE AS AN UNCONDITIONAL TERM THE DELIVERY BY THE CLAIMANT OR PLAINTIFF TO BENEFICIARY PARTIES OF A WRITTEN RELEASE OF THOSE INDEMNITEES, SATISFACTORY IN FORM AND SUBSTANCE TO LENDER; OR (2) MAY MATERIALLY AND ADVERSELY AFFECT BENEFICIARY PARTIES, AS DETERMINED BY LENDER IN ITS DISCRETION.

(o) BORROWER'S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL NOT BE LIMITED OR IMPAIRED BY ANY OF THE FOLLOWING, OR BY ANY FAILURE OF BORROWER OR ANY GUARANTOR TO RECEIVE NOTICE OF OR CONSIDERATION FOR ANY OF THE FOLLOWING:

- (i) ANY AMENDMENT OR MODIFICATION OF ANY LOAN DOCUMENT;
- (ii) ANY EXTENSIONS OF TIME FOR PERFORMANCE REQUIRED BY ANY LOAN DOCUMENT;

- (iii) ANY PROVISION IN ANY LOAN DOCUMENT LIMITING BENEFICIARY PARTIES' RECOURSE TO PROPERTY SECURING THE INDEBTEDNESS, OR LIMITING THE PERSONAL LIABILITY OF BORROWER OR ANY OTHER PARTY FOR PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS;
  - (iv) THE ACCURACY OR INACCURACY OF ANY REPRESENTATIONS AND WARRANTIES MADE BY BORROWER UNDER THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT;
  - (v) THE RELEASE OF BORROWER OR ANY OTHER PERSON, BY BENEFICIARY PARTIES OR BY OPERATION OF LAW, FROM PERFORMANCE OF ANY OBLIGATION UNDER ANY LOAN DOCUMENT;
  - (vi) THE RELEASE OR SUBSTITUTION IN WHOLE OR IN PART OF ANY SECURITY FOR THE INDEBTEDNESS; AND
  - (vii) FAILURE BY BENEFICIARY PARTIES TO PROPERLY PERFECT ANY LIEN OR SECURITY INTEREST GIVEN AS SECURITY FOR THE INDEBTEDNESS.
- (p) BORROWER SHALL, AT ITS OWN COST AND EXPENSE, DO ALL OF THE FOLLOWING:
- (i) PAY OR SATISFY ANY JUDGMENT OR DECREE THAT MAY BE ENTERED AGAINST ANY INDEMNITEE OR INDEMNITEES IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING INCIDENT TO ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18;
  - (ii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES PAID OR INCURRED IN CONNECTION WITH ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18; AND
  - (iii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES, INCLUDING, WITHOUT LIMITATION, FEES AND OUT OF POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, PAID OR INCURRED IN CONNECTION WITH THE ENFORCEMENT BY INDEMNITEES OF THEIR RIGHTS UNDER THIS SECTION 18, OR IN MONITORING AND PARTICIPATING IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING.

(q) THE PROVISIONS OF THIS SECTION 18 SHALL BE IN ADDITION TO ANY AND ALL OTHER OBLIGATIONS AND LIABILITIES THAT BORROWER MAY HAVE UNDER APPLICABLE LAW OR UNDER ANY OTHER LOAN DOCUMENT, AND EACH INDEMNITEE SHALL BE ENTITLED TO INDEMNIFICATION UNDER THIS SECTION 18 WITHOUT REGARD TO WHETHER ANY OTHER BENEFICIARY PARTY OR THAT INDEMNITEE HAS EXERCISED ANY RIGHTS AGAINST THE MORTGAGED PROPERTY OR ANY OTHER SECURITY, PURSUED ANY RIGHTS AGAINST ANY GUARANTOR, OR PURSUED ANY OTHER RIGHTS AVAILABLE UNDER THE LOAN DOCUMENTS OR APPLICABLE LAW. IF BORROWER CONSISTS OF MORE THAN ONE PERSON OR ENTITY, THE OBLIGATION OF THOSE PERSONS OR ENTITIES TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18 SHALL BE JOINT AND SEVERAL. THE OBLIGATION OF BORROWER TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18 SHALL SURVIVE ANY REPAYMENT OR DISCHARGE OF THE INDEBTEDNESS, ANY FORECLOSURE PROCEEDING, ANY FORECLOSURE SALE, ANY DELIVERY OF ANY DEED IN LIEU OF FORECLOSURE, AND ANY RELEASE OF RECORD OF THE LIEN OF THIS INSTRUMENT.

**19. PROPERTY AND LIABILITY INSURANCE.**

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, business income coverage and extra expense insurance, coverage against acts of terrorism, mold and earthquake coverage. Borrower acknowledges and agrees that Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any portion of the Improvements is at any time located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area now or hereafter having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood in an amount equal to the maximum amount available under the National Flood Insurance Program or any successor thereto.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver

to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require consistent with Lender's then current practices and standards, and shall be issued by insurance companies satisfactory to Lender.

(d) During any period of construction and/or rehabilitation, and at all times prior to occupancy of the Project by any tenants following the completion of the construction and/or rehabilitation of the Project in accordance with the Loan Agreement, the following provisions shall apply, in addition to the other provisions of this Section 19 and without limiting the generality of the other provisions of this Section 19:

(i) Borrower shall provide (or cause to be provided), maintain and keep in force, the following insurance coverage:

(A) Builder's "all risk" insurance or the equivalent coverage, including theft, to insure all buildings, machinery, equipment, materials, supplies, temporary structures and all other property of any nature on-site, off-site and while in transit which is to be used in fabrication, erection, installation and construction and/or rehabilitation of the Project, and to remain in effect until the entire Project has been completed and accepted by Borrower and is first occupied by any tenants (provided that in any event, such coverage shall remain in effect until such time as Borrower has provided Lender with evidence of property insurance covering the Improvements and meeting the requirements of this Section 19). Such insurance shall be provided on a replacement cost value basis and shall include foundations, other underground property, tenant improvements and personal property. If tenant improvements and personal property are not included in the above coverage, they may be insured separately by Borrower provided coverage is acceptable to Lender. Builders "all risk" insurance shall (i) be on a nonreporting, completed value form, (ii) cover soft costs, debris removal expense (including removal of pollutants), resulting loss and damage to property due to faulty or defective workmanship or materials and error in design or specification, loss while the property is in the care, custody and control of others to whom the property may be entrusted, (iii) provide that Borrower can complete and occupy the Mortgaged Property without further written consent from the insurer, and (iv) cover loss of income resulting from delay in occupancy and use of the Mortgaged Property due to loss. During the initial construction and/or

rehabilitation of the Project and until such time as the Project is first occupied by any tenants, the Borrower shall not be required to maintain property insurance as required by this Section 19 for so long as Builder's "all risk" insurance or equivalent coverage is maintained in accordance with this paragraph.

(B) If any portion of the Mortgaged Property is or becomes located in an area identified by the United States Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, as amended, Borrower shall also keep the improvements and the equipment located thereon insured against loss by flood in an amount at least equal to the principal amount of the Loan or the maximum limits of coverage available with respect to the Mortgaged Property, whichever is less. All such insurance shall also cover continuing expenses not directly involved in the direct cost of construction, rehabilitation or renovation, including interest on money borrowed to finance construction, rehabilitation or renovation, continuing interest on the Loan, advertising, promotion, real estate taxes and other assessments, the cost of renegotiating leases, and other expenses incurred as the result of property loss or destruction by the insured peril. Such coverage shall not contain any monthly limitation.

(ii) If Lender fails to receive proof and evidence of the insurance required hereunder, Lender shall have the right, but not the obligation, to obtain or cause to be obtained current coverage and to make a Disbursement, as defined by the Loan Agreement (or, in its sole discretion, advance funds) to pay the premiums for it. If Lender makes an advance for such purpose, Borrower shall repay such advance immediately on demand and such advance shall be considered to be a demand loan to Borrower bearing interest at the Default Rate (as defined by the Note) and secured by the Mortgaged Property.

(e) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require, consistent with Lender's then current practices and standards.

(f) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(g) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (i) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration"), or (ii) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall apply the proceeds in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily and mixed-use properties.

(h) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration (and complete construction of the Project in accordance with the Loan Agreement and the Plans and Specifications, as defined therein, if such construction has not been completed at such time); (iii) Lender determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (iv) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (v) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained pursuant to this Instrument.

(i) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(j) Unless Lender otherwise agrees in writing, any application of any insurance proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments, except as provided in the Note.

(k) Borrower agrees to execute such further evidence of assignment of any insurance proceeds as Lender may require.

(l) Borrower further agrees that to the extent that Borrower obtains any form of property damage insurance for the Mortgaged Property or any portion thereof that insures perils not required to be insured against by Lender, such policy of property damage insurance shall include a standard mortgagee clause and shall name Lender as loss payee and, within ten (10) days following Borrower's purchase of such additional insurance, Borrower shall cause to be delivered to Lender a duplicate original policy of insurance with respect to such policy. Any insurance proceeds payable to Borrower under such policy shall be additional security for the Indebtedness and Lender shall have the same rights to such policy and proceeds as it has with respect to insurance policies required by Lender pursuant to this Section 19 (except that Lender shall not require that the premium for such additional insurance be included among the Imposition Deposits).

(m) If Lender fails to receive proof and evidence of the insurance required hereunder, Lender shall have the right, but not the obligation, to obtain or cause to be obtained current coverage and to pay the premiums for it. If Lender makes a payment for such purpose, Borrower shall repay same immediately on demand and such payment shall be considered to be a demand loan to Borrower bearing interest at the Default Rate (as defined by the Note) and secured by the Mortgaged Property.

## 20. CONDEMNATION.

(a) Borrower shall promptly notify Lender in writing of any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"), and shall deliver to the Lender copies of any and all papers served in connection with such Condemnation. Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts (including, without limitation, fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise), at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness in accordance with the provisions of the Note as to application of payments to the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of payments due under the Note, Section 7 of this

Instrument or any Collateral Agreement or any other Loan Document, or change the amount of such payments, except as otherwise provided in the Note. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

**21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.**

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

- (i) other than the lien of this Instrument and the Permitted Encumbrances, a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (ii) a Transfer of any interest in Borrower;
- (iii) a Transfer of any interest in any entity which owns, directly or indirectly through one or more intermediate entities, any interest in Borrower;
- (iv) a Transfer of all or any part of a Guarantor's ownership interests in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower;
- (v) if Guarantor is an entity, (A) a Transfer of any interest in Guarantor, or (B) a Transfer of any interest in any entity which owns, directly or indirectly through one or more intermediate entities, any interest in Guarantor;
- (vi) if Borrower or Guarantor is a trust, the termination or revocation of such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Guarantor must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);
- (vii) if Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);

- (viii) the merger, dissolution, liquidation, or consolidation of (i) Borrower, (ii) any Guarantor that is a legal entity, or (iii) any legal entity holding, directly or indirectly, any interest in Borrower or in any Guarantor that is an entity;
- (ix) a conversion of Borrower from one type of legal entity into another type of legal entity (including the conversion of a general partnership into a limited partnership and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer; if such conversion results in a change in any assets, liabilities, legal rights or obligations of Borrower (or of any Guarantor, or any general partner of Borrower, as applicable), by operation of law or otherwise;
- (x) a Transfer of the economic benefits or right to cash flows attributable to the ownership interests in Borrower and/or, if Guarantor is an entity, Guarantor, separate from the Transfer of the underlying ownership interests, unless the Transfer of the underlying ownership interests would otherwise not be prohibited by this Instrument; and
- (xi) the filing, recording, or consent to filing or recording of any plat or map subdividing, replatting or otherwise affecting the Mortgaged Property or any other replat or subdivision of the Mortgaged Property, whether or not any such action affects the priority of the lien of this Instrument.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary (each, a "Permitted Transfer"):

- (i) a Transfer to which Lender has consented;
- (ii) except as provided in Section 21(a)(vi) and (vii), a Transfer that occurs by devise, descent, pursuant to the provisions of a trust, or by operation of law upon the death of a natural person;
- (iii) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (iv) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests

other than those created by or permitted pursuant to the Loan Documents or consented to by Lender;

- (v) the grant of an easement, servitude, or restrictive covenant if, before the grant, Lender determines that the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request;
- (vi) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 45 days after Borrower has actual or constructive notice of the existence of such lien;
- (vii) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument; and
- (viii) the termination of the Agency Leases pursuant to their respective terms.

(c) Lender shall consent to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (i) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (ii) the absence of any Event of Default;
- (iii) the transferee meets all of the eligibility, credit, management, and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgage finance structures on similar multifamily and mixed-use properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;
- (iv) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar multifamily and mixed-use properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;

- (v) if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender;
- (vi) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a substitute guaranty in a form acceptable to Lender;
- (vii) Lender's receipt of all of the following:
  - (A) a non refundable review fee in the amount of \$3,000 and a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer; and
  - (B) Borrower's reimbursement of all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed \$3,000; and
- (viii) Borrower has agreed to Lender's conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Loan Documents to (i) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (ii) restore to original provisions of the standard Lender's form multifamily loan documents, to the extent such provisions were previously modified.

(d) Lender shall be provided with written notice of all Transfers under this Section 21, whether or not such Transfers are permitted under Section 21(b) or approved by Lender under Section 21(c), no later than 10 days prior to the date of the Transfer.

22. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

- (a) (i) any failure by Borrower to pay or deposit any payment of principal, interest, principal reserve fund deposit, any payment with a specified due date, or any other scheduled payment or deposit required by the Note, this Instrument or any other Loan

Document when such payment or deposit is due or (ii) any failure by Borrower to pay or deposit any unscheduled payment or deposit, or other payment or deposit without a specified due date, required by the Note, this Instrument or any other Loan Document, within five (5) days after written notice from Lender;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19;

(c) any failure by Borrower to comply with the provisions of Section 32;

(d) fraud or material misrepresentation or material omission by Borrower or Guarantor, any of their respective officers, directors, trustees, general partners, managing members, managers, agents or representatives in connection with (i) the application for the Loan, (ii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) any of Borrower's representations and warranties in this Instrument is false or misleading in any material respect;

(f) any Event of Default under Section 21;

(g) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

(h) any failure by Borrower to perform or comply with any of its obligations under this Instrument (other than those specified in this Section 22), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Lender to Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(i) any failure by Borrower or any Guarantor to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document;

(j) any exercise by the holder of any debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable;

(k) the occurrence of a Bankruptcy Event;

(l) any Event of Default (as defined in any of the Loan Documents), which continues beyond the expiration of any applicable cure period;

(m) any breach of, or event of default under, any other document or agreement relating to the Loan to which Borrower is a party, which continues beyond the expiration of any applicable cure period thereunder;

(n) the occurrence of any one or more of the following: (i) a breach or default under the Permanent Loan Commitment (as defined by the Loan Agreement), or (ii) prior to the closing of the Permanent Loan (as defined by the Loan Agreement) and repayment in full of the Indebtedness, the Permanent Loan Commitment is terminated, expires or otherwise fails to remain in full force and effect, or (iii) the Borrower fails to satisfy any of the conditions under the Permanent Loan Commitment for the closing of the Permanent Loan;

(o) any amendment, modification, waiver or termination of any of the provisions of Borrower's Organizational Documents without the prior written consent of Lender, other than (i) modifications necessary to reflect the occurrence of a Permitted Transfer or (ii) modifications that do not: (A) impose any additional or greater obligations on Borrower or any of the partners, managers or members of Borrower, (B) reduce or relieve Borrower or any of the partners, managers or members of Borrower of any of their obligations, (C) modify the timing, amounts, number, conditions or other terms of the installments or other payment obligations of the partners or members of Borrower or (D) impair the collateral for the Loan; provided, however, that Borrower shall promptly provide to Lender a copy of any modifications to Borrower's Organizational Documents that do not require Lender's consent;

(p) (i) any breach of any Material Property Agreement by Borrower or its officers, directors, employees, agents or tenants that continues beyond any applicable notice and cure period; (ii) any failure by Borrower or its officers, directors, employees or agents or any other party to deliver concurrently (in case of notices given) or promptly (in case of notices received) copies of any and all notices received or given thereby to Lender with respect to any Material Property Agreement; or (iii) any breach of the representations, warranties, or covenants set forth in the Borrower's Certificate and Agreement;

(q) if Borrower or any Guarantor is a trust, the termination or revocation of any such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Guarantor must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged); or

(r) if any Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged).

23. **REMEDIES CUMULATIVE.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. **FORBEARANCE.**

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. **WAIVER OF STATUTE OF LIMITATIONS.** BORROWER HEREBY WAIVES THE RIGHT TO ASSERT ANY STATUTE OF LIMITATIONS AS A BAR TO THE ENFORCEMENT OF THE LIEN OF THIS INSTRUMENT OR TO ANY ACTION BROUGHT TO ENFORCE ANY LOAN DOCUMENT.

26. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or

applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

27. **FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents. In furtherance thereof, on the request of Lender, Borrower shall re-execute or ratify any of the Loan Documents or execute any other documents or take such other actions as may be necessary to effect the assignment, pledge or other transfer of the Loan to any party that may purchase, insure, credit enhance or otherwise finance all or any part of the Loan, including, without limitation, any Credit Enhancer (including Freddie Mac or Fannie Mae), the U.S. Department of Housing and Urban Development, or any insurance company, conduit lender or any other lender or investor.

28. **ESTOPPEL CERTIFICATE.** Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

29. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the Property Jurisdiction.

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction - the state and federal courts and authorities with jurisdiction over the Mortgaged Property in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue

to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 29 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

30. **NOTICE.**

(a) All notices, demands and other communications ("notice") under or concerning this Instrument shall be in writing, addressed as set forth below, and shall include a reference to "CPC Loan # 70664." Each notice shall be deemed given on the earliest to occur of (i) the date when the notice is received by the addressee; (ii) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

If to the Borrower: 444 EAST GENESEE STREET LLC  
344 S. Warren Street  
Syracuse, New York 13202  
Attention: Graziano Zazzara, Jr.

and with a copy to: Michael Stanczyk, Esq.  
Lynn D'Elia Temes & Stanczyk LLC  
100 Madison Street  
Tower 1 – Suite 1905  
Syracuse, New York 13202

If to Lender: CPC Funding SPE 1 LLC  
c/o The Community Preservation Corporation  
220 East 42nd Street, 16th Floor  
New York, New York 10017  
Attention: Director of Portfolio Services  
Loan No.: 70664  
Facsimile: (212) 683-0737

With a copy to: CPC Funding SPE 1 LLC  
c/o The Community Preservation Corporation  
220 East 42nd Street, 16th Floor  
New York, New York 10017  
Attention: General Counsel  
Loan No.: 70664  
Facsimile: (212) 683-2909

If to the Agency: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

Attention: Chairman  
Facsimile:

With a copy to:

Bousquet Holstein PLLC  
One Lincoln Center, Suite 1000  
110 West Fayette Street, Suite 100  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 30. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 30, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 30 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document that does not specify how notices are to be given shall be given in accordance with this Section 30.

31. **CHANGE IN SERVICER.** If there is a change of the Servicer, Borrower will be given notice of the change.

32. **SINGLE ASSET BORROWER.** Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

33. **SUCCESSORS AND ASSIGNS BOUND.** This Instrument shall bind, and the rights granted by this Instrument shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower.

34. **JOINT AND SEVERAL LIABILITY.** If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

35. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person (other than a holder of the Note and Servicer) shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a "Servicing Arrangement") between Lender and any Servicer for loss

sharing or interim advancement of funds shall constitute a contractual obligation of such Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

36. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought; provided, however, that in the event of a Transfer, any or some or all of the Modifications to this Instrument set forth in Exhibit B (if any) may be modified or rendered void by Lender at Lender's option by notice to Borrower or such transferee.

37. **CONSTRUCTION.** The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

38. **SERVICER.**

(a) Borrower further acknowledges that Lender may from time to time and in accordance with the terms of the Loan Agreement, appoint a Servicer or a replacement servicer to collect payments, escrows and deposits, to give and receive notices under the Note, this Instrument, or the other Loan Documents, and to otherwise service the Loan. Borrower hereby acknowledges and agrees that, unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by Servicer with the same force and effect, including, without limitation, the collection of payments, the giving of notice, the holding of escrows, inspection of the Mortgaged Property, inspections of books and records, the request for documents or information, and the granting of consents and approvals. Borrower further agrees that, unless Lender instructs Borrower to the contrary in writing, (i) any notices, books or records, or other documents or information to be delivered under this Instrument, the Note, or any other Loan Document shall also be simultaneously delivered to the Servicer at the address provided for notices to Servicer pursuant to Section 30 hereof, (ii) any payments to be made under the Note or for escrows under Section 7 of this Instrument or under any of the other Loan Documents shall be made to Servicer. In the event Borrower receives conflicting notices regarding the identity of the Servicer or any other subject, any such notice from Lender shall govern.

(b) Borrower further acknowledges and agrees that, for the purpose of determining whether a security interest is created or perfected under the Uniform Commercial Code of the Property Jurisdiction, any escrows or other funds held by Servicer pursuant to the Loan Documents shall be deemed to be held by Lender.

39. **DISCLOSURE OF INFORMATION.** Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Without limiting the generality of the foregoing, without notice to or the consent of Borrower, Lender may disclose to any title insurance company which insures any interest of Lender under this Instrument (whether as primary insurer, coinsurer or reinsurer) any information, data or material in its possession relating to Borrower, the Loan, the Improvements or the Mortgaged Property. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

40. **NO CHANGE IN FACTS OR CIRCUMSTANCES.** Borrower warrants that all information in Borrower's application for the Loan and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with Borrower's application for the Loan are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

41. **SUBROGATION.** If, and to the extent that, the proceeds of the Loan are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "Prior Lien"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

42. **FINANCING STATEMENT.** As provided in Section 2, this Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and for the purposes of such financing statement: (a) the Debtor shall be Borrower and the Secured Party shall be Lender; (b) the addresses of Borrower as Debtor and of Lender as Secured Party are as specified above in the first paragraph of this Instrument; (c) the name of the record owner is Borrower; (d) the types or items of collateral consist of any part of the Mortgaged Property which is or may become a Fixture; and (e) the organizational identification number of Borrower (if any) as Debtor is set forth on Exhibit C.

43. **ACCELERATION; REMEDIES.** If an Event of Default has occurred and is continuing, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may foreclose this Instrument by judicial or nonjudicial proceedings (including a nonjudicial foreclosure by power of sale in accordance with the provisions of any applicable law), shall be entitled to the appointment of a receiver, without notice, and may invoke any other remedies permitted by New York law or provided in this Instrument or

in any other Loan Document. Lender may, at Lender's option, also foreclose this Instrument for any portion of the Indebtedness which is then due and payable, subject to the continuing lien of this Instrument for the balance of the Indebtedness. Lender shall be entitled to collect all costs and expenses allowed by New York law, including attorneys' fees, costs of documentary evidence, abstracts, title reports, statutory costs and any additional allowance made pursuant to Section 8303 of the Civil Practice Law and Rules. The rights and remedies of Lender specified in this Instrument shall be in addition to Lender's rights and remedies under New York law, specifically including Section 254 of the Real Property Law. In the event of any conflict between the provision of this Instrument and the provisions of Section 254 of the Real Property Law, the provisions of this Instrument shall control.

44. **SATISFACTION OF DEBT.** Upon the payment in full of the Indebtedness and termination of the Loan Agreement, Lender shall promptly discharge this Instrument.

45. **LIEN LAW.** Borrower will receive advances under this Instrument subject to the trust fund provisions of Section 13 of the Lien Law.

46. **MAXIMUM PRINCIPAL AMOUNT.** Notwithstanding any provision set forth in this Instrument to the contrary, the maximum amount of principal indebtedness secured by this Instrument at execution, or which under any contingency may become secured by this Instrument at any time hereafter, is US \$1,932,744, plus all interest payable under the Note and all amounts expended by Lender after an Event of Default (a) for the payment of taxes, charges or assessments which may be imposed by legal requirements upon the Mortgaged Property; (b) to maintain the insurance required under this Instrument; (c) for any expenses incurred in maintaining the Mortgaged Property and upholding the lien of this Instrument, including the expense of any litigation to prosecute or defend the rights and lien created by this Instrument; (d) protective advances; and (e) for any amount, cost or charge to which Lender becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority, together with interest on all of the foregoing amounts at the Default Rate (as defined in the Note).

47. **SECTION 291-f OF THE REAL PROPERTY LAW.** In addition to any other right or remedy contained in this Instrument or in any other Loan Document, Lender shall have all the rights against lessees of all or any part of the Mortgaged Property as are set forth in Section 291-f of the Real Property Law of New York.

48. **TRANSFER TAX PROVISIONS.** Borrower covenants and agrees that:

(a) in the event of a sale of the Mortgaged Property or other Transfer, Borrower will duly complete, execute and deliver to Lender, contemporaneously with the submission to the applicable taxing authority or recording officer, all forms and supporting documentation required by such taxing authority or recording officer to estimate and fix any and all applicable state and local real estate transfer taxes (collectively "Transfer Taxes") assessable by reason of such sale or other Transfer or recording of the deed evidencing such sale or other Transfer; and

(b) Borrower shall pay all Transfer Taxes that may hereafter become due and payable with respect to any Transfer, and if Borrower fails to pay or fails to cause to be paid any such Transfer Taxes, Lender may pay such Transfer Taxes and the amount of such payment shall be added to the Indebtedness and, unless incurred in connection with a foreclosure of this Instrument, be secured by this Instrument.

(c) The provisions of this Section shall survive any Transfer and the delivery of the deed in connection with any Transfer.

49. This Instrument does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six (6) residential dwelling units, each having their own separate cooking facilities.

50. **ATTACHED EXHIBITS.** The following Exhibits are attached to this Instrument and are incorporated by reference herein as if more fully set forth in the text hereof:

- Exhibit A Description of the Land.
- Exhibit B Modifications to Instrument.
- Exhibit C Financing Statement Information.
- Exhibit D HFA Participation Rider.

The terms of this Instrument are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Instrument, the terms of said Exhibits shall be controlling in all respects.

51. **WAIVER OF TRIAL BY JURY.**

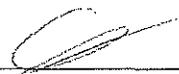
**TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Instrument or caused this Instrument to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

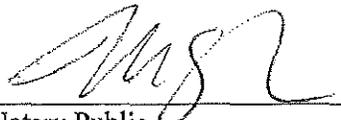
**BORROWER:**

**444 EAST GENESEE STREET LLC,**  
a Delaware limited liability company

By:   
Name: Graziano Zazzara, Jr.  
Title: Manager

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

On May 26, 2021, before me, the undersigned, personally appeared Graziano Zazzara, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

MICHAEL STANCZYK  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02ST6220670  
Qualified in Onondaga County  
Commission Expires April 19, 2022

**AGENCY:**

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY,  
a public benefit corporation

By:   
Name: Judith DeLaney  
Title: Executive Director

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

On May 27, 2021, before me, the undersigned, personally appeared Judith DeLaney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC505591  
Commission Expires on Feb. 12, 2022

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

## LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

Being the same premises conveyed by the City of Syracuse to Route 20/20, LLC by Warranty Deed dated June 7, 2006 and recorded in the Onondaga County Clerk's Office on March 5, 2007 in Book 4984 of Deeds at page 637.

BEING MORE MODERNLY DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

BEGINNING at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

thence S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

thence N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

thence N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

thence S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the POINT OF BEGINNING.

## EXHIBIT B

### MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. Section 22 of the Instrument is amended by adding the following at the end of such Section:

“(s) if an “Event of Default”, as therein defined, shall occur under the Agency Leases or PILOT Agreement, or any of the same are terminated, amended, or modified without the written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.”

2. The following new Sections are added to the Instrument after the last numbered Section:

#### **52. TAX EXEMPTION OR ABATEMENT.**

(a) Borrower represents, warrants and covenants to Lender that the Mortgaged Property is expected to receive an abatement of real property taxes pursuant to New York State General Municipal Law Section 874 and New York State Real Property Tax Law Section 412-a (the “Tax Abatement”) upon terms and conditions contained in the PILOT Agreement.

(b) Borrower must file or cause to be filed on a timely basis all documentation necessary to maintain the Tax Abatement.

(c) Borrower must comply or cause compliance fully with the PILOT Agreement in order to obtain and maintain the Tax Abatement.

(d) Borrower shall promptly provide Lender with a copy of any notice Borrower may receive alleging that Borrower is in breach of the requirements of the PILOT Agreement or that the Mortgaged Property is not being maintained as required by the PILOT Agreement or the Agency Leases.

(e) In any application for a Transfer of the Mortgaged Property, any interest in the Mortgaged Property or any interest in Borrower, Borrower shall notify Lender if the completion of such Transfer without the consent of the Agency would result in the termination of the Tax Abatement and the PILOT Agreement.

(f) Borrower shall avail itself of all rights and opportunities to renew or extend the Tax Abatement.

(g) Borrower shall not voluntarily take or cause to be taken any action that would threaten the Tax Abatement or cause the Tax Abatement to terminate without the prior written consent of Lender.

(h) Borrower represents and warrants that:

(1) Borrower has not received any notice indicating that the Tax Abatement will be terminated or will not be obtained.

(2) Borrower has adhered to any income, rent or other restrictions imposed by the Tax Abatement.

(i) Each of the following shall constitute an Event of Default:

(1) Any breach of any of the representations and warranties in Subsection (h).

(2) Any transfer of the Mortgaged Property, any interest in the Mortgaged Property, or any interest in Borrower that would cause the Tax Abatement to terminate.

**53. VARIABLE RATE NOTE.** The Note is subject to interest rate adjustment from time to time in accordance with its terms, which terms are incorporated herein by this reference.

**54. DISPLAY OF LENDER'S SIGN.** The Borrower grants permission for the Lender and any of its participants (including public participants) or their respective agents to enter upon the Mortgaged Property and to erect or cause to be erected, a sign to be permanently affixed (by holes drilled into the facade of any of the Improvements to accommodate metal studs attached to the sign or otherwise) to the exterior facade of any of the Improvements in a location satisfactory to the Lender during the term of this Instrument indicating that the property is a CPC - Financed Building. The Borrower shall fully cooperate towards the erection of such sign at the Mortgaged Property.

**55. DISPLAY OF SONYMA SIGN.** In the event that SONYMA is the Mortgage Insurer at any time, and if SONYMA so requests, the Borrower shall permit a sign to be securely affixed to and maintained on the exterior wall of any of the Improvements in a location and manner satisfactory to SONYMA, which sign shall indicate that the financing of the construction, rehabilitation or acquisition of the property was made possible through the efforts of SONYMA. SONYMA will provide the sign, available to the Borrower at the office of the New York State Office of General Services ("OGS") nearest to the Mortgaged Property. The Borrower shall be responsible, at its own cost, for transporting the sign from such OGS office to the Mortgaged Property, for affixing the sign, maintaining it in good condition, and for providing insurance coverage with respect to the sign.

**56. MORTGAGE INSURANCE.** The Lender shall apply for mortgage insurance for this Instrument at the Borrower's expense with respect to initial application fees and other requisite fees. Until the date of repayment of the Permanent Loan (as defined in the Loan Agreement), the Borrower shall be obligated to pay the premium on such insurance. If any Mortgage Insurer shall at any time commit to insure this Instrument, the Borrower shall take all actions which shall be required by such Mortgage Insurer in order to finalize such insurance for this Instrument and keep such insurance in full force and effect.

**57. PERMANENT LOAN CONDITIONS.** If the conditions of the Permanent Loan (as defined in the Loan Agreement) are satisfied on or prior to the Maturity Date, the Lender shall assign this Instrument to the CPC Permanent Lender (as defined in the Permanent Loan Commitment) and the Borrower and the CPC Permanent Lender shall enter into a consolidation, modification and extension agreement, which shall consolidate the lien of this Instrument with the lien of the First Project Loan Mortgage, and shall modify and extend the terms of this Instrument (the "Consolidation Agreement").

**58. PENSION FUND DELIVERY.** The Borrower has previously deposited with the Permanent Lender (as defined in the Loan Agreement) a "Pension Fund Late Delivery Fee" in the amount of Twenty-One Thousand One Hundred and No/100 Dollars (\$21,100.00). In the event that the Loan is converted to the Permanent Loan (as defined in the Loan Agreement) and the sale thereof to the appropriate pension fund occurs on or before April 1, 2023 (the "Pension Fund Delivery Date") as provided for in the Permanent Loan Commitment (as defined in the Loan Agreement), the Pension Fund Late Delivery Fee shall be refunded to the Borrower upon the sale of the Permanent Loan to the appropriate pension fund. In the event that the Loan is not converted to the Permanent Loan and sold to the appropriate pension fund on or before the Pension Fund Delivery Date for any reason whatsoever, the Pension Fund Late Delivery Fee shall be subject to forfeiture at the rate of 1/12th of such Pension Fund Late Delivery Fee for each month (or fraction thereof) which elapses from the Pension Fund Delivery Date until the conversion of the Loan to the Permanent Loan and the sale thereof to the appropriate pension fund. In the event that more than twelve (12) months elapse from the Pension Fund Delivery Date without the conversion of the Loan to the Permanent Loan and the sale thereof to the appropriate pension fund, additional penalties shall accrue and be payable by the Borrower at a rate equal to 1/12th of 1% of the amount of the Permanent Loan for each month of additional delay. Notwithstanding the foregoing, failure for any reason to close the Permanent Loan and sell it to the appropriate pension fund within six (6) months of the Pension Fund Delivery Date shall result in the automatic termination of Permanent Loan Commitment.

**59. CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY SPECIAL OBLIGATIONS.**

(a) This Instrument is executed by the Agency solely for the purpose of subjecting its interest in the Mortgaged Property, and in the event of a default, the holder of this Instrument shall look, only with respect to the Agency, solely to the Mortgaged Property described in this Instrument in satisfaction of the indebtedness evidenced under the Note and will not seek or obtain any deficiency or personal judgment against the Agency or any members or officers thereof except such judgment or decree as may be necessary to foreclose its interest in the Mortgaged Property

as pledged hereunder and all other property mortgaged, pledged, conveyed or assigned to secure payment under the Note.

(b) **Borrower's Obligations to Comply with the Company Lease, the Agency Lease and the PILOT Agreement.** Borrower shall: (i) pay all other sums of money due and payable at any time and from time to time under the Agency Leases and the PILOT Agreement when such sums become due and payable, but in any event, before the expiration of any grace period provided in the Agency Leases and/or the PILOT Agreement for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Leases and/or the PILOT Agreement to be performed, observed or complied with by Borrower as a lessor under the Company Lease, as a lessee under the Agency Lease and as a party to the PILOT Agreement. If the Company Lease, the Agency Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Borrower shall make the payment on or before the date on which the payment becomes due and payable. Borrower shall deliver evidence of the payment to Lender within ten (10) days after receipt of a written request from Lender for evidence of the payment.

(c) **Subordination Provisions.** Notwithstanding anything herein to the contrary, Lender by accepting this Instrument, acknowledges and agrees that the rights of Lender hereunder shall be subordinate to the rights of the Agency to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by the Borrower to the Agency shall have the same force, priority and effect as a real property tax lien under New York State law against the Mortgaged Property.

(d) **Agency Executing at the Direction of Borrower.** The Borrower directs the Agency to execute and deliver this Instrument to the Lender, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Instrument, including but not limited to attorney's fees and costs.

(e) **Hold Harmless Provisions.** The Borrower hereby acknowledges that the terms of the Agency Lease, as amended and restated from time to time, is in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

(f) **Miscellaneous Provision.** The Borrower and the Lender hereto, by accepting this Instrument, acknowledge that the Agency is executing this Instrument solely to subject its interest in the Mortgaged Property, if any, to this Instrument. Notwithstanding anything herein to the contrary, the Lender acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be with respect to the Agency's interest in the Mortgaged Property.

All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

BORROWER'S INITIALS: GZ

AGENCY'S INITIALS: \_\_\_\_\_

All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

BORROWER'S INITIALS: \_\_\_\_\_

AGENCY'S INITIALS 

**EXHIBIT C**

**FINANCING STATEMENT INFORMATION**

1. Name and Address of Debtor: 444 EAST GENESEE STREET LLC  
344 S. Warren Street  
Syracuse, New York 13202  
  
Name and Address of Agency: City of Syracuse Industrial  
Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202
2. Debtor's State of Formation: Delaware  
  
Type of Entity: Limited liability company  
  
Agency State of Formation: New York
3. Name and Address of Secured Party: CPC Funding SPE 1 LLC  
c/o The Community Preservation  
Corporation  
220 East 42<sup>nd</sup> Street, 16<sup>th</sup> Floor  
New York, New York 10017
4. The Collateral is: Fixtures (as that term is described in the  
Uniform Commercial Code of New York)  
attached to the Land described in Exhibit A  
attached to this Instrument.

## EXHIBIT D

RIDER TO FIRST MULTIFAMILY CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING, DATED JUNE 3, 2021, BY 444 EAST GENESEE STREET LLC, AS BORROWER, AND CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY TO CPC FUNDING SPE 1 LLC, AS LENDER

1. The following definition shall be added to Section 1 of this Instrument:

“HFA Regulatory Agreement” shall mean that certain Regulatory Agreement between the Borrower and HFA and dated as of the date hereof.

2. The definition of “Rental Achievement Requirement” set forth in Section 1 of this Instrument is hereby amended as follows:

(i) by adding to the end of the first sentence thereof the following: “and one hundred fifteen percent (115%) of the Loan, and the loans secured by Second Construction Loan Mortgage and First Project Loan Mortgage, combined”; and

(ii) by adding to the last line thereof immediately following the words “of the Lender” the following: “and HFA”.

3. The following new clause (h) is hereby added to Section 3 of this Instrument:

(h) Notwithstanding any provision to the contrary contained herein, the Borrower shall not make application to HCR (or its successor agencies) for any rent increase to which it might be entitled under the Tenant Protection Regulations of the Emergency Tenant Protection Act of 1974, for rehabilitation work performed on the Mortgaged Property when such work was performed pursuant to or in connection with the Loan.

4. The following new clause (m) is hereby added to Section 4 of this Instrument:

(m) All new Leases executed during or after the construction and/or rehabilitation of the Project in accordance with the Loan Agreement must be satisfactory in form and substance to HFA and its attorneys and subordinate to the lien of Lender’s permanent loan mortgage. The Borrower shall provide HFA with the form of such lease and with access to copies of all such new Leases.

5. The following new clause (ix) shall be added to Section 21(c) of this Instrument:

(ix) such transfer is permitted pursuant to the terms of the HFA Regulatory Agreement.

6. The following new clause (t) is hereby added to Section 22 of this Instrument:

(t) if an "Event of Default", as therein defined, shall occur under the Second Construction Loan Note and/or the Second Construction Loan Mortgage, or under the First Project Loan Note, and First Project Loan Mortgage, each executed on the date hereof by the Borrower and/or City of Syracuse Industrial Development Agency in favor of the Lender.

7. The following new Sections are hereby added to this Instrument:

60. **Compliance With Regulatory Agreement.** The Borrower shall comply fully with all of the terms and conditions of the HFA Regulatory Agreement entered into as a condition of the closing of the Loan. The Borrower's obligations under such HFA Regulatory Agreement shall continue for the periods specified therein. The HFA Regulatory Agreement is incorporated into and made a part of this Instrument and failure to comply with the terms of the HFA Regulatory Agreement and/or a default under the HFA Regulatory Agreement shall constitute an Event of Default under this Instrument and Lender may exercise all of its rights under this Instrument.

61. **Lien Priority.** Until the assignment of the Second Construction Loan Mortgage to HFA, the lien of this Instrument shall be superior to the lien of the Project Loan Mortgage, and equal and coordinate with the lien of the Second Construction Loan Mortgage on the Mortgaged Property, except as may be otherwise provided in that certain Construction Loan Participation Certificate between Lender and HFA dated as of the date of this Instrument. After the assignment of the Second Construction Loan Mortgage to HFA, the lien of this Instrument, as consolidated with the lien of the First Project Loan Mortgage, and modified and extended pursuant to the Consolidation Agreement, shall be superior to the lien of the Second Construction Loan Mortgage, as consolidated, amended and restated.

62. **Curing of Defaults.** If default shall be made in the payment of any interest or principal installment or other amount when due under any or all of the Second Construction Loan Mortgage and the First Project Loan Mortgage, the Lender shall have the right (but not the obligation) to pay same and the Borrower on demand will repay the amount so paid with interest at the Involuntary Rate, and such amount, if not paid with such interest thereon, shall be added to the Indebtedness and shall be a lien on the Mortgaged Property and be collected as part of the debt secured by this Instrument.

63. **Compliance with Agreements.** The Borrower shall comply fully with all of the terms and conditions of that certain (i) Equal Employment Opportunity Agreement and (ii) Minority And Women-Owned Business Utilization And Service-Disabled Veteran-Owned Business Agreement, each entered into among HFA, the Borrower, and the construction contractor with respect to the Project, and each dated as of the date hereof. Additionally, Borrower shall ensure that the General Contractor complies with such agreements.

64. **Fair Market Housing.** Borrower shall submit to HFA for its records a marketing and tenant selection plan that is in compliance with HFA's affirmative fair housing marketing guidelines as more fully provided in the HFA Regulatory Agreement.

65. **HFA Guidelines.** Borrower shall ensure that the Project will comply with (a) applicable green building guidelines as may be established by HFA and (b) all applicable requirements of the Americans with Disabilities Act of 1990 or Section 504 of the Rehabilitation Act of 1973.



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
CHICAGO TITLE - EMILY

Return To :  
CANNON HEYMAN & WEISS LLP  
726 EXCHANGE STREET STE 500  
BUFFALO, NY 14210

Method Returned : MAIL

First PARTY 1

444 EAST GENESEE STREET LLC

First PARTY 2

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2021-00025810

Book : Page :

Type of Instrument : Mortgage

Type of Transaction : Mtg Type A

Recording Fee: \$390.50

Recording Pages : 69

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

Mortgage Taxes

Property Located : Syracuse

Serial Number : DM3750

Mortgage Amount : \$177,256.00

Basic Tax : \$0.00

Local Tax : \$0.00

Additional Tax : \$443.25

Transportation Auth Tax : \$0.00

SONYMA : \$0.00

County Tax : \$0.00

Total : \$443.25

Total Fees : \$833.75

State of New York

County of Onondaga

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

On (Recorded Date) : 06/08/2021

At (Recorded Time) : 1:45:59 PM



Doc ID - 042814510069

*Lisa Dell*  
Lisa Dell, County Clerk



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

Entered By: RSWEENIE Printed On : 06/08/2021 At : 1:52:20PM

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Cannon Heyman & Weiss, LLP  
726 Exchange Street, Suite 500  
Buffalo, New York 14210  
Attn: Steven J. Weiss, Esq.  
CPC # 70664

**FIRST MULTIFAMILY PROJECT LOAN MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

**LOCATION OF PREMISES:**

444 East Genesee Street  
Syracuse, New York

SBL No.: 102.-08-04.0 of the  
Tax Map of the City of Syracuse, Onondaga County, State of New York

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EXHIBITS

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**FIRST MULTIFAMILY PROJECT LOAN MORTGAGE, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

This **FIRST MULTIFAMILY PROJECT LOAN MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Instrument") is dated for reference purposes only as of the 3rd day of June, 2021, but will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), by **444 EAST GENESEE STREET LLC**, a Delaware limited liability company, whose address is 344 S. Warren Street, Syracuse, New York 13202 (the "Borrower"), and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation having an address at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "Agency"), for the benefit of **CPC FUNDING SPE 1 LLC**, a New York limited liability company, whose address is c/o The Community Preservation Corporation, 220 East 42<sup>nd</sup> Street, 16<sup>th</sup> Floor, New York, New York 10017, as beneficiary, and its successors and assigns ("Lender").

The Loan is made and the Indebtedness is evidenced by the Note in the maximum principal amount of One Hundred Seventy-Seven Thousand Two Hundred Fifty-Six and 00/100 Dollars (\$177,256.00), maturing on July 1, 2023 (the "Maturity Date") and secured by this Instrument.

WHEREAS, Agency and Borrower previously entered into (i) a certain Company Lease (as hereafter defined), a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith, wherein the Mortgaged Property was leased by the Borrower to the Agency; and (ii) a certain Agency Lease (as hereafter defined), a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith, wherein the Mortgaged Property was leased by the Agency back to the Borrower.

**NOW THEREFORE:**

Borrower and Agency, each for themselves and not the other, as security for the repayment of the Indebtedness (as hereafter defined), hereby irrevocably mortgage, warrant (solely as to the Borrower), grant, convey and assign to Lender the Mortgaged Property, including the Land located in the City of Syracuse, Onondaga County, New York, and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER and its successors and assigns the repayment of the Indebtedness evidenced by the Note executed by Borrower and maturing on the Maturity Date, and all renewals, extensions and modifications of the Indebtedness, including, without limitation, the payment of all sums advanced by or on behalf of Lender to protect the security of this Instrument under Section 12 and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower represents and warrants that Borrower is lawfully seized of the fee estate and sub-leasehold estate in the Mortgaged Property and the Agency is lawfully seized of the leasehold estate in the Mortgaged Property and the Borrower has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except for the Permitted Encumbrances. Agency represents that it has the right,

power and authority to grant and convey its interest in the Mortgaged Property. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any Permitted Encumbrances.

This Instrument is also a financing statement and a fixture filing under the Uniform Commercial Code of the Property Jurisdiction and the information set forth on Exhibit C is included for that purpose.

**Covenants.** Borrower and Lender covenant and agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person. The term "control" for these purposes means, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

(b) "Agency" shall mean the City of Syracuse Industrial Development Agency, a body corporate and politic and a public instrumentality of the State of New York, having its office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202.

(c) "Agency Lease" shall mean that certain agency lease agreement dated as of June 1, 2021 by and between the Agency and the Borrower.

(d) "Agency Leases" shall mean, collectively, the Agency Lease and the Company Lease

(e) "Bankruptcy Event" means any one or more of the following:

- (i) (A) the commencement of a voluntary case under one or more of the Insolvency Laws by the Borrower; (B) the acknowledgment in writing by the Borrower that it is unable to pay its debts generally as they mature; (C) the making of a general assignment for the benefit of creditors by the Borrower; (D) the commencement of an involuntary case under one or more Insolvency Laws against the Borrower; or (E) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over the Borrower or any substantial part of the assets of the Borrower provided that any proceeding or case under (D) or (E) above is not dismissed within 90 days after filing;
- (ii) Any Guarantor or any Affiliate of a Guarantor files an involuntary petition against Borrower under one or more of the Insolvency Laws; or

(iii) Both (A) an involuntary petition under any one or more of the Insolvency Laws is filed against Borrower or Borrower directly or indirectly becomes the subject of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or in equity, and (B) Borrower or any Affiliate of Borrower has acted in concert or conspired with such creditors of Borrower (other than Lender) to cause the filing thereof with the intent to interfere with enforcement rights of Lender after the occurrence of an Event of Default.

(f) “Beneficiary Parties” means Lender, Servicer and their respective successors and assigns, together with any lawful owner, holder or pledgee of the Note.

(g) “Borrower” means all persons or entities identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

(h) “Borrower’s Organizational Documents” means, collectively: (i) the certificate of formation of Borrower filed with the Office of the Secretary of State of Delaware on March 17, 2016, as the same may be amended and/or restated from time to time; and (ii) the operating agreement of Borrower dated as of March 17, 2016, as the same may be amended and/or restated from time to time.

(i) “Business Day” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(j) “Closing Date” has the meaning ascribed thereto in the Loan Agreement.

(k) “Collateral Agreement” means any separate agreement between Borrower and Lender for the purpose of establishing tax, repair or replacement reserve or escrow accounts for the Mortgaged Property or granting Lender a security interest in any such accounts, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(l) “Collateral Assignments” means, collectively, (i) the Assignment of Construction Contract dated as of the date hereof by Borrower to Lender and any consents relating thereto, (ii) the Assignment of Architect’s Agreement and Plans and Specifications dated as of the date hereof by Borrower to Lender and any consents relating thereto, (iii) the Assignment of Project Documents dated as of the date hereof by Borrower to Lender, and (iv) the Assignment of Management, Maintenance, Service, Operating, Brokerage and Leasing Contracts dated as of the date hereof by Borrower to Lender.

(m) “Commitment” has the meaning ascribed thereto in the Loan Agreement.

(n) “Company Lease” shall mean that certain company lease agreement, dated as of June 1, 2021, by and between the Borrower and the Agency.

(o) "Credit Enhancer" means a government sponsored enterprise that at any time, directly or indirectly, purchases the Loan or provides credit enhancement with respect to the Loan.

(p) "Environmental Agreement" means that certain Agreement of Environmental Indemnification dated as of the date hereof by Borrower and Guarantor for the benefit of Beneficiary Parties.

(q) "Environmental Permit" means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(r) "Event of Default" means the occurrence of any event listed in Section 22.

(s) "First Construction Loan Mortgage" shall mean that certain First Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, in the amount of the First Construction Loan Note, made by Borrower and the Agency for the benefit of Lender.

(t) "First Construction Loan Note" shall mean that certain First Multifamily Construction Note, dated as of the date hereof, in the original maximum principal amount of \$1,932,744.00, made by Borrower and payable to Lender, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(u) "Fixtures" means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(v) "Governmental Authority" means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(w) "Guarantor" means collectively, GRAZIANO ZAZZARA, SR., an individual, GRAZIANO ZAZZARA, JR., an individual, and I. MICHAEL VELLA, an individual, or any other person or entity which may hereafter become a guarantor of any of Borrower's obligations under the Loan.

(x) "Hazardous Materials" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; radon; Mold; toxic or mycotoxin spores; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance (whether or not naturally occurring) now or in the future that (i) is defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "solid waste", "pesticide", "contaminant," or "pollutant", or otherwise classified as hazardous or toxic by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

(y) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, rule of common law (including, without limitation, nuisance and trespass), consent order, administrative rulings and court judgments and decrees or other government directive in effect now or in the future and including all amendments, that relate to Hazardous Materials or to the protection or conservation of the environment or human health and apply to Borrower or to the Mortgaged Property, including, without limitation, those relating to industrial hygiene, or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation, or remediation of Hazardous Materials. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, and their state analogs.

(z) "HFA" shall mean the New York State Housing Finance Agency.

(aa) "Impositions" and "Imposition Deposits" shall have the meanings ascribed thereto in Section 7.

(bb) "Improvements" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(cc) "Indebtedness" means collectively, the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument, and any fees or expenses paid by Lender on behalf of Borrower to Lender, or any other party for the Loan or other amounts relating to the Loan Documents which are paid by Lender;

(dd) "Initial Owners" means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note, directly or indirectly, own in the aggregate 100% of the ownership interests in Borrower or that entity.

(ee) "Insolvency Laws" means the United States Bankruptcy Code, 11 U.S.C. § 101, et seq., together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding, as amended from time to time, to the extent applicable to the Borrower.

(ff) "Land" means the land described in Exhibit A.

(gg) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals, excepting therefrom the Agency Leases.

(hh) "Lender" means the entity identified as "Lender" in the first paragraph of this Instrument, or any subsequent holder of the Note.

(ii) "Loan" means the loan made by Lender to Borrower in an amount not to exceed the original principal amount of the Note, which loan is evidenced by the Note and secured by, among other things, this Instrument.

(jj) "Loan Agreement" means that certain Construction and Project Loan Agreement dated as of the date hereof by and between Borrower and Lender relating to the Loan, as the same may be amended, modified or supplemented from time to time.

(kk) "Loan Documents" means collectively, the Loan Agreement, the Note, the First Construction Loan Note, the Second Construction Loan Note, this Instrument, the First Construction Loan Mortgage, the Second Construction Loan Mortgage, the Commitment, the Permanent Loan Commitment, the Environmental Agreement, all guaranties, all indemnity agreements, all Collateral Agreements, all Collateral Assignments, all O&M Programs, the MMP, and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the Loan, as such documents may be amended from time to time.

(ll) "Material Property Agreements" means any agreement which, in Lender's sole discretion, acting in good faith, materially affects the Mortgaged Property, the use thereof or otherwise materially affects the rights of Borrower or Beneficiary Parties in, to, and with respect to the Mortgaged Property or the proceeds therefrom, including, without limitation, each of the following: (i) the PILOT Agreement, (ii) all covenants, conditions and restrictions, including, without limitation, any declaration subjecting the Mortgaged Property to an association of owners or other community governance, (iii) any agreement regarding the abatement or exemption of real estate taxes, (iv) any easement pursuant to which the Mortgaged Property is granted access to a public right of way, (v) any material

lease of all or any portion of the Mortgaged Property, (vi) any operating agreements relating to the Land or the Improvements, and (vii) any regulatory agreements, declarations, land use restriction agreements or similar instruments affecting the Mortgaged Property including the operation or use thereof.

(mm) "Maturity Date" has the meaning ascribed thereto in the recitals to this Instrument.

(nn) "MMP" means an operations and maintenance plan, moisture management program and/or microbial operations and maintenance program approved by Lender to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property throughout the term of this Instrument. If required by Lender, the MMP shall contain a provision for (i) staff training, (ii) information to be provided to tenants, (iii) documentation of the plan, (iv) the appropriate protocol for incident response and remediation and (v) routine, scheduled inspections of common space and unit interiors.

(oo) "Mold" means mold, fungus, microbial contamination or pathogenic organisms.

(pp) "Mortgage Insurer" means SONYMA, REMIC or such other insurer of the mortgage lien created hereby, during such time as such insurer provides such insurance.

(qq) "Mortgaged Property" means all of Borrower's and Agency's present and future right, title and interest in and to all of the following, which, for the avoidance of doubt, does not include the Unassigned Rights, as that term is defined in the Agency Leases:

- (i) the Land;
- (ii) the Improvements;
- (iii) the Fixtures;
- (iv) the Personalty;
- (v) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (vi) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirements;

- (vii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (ix) all Rents and Leases;
- (x) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, whether the foregoing are now due, past due, or to become due, all undisbursed proceeds of the loan secured by this Instrument, deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (xi) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
- (xii) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits;
- (xiii) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;
- (xiv) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether now existing or hereafter created; and
- (xv) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds, and all other cash and non-cash proceeds and products of any of the foregoing.

(rr) "Note" means that certain First Multifamily Project Note dated as of the date of this Instrument, executed and delivered by the Borrower, payable to Lender in an amount not to exceed the original maximum principal amount of the Loan set forth in the recitals to this Instrument, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(ss) "O&M Program" has the meaning ascribed thereto in Section 18(d).

(tt) "Permanent Loan Commitment" has the meaning ascribed thereto in the Loan Agreement.

(uu) "Permitted Encumbrances" means any easements, encumbrances or restrictions listed on the schedule of exceptions in the title insurance policy issued to Lender as of the date of recordation of this Instrument insuring Lender's interest in the Mortgaged Property, together with the First Construction Loan Mortgage, the Second Construction Loan Mortgage, and the Second Project Loan Mortgage.

(vv) "Permitted Transfer" has the meaning ascribed thereto in Section 21(b).

(ww) "Person" shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(xx) "Personalty" means all:

- (i) accounts (including deposit accounts) of Borrower related to the Mortgaged Property;
- (ii) Imposition Deposits;
- (iii) equipment, goods, supplies and inventory owned by Borrower that are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements (other than Fixtures), including furniture, furnishings, machinery, building materials, tools, books, records (whether in written or electronic form), computer equipment (hardware and software);
- (iv) other tangible personal property owned by Borrower which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or in the Improvements (other than Fixtures), including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances;
- (v) any operating agreements relating to the Land or the Improvements;

- (vi) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;
- (vii) documents, instruments, chattel paper, claims, deposits, deposit accounts, payment intangibles, other intangible property, general intangibles, and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a governmental authority; and
- (viii) any rights of Borrower in or under letters of credit.

(yy) "PILOT Agreement" shall mean that certain payment in lieu of taxes agreement dated as of June 1, 2021 by and among the Agency and Borrower.

(zz) "Project" means that multifamily mixed-use project with twenty-four (24) residential units, approximately 1,813 square feet of commercial space and covered parking known as 444 East Genesee Street, and located in the City of Syracuse, Onondaga County, New York.

(aaa) "Property Jurisdiction" means the State of New York.

(bbb) "Rental Achievement Requirement" means legally collectible rents at least equal to (i) \$304,243.00 annually in respect of residential units, (ii) \$18,630.00 annually in respect of commercial units, or such higher amount as shall be sufficient to provide coverage of not less than one hundred twenty-five percent (125%) of the Loan and the loan secured by the First Construction Loan Mortgage combined. Such coverage shall mean the ratio of net collectible rents (assuming vacancy and collection loss), less building operating expenses divided by the debt service (including mortgage insurance premiums and loan servicing fees) and shall be based on the most current actual maintenance and operation expenses as adjusted for projected inflation during the two-year lease period following rent setting and as documented to the satisfaction of Lender at the time rents are established.

(ccc) "Rents" means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract or similar agreements), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants, excepting therefrom any monies due the Agency under the Agency Leases.

(ddd) "Second Construction Loan Mortgage" shall mean that certain Second Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, in the amount of the Second Construction Loan Note, made by Borrower and the Agency for the benefit of Lender.

(eee) "Second Construction Loan Note" shall mean that certain Second Multifamily Construction Note, dated as of the date hereof, in the original maximum principal amount of \$1,866,464.00, made by Borrower and payable to Lender.

(fff) "Servicer" means the servicing party that is designated by Lender to service the Loan, together with its successors in such capacity.

(ggg) "SONYMA" means the State of New York Mortgage Agency or any successor agency or entity.

(hhh) "Taxes" means, collectively, all taxes or payments in lieu thereof, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(iii) "Transfer" means (i) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (ii) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (iii) the issuance or other creation of a direct or indirect ownership interest; or (iv) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

(jjj) "United States Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

## 2. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file any and all financing statements, continuation statements and financing statement amendments, in such form as Lender may require to perfect or continue the perfection of this security interest without execution by Borrower. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

(b) Unless Borrower gives at least thirty (30) days' prior written notice to Lender and subject to Section 21 hereof, Borrower shall not: (i) change its name, identity, or structure of organization; (ii) change its state of organization through dissolution, merger, transfer of assets or otherwise; (iii) change its principal place of business (or chief executive office if more than one place of business); or (iv) add to or change any location at which any of the Mortgaged Property is stored, held or located. Such notice shall be accompanied by new financing statements and/or financing statement amendments in the same form as the financing statements delivered to Lender on the date hereof. Without limiting the foregoing, Borrower hereby authorizes and irrevocably appoints Lender and each of its officers attorneys-in-fact for Borrower to execute, deliver, and file, as applicable, such financing statements, continuation statements or amendments deemed necessary by Lender in its sole discretion for and on behalf of Borrower, without execution by Borrower. Borrower shall also execute and deliver to Lender modifications or supplements of this Instrument as Lender may require in connection with any change described in this Section.

**3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments of Rents as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with

respect to Rents under this Instrument. Upon the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid (such license shall be reinstated upon Borrower's cure of the Event of Default to the satisfaction of Lender). Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the occurrence of an Event of Default, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the right of Lender to collect, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the Loan), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month's rent). Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month's rent).

(d) If an Event of Default has occurred and is continuing, Lender may, but shall in no event be required, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted

by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, except for the gross negligence or willful misconduct of Lender or its agents.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

#### **4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property

Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower and Agency that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Unless an Event of Default has occurred and is continuing, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. During the continuance of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property, except to the extent arising from the gross negligence or willful misconduct of Lender. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time during the continuance of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall (i) be on forms approved by Lender, (ii) be for initial terms of at least one (1)

year and not more than two (2) years, (iii) not include options to purchase, (iv) be legally valid, binding, and enforceable obligations of the tenants, (v) contain language expressly stating that such Lease is subordinate to the lien of this Instrument and (vi) comply with all applicable laws.

(f) Except for laundry facilities and cable television services for tenants on market terms and conditions, Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance (other than a security deposit not in excess of one month's rent).

(h) The Borrower agrees that it will not agree with any person to accept rent in an amount below the maximum rent permitted by law for any rent-regulated apartment at the Mortgaged Property, without, in each instance, the prior written consent of the Lender.

(i) Intentionally Omitted.

(j) All residential rentals and Lease renewals will be subject to all applicable rules and regulations of HCR ("HCR Regulations").

(k) Intentionally Omitted.

(l) The Borrower agrees to use its best efforts to lease the Mortgaged Property so as to attain and maintain the Rental Achievement Requirement.

**5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.** Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents.

6. **EXCULPATION.** The personal liability of Borrower for payment of the Note and for performance of the other obligations to be performed by Borrower under this Instrument is limited in the manner, and to the extent, provided in the Note.

7. **PAYMENT OF TAXES, INSURANCE AND OTHER CHARGES.**

(a) Borrower shall pay directly to the appropriate public office of insurance company, until the Indebtedness is paid in full, the entire sum required to pay, when due (i) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (ii) the premiums for fire and other hazard insurance, rental loss insurance and such other insurance as Lender may require under Section 19, (iii) Taxes, and (iv) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests. The obligations of Borrower for which the payments referenced above are required are collectively referred to in this Instrument as "Impositions".

(b) On or before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower shall, if required by Lender, provide Lender with proof of payment of each such Imposition. Lender may, at any time and in Lender's discretion require Borrower to deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due, the Impositions, as reasonably estimated from time to time by Lender plus one-twelfth of such estimate (the "Imposition Deposits").

8. **COLLATERAL AGREEMENTS.** Borrower shall deposit with Lender such amounts as may be required by the Loan Agreement and any Collateral Agreement and shall perform all other obligations of Borrower under the Loan Agreement and each Collateral Agreement.

9. **APPLICATION OF PAYMENTS.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. **COMPLIANCE WITH LAWS.** Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, disability accommodation, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the

maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

11. **USE OF PROPERTY.** Unless required by applicable law, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, except for any change in use approved by Lender, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate a change in the zoning classification of the Mortgaged Property or acquiesce in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property; (e) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, or (f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender.

12. **PROTECTION OF LENDER'S SECURITY; INSTRUMENT SECURES FUTURE ADVANCES.**

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document after the expiration of any applicable notice and cure period, or if any action or proceeding (including a Bankruptcy Event) is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (i) payment of fees, expenses and reasonable fees of attorneys, accountants, inspectors and consultants, (ii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iii) procurement of the insurance required by Section 19 (specifically including, without limitation, flood insurance if required by Section 19), and (iv) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be secured by this Instrument, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Note.

(c) If the Lender shall elect to pay any sum due with reference to the Project or the Mortgaged Property, the Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by this Instrument and/or the other Loan Documents, the Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same.

(d) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

### 13. INSPECTION.

(a) Lender and its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests to the extent permitted under Section 18) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Borrower shall not be required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

(b) If Lender determines that Mold has developed as a result of a water intrusion event or leak, Lender, at Lender's discretion, may require that a professional inspector inspect the Mortgaged Property as frequently as Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Lender's satisfaction. Such inspection shall be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower shall be responsible for the cost of such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold, water intrusion or leaks is remedied to Lender's satisfaction, Lender shall not require a professional inspection any more frequently than once every three years unless Lender is otherwise aware of Mold as a result of a subsequent water intrusion event or leak.

(c) If Lender determines not to conduct an annual inspection of the Mortgaged Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect: that Borrower represents and warrants that Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities regarding odors, indoor air quality, Mold or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property, or if Borrower has received any such written complaint, notice, letter or other written communication, that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the MMP for the Mortgaged Property. If

Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

**14. BOOKS AND RECORDS; FINANCIAL REPORTING.**

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender upon reasonable advance oral notice.

- (b) Borrower shall furnish to Lender all of the following:
- (i) (1) except as provided in clause (2) below, within 45 days after the end of each fiscal quarter of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each fiscal quarter, (2) within 120 days after the end of each fiscal year of Borrower, (A) a statement of income and expenses for Borrower's operation of the Mortgaged Property for such fiscal year, (B) a statement of changes in financial position of Borrower relating to the Mortgaged Property for such fiscal year, and (C) when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of such fiscal year; and (3) any of the foregoing at any other time upon Lender's request;
  - (ii) Within 45 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
  - (iii) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
  - (iv) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all

owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;

- (v) upon Lender's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender;
- (vi) upon Lender's request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year; and
- (vii) if required by Lender, within 30 days of the end of each calendar month, a monthly statement of income and expenses for such calendar month on a year-to-date basis for Borrower's operation of the Mortgaged Property.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower and shall be in such form and contain such detail as Lender may require. Lender also may require that any statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

## 15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes and/or PILOT payments when due and before the imposition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall pay (i) the expenses of operating, managing, maintaining and repairing the Mortgaged Property

(including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

(c) If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits, to the extent Lender is collecting same, without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly furnish to Lender on or before the date this Instrument requires such Impositions to be paid, copies of receipts evidencing that such payments were made.

(f) All payments made by Borrower to Lender pursuant to this Instrument or any of the Loan Documents shall be free and clear of any and all tax liabilities whatsoever (other than United States federal income taxation payable by Lender) and, to the extent Lender is required to pay any such tax liabilities, Borrower shall reimburse Lender in respect of any such payment of taxes and, immediately upon request from Lender, shall deliver to Lender copies of receipts evidencing the payment of such taxes.

16. **LIENS; ENCUMBRANCES.** Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Instrument and the Permitted Encumbrances) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "Transfer" which constitutes an Event of Default and subjects Borrower to personal liability under the Note. Borrower shall maintain the lien created by this Instrument as a third mortgage lien upon the Mortgaged Property, subject to no other Liens or encumbrances other than Permitted Encumbrances.

17. **PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.**

(a) Borrower shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Borrower shall not abandon the Mortgaged Property.

(c) Borrower shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair.

(d) Borrower shall keep the Mortgaged Property in good repair (normal wear and tear excepted), including the replacement of Personalty and Fixtures with items of equal or better function and quality.

(e) Borrower shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender at all times, under a contract approved by Lender, in writing, which contract must be terminable upon not more than thirty (30) days notice without the necessity of establishing cause and without payment of a penalty or termination fee by Borrower or its successors. There shall be no change in the property manager or any contract for the management of the Mortgaged Property without Lender's prior written approval. Lender shall have the right to require that Borrower and any new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. "Affiliate of Borrower" means any Person controlled by, under common control with, or which controls Borrower (the term "control" for these purposes means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(f) Borrower shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except (i) in connection with the replacement of tangible Personalty and (ii) repairs and replacements in connection with making an individual unit ready for a new occupant.

(g) Unless otherwise waived by Lender in writing, Borrower must have or must establish and must adhere to the MMP. If Borrower is required to have an MMP, Borrower must keep all MMP documentation at the Mortgaged Property or at the management agent's office and available for Lender or its agents to review during any annual assessment or inspection of the Mortgaged Property that is required by Lender.

#### 18. ENVIRONMENTAL HAZARDS.

(a) Except for matters described in Section 18(b), Borrower shall not cause or permit any of the following:

- (i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property;
- (ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties);
- (iii) any occurrence or condition on the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;
- (iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property;
- (v) the imposition of any environmental lien against the Mortgaged Property; or
- (vi) any violation or noncompliance with the terms of any O&M Program.

The matters described in clauses (i) through (vi) above, except as otherwise provided in Section 18(b), are referred to collectively in this Section 18 as "Prohibited Activities or Conditions".

(b) Prohibited Activities or Conditions shall not include lawful conditions permitted by an O&M Program or the safe and lawful use and storage of quantities of (i) pre-packaged supplies, cleaning materials, petroleum products, household products, paints, solvents, lubricants and other materials customarily used in the construction, renovation, operation, maintenance or use of comparable multifamily and mixed use properties, (ii) cleaning materials, household products, personal grooming items and other items sold in

pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (iii) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If and as required by Lender, Borrower shall also establish a written operations and maintenance program with respect to certain Hazardous Materials. Each such operations and maintenance program and any additional or revised operations and maintenance programs established for the Mortgaged Property pursuant to this Instrument must be approved by Lender and shall be referred to herein as an "O&M Program." Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with each O&M Program. Borrower shall pay all costs of performance of Borrower's obligations under any O&M Program, and any Beneficiary Party's out-of-pocket costs incurred by such Beneficiary Party in connection with the monitoring and review of each O&M Program and Borrower's performance shall be paid by Borrower upon demand by such Beneficiary Party. Any such out-of-pocket costs of such Beneficiary Party which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Without limitation of the foregoing, (i) Borrower hereby agrees to implement and maintain during the entire term of the Loan the O&M Program(s) described in that certain Borrower's Certificate and Agreement dated as of the date hereof, and (ii) if asbestos-containing materials are found to exist at the Mortgaged Property, the O&M Program with respect thereto shall be undertaken consistent with the Guidelines for Controlling Asbestos-Containing Materials in Buildings (USEPA, 1985) and other relevant guidelines and applicable Hazardous Materials Laws.

(f) With respect to any O&M Program, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify; (ii) amendments to such O&M Program to address changing circumstances, laws or other matters, including, without limitation, variations in response to reports provided by environmental consultants; and (iii) execution of an Operations and Maintenance Agreement relating to such O&M Program satisfactory to Lender.

(g) Borrower represents and warrants to Beneficiary Parties that, except as otherwise disclosed in the Environmental Reports (as defined in the Environmental Agreement):

- (i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (ii) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed, and Borrower has provided Lender with copies of all reports and information acquired in such inquiries;
- (iii) the Mortgaged Property does not now contain any underground storage tanks, and, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been disclosed in Exhibit A to the Environmental Agreement, that tank complies with all requirements of Hazardous Materials Laws;
- (iv) Borrower has complied with and will continue to comply with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (v) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit or Hazardous Materials Law;
- (vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition;
- (vii) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (viii) no prior Remedial Work (as defined below) has been undertaken, and no Remedial Work is ongoing, with respect to the Mortgaged Property during Borrower's ownership thereof or, to the best of Borrower's knowledge, at any time prior to Borrower's ownership thereof; and

- (ix) Borrower has disclosed in the Environmental Agreement all material facts known to Borrower or contained in Borrower's records the nondisclosure of which could cause any representation or warranty made herein or any statement made in the Environmental Agreement to be false or materially misleading.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until the Indebtedness has been paid in full or otherwise discharged.

(h) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (i) Borrower's discovery of any Prohibited Activity or Condition;
- (ii) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (iii) Borrower's receipt of or knowledge of any personal injury claim, proceeding or cause of action directly or indirectly arising as a result of the presence of asbestos or other hazardous materials on or from the Mortgaged Property;
- (iv) Borrower's discovery that any representation or warranty in this Section 18 has become untrue after the date of this Instrument; and
- (v) Borrower's breach of any of its obligations under this Section 18.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(i) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("Environmental Inspections") required by Lender or any Beneficiary Party in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including, without limitation, fees and expenses of attorneys, expert witnesses, engineers, technical consultants and investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain

the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with such Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(j) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with or cure a violation of any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower shall, by the earlier of (i) the applicable deadline required by such Hazardous Materials Law or (ii) thirty (30) days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by such Hazardous Materials Law. Borrower shall promptly provide Lender with a cost estimate from an environmental consultant acceptable to Lender to complete any required Remedial Work. If required by Lender, Borrower shall promptly establish with Lender a reserve fund in the amount of such estimate. If in Lender's opinion the amount reserved at any time during the Remedial Work is insufficient to cover the work remaining to complete the Remediation or achieve compliance, Borrower shall increase the amount reserved in compliance with Lender's written request. All amounts so held in reserve, until disbursed, are hereby pledged to Lender as security for payment of Borrower's obligations under this Instrument. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(k) Borrower shall comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Borrower shall (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (ii) cooperate with

any inquiry by any Governmental Authority; and (iii) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(1) BORROWER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND BENEFICIARY PARTIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, EMPLOYEES, AGENTS, ATTORNEYS, TRUSTEES, HEIRS AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST ALL LOSSES, PROCEEDINGS, CLAIMS, DAMAGES, PENALTIES AND COSTS (WHETHER INITIATED OR SOUGHT BY GOVERNMENTAL AUTHORITIES OR PRIVATE PARTIES), INCLUDING, WITHOUT LIMITATION, FEES AND OUT-OF-POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, ENGINEERING FEES, ENVIRONMENTAL CONSULTANT FEES, INVESTIGATORY FEES, AND REMEDIATION COSTS (INCLUDING, WITHOUT LIMITATION, ANY FINANCIAL ASSURANCES REQUIRED TO BE POSTED FOR COMPLETION OF REMEDIAL WORK AND COSTS ASSOCIATED WITH ADMINISTRATIVE OVERSIGHT), AND ANY OTHER LIABILITIES OF WHATEVER KIND AND WHATEVER NATURE, WHETHER INCURRED IN CONNECTION WITH ANY JUDICIAL OR ADMINISTRATIVE PROCESS OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY FROM ANY OF THE FOLLOWING:

- (i) ANY BREACH OF ANY REPRESENTATION OR WARRANTY OF BORROWER IN THIS SECTION 18;
- (ii) ANY FAILURE BY BORROWER TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS SECTION 18;
- (iii) THE EXISTENCE OR ALLEGED EXISTENCE OF ANY PROHIBITED ACTIVITY OR CONDITION;
- (iv) THE PRESENCE OR ALLEGED PRESENCE OF HAZARDOUS MATERIALS ON OR UNDER THE MORTGAGED PROPERTY (WHETHER AS A RESULT OF ACTIVITIES ON THE MORTGAGED PROPERTY OR ON SURROUNDING PROPERTIES) OR IN ANY OF THE IMPROVEMENTS OR ON OR UNDER ANY PROPERTY OF BORROWER THAT IS ADJACENT TO THE MORTGAGED PROPERTY;
- (v) THE ACTUAL OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW;
- (vi) ANY LOSS OR DAMAGE RESULTING FROM A LOSS OF PRIORITY OF THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT DUE TO AN IMPOSITION OF AN ENVIRONMENTAL LIEN AGAINST THE MORTGAGED PROPERTY; AND

(vii) ANY PERSONAL INJURY CLAIM, PROCEEDING OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING AS A RESULT OF THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS ON OR FROM THE MORTGAGED PROPERTY.

(m) COUNSEL SELECTED BY BORROWER TO DEFEND INDEMNITEES SHALL BE SUBJECT TO THE APPROVAL OF THOSE INDEMNITEES. IN ANY CIRCUMSTANCES IN WHICH THE INDEMNITY UNDER THIS SECTION 18 APPLIES, ANY BENEFICIARY PARTY MAY EMPLOY ITS OWN LEGAL COUNSEL AND CONSULTANTS TO PROSECUTE, DEFEND OR NEGOTIATE ANY CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING AT BORROWER'S EXPENSE, AND SUCH BENEFICIARY PARTY, WITH THE PRIOR WRITTEN CONSENT OF BORROWER (WHICH SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED) MAY SETTLE OR COMPROMISE ANY ACTION OR LEGAL OR ADMINISTRATIVE PROCEEDING. BORROWER SHALL REIMBURSE SUCH BENEFICIARY PARTY UPON DEMAND FOR ALL COSTS AND EXPENSES INCURRED BY SUCH BENEFICIARY PARTY, INCLUDING, WITHOUT LIMITATION, ALL COSTS OF SETTLEMENTS ENTERED INTO IN GOOD FAITH, AND THE FEES AND OUT OF POCKET EXPENSES OF SUCH ATTORNEYS AND CONSULTANTS.

(n) BORROWER SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THOSE INDEMNITEES WHO ARE NAMED AS PARTIES TO A CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING (A "CLAIM"), SETTLE OR COMPROMISE THE CLAIM IF THE SETTLEMENT (1) RESULTS IN THE ENTRY OF ANY JUDGMENT THAT DOES NOT INCLUDE AS AN UNCONDITIONAL TERM THE DELIVERY BY THE CLAIMANT OR PLAINTIFF TO BENEFICIARY PARTIES OF A WRITTEN RELEASE OF THOSE INDEMNITEES, SATISFACTORY IN FORM AND SUBSTANCE TO LENDER; OR (2) MAY MATERIALLY AND ADVERSELY AFFECT BENEFICIARY PARTIES, AS DETERMINED BY LENDER IN ITS DISCRETION.

(o) BORROWER'S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL NOT BE LIMITED OR IMPAIRED BY ANY OF THE FOLLOWING, OR BY ANY FAILURE OF BORROWER OR ANY GUARANTOR TO RECEIVE NOTICE OF OR CONSIDERATION FOR ANY OF THE FOLLOWING:

- (i) ANY AMENDMENT OR MODIFICATION OF ANY LOAN DOCUMENT;
- (ii) ANY EXTENSIONS OF TIME FOR PERFORMANCE REQUIRED BY ANY LOAN DOCUMENT;
- (iii) ANY PROVISION IN ANY LOAN DOCUMENT LIMITING BENEFICIARY PARTIES' RECOURSE TO PROPERTY SECURING THE INDEBTEDNESS, OR LIMITING THE

PERSONAL LIABILITY OF BORROWER OR ANY OTHER PARTY FOR PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS;

- (iv) THE ACCURACY OR INACCURACY OF ANY REPRESENTATIONS AND WARRANTIES MADE BY BORROWER UNDER THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT;
- (v) THE RELEASE OF BORROWER OR ANY OTHER PERSON, BY BENEFICIARY PARTIES OR BY OPERATION OF LAW, FROM PERFORMANCE OF ANY OBLIGATION UNDER ANY LOAN DOCUMENT;
- (vi) THE RELEASE OR SUBSTITUTION IN WHOLE OR IN PART OF ANY SECURITY FOR THE INDEBTEDNESS; AND
- (vii) FAILURE BY BENEFICIARY PARTIES TO PROPERLY PERFECT ANY LIEN OR SECURITY INTEREST GIVEN AS SECURITY FOR THE INDEBTEDNESS.

(p) BORROWER SHALL, AT ITS OWN COST AND EXPENSE, DO ALL OF THE FOLLOWING:

- (i) PAY OR SATISFY ANY JUDGMENT OR DECREE THAT MAY BE ENTERED AGAINST ANY INDEMNITEE OR INDEMNITEES IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING INCIDENT TO ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18;
- (ii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES PAID OR INCURRED IN CONNECTION WITH ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18; AND
- (iii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES, INCLUDING, WITHOUT LIMITATION, FEES AND OUT OF POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, PAID OR INCURRED IN CONNECTION WITH THE ENFORCEMENT BY INDEMNITEES OF THEIR RIGHTS UNDER THIS SECTION 18, OR IN MONITORING AND PARTICIPATING IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING.

(q) THE PROVISIONS OF THIS SECTION 18 SHALL BE IN ADDITION TO ANY AND ALL OTHER OBLIGATIONS AND LIABILITIES THAT BORROWER MAY HAVE UNDER APPLICABLE LAW OR UNDER ANY OTHER LOAN

DOCUMENT, AND EACH INDEMNITEE SHALL BE ENTITLED TO INDEMNIFICATION UNDER THIS SECTION 18 WITHOUT REGARD TO WHETHER ANY OTHER BENEFICIARY PARTY OR THAT INDEMNITEE HAS EXERCISED ANY RIGHTS AGAINST THE MORTGAGED PROPERTY OR ANY OTHER SECURITY, PURSUED ANY RIGHTS AGAINST ANY GUARANTOR, OR PURSUED ANY OTHER RIGHTS AVAILABLE UNDER THE LOAN DOCUMENTS OR APPLICABLE LAW. IF BORROWER CONSISTS OF MORE THAN ONE PERSON OR ENTITY, THE OBLIGATION OF THOSE PERSONS OR ENTITIES TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18 SHALL BE JOINT AND SEVERAL. THE OBLIGATION OF BORROWER TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18 SHALL SURVIVE ANY REPAYMENT OR DISCHARGE OF THE INDEBTEDNESS, ANY FORECLOSURE PROCEEDING, ANY FORECLOSURE SALE, ANY DELIVERY OF ANY DEED IN LIEU OF FORECLOSURE, AND ANY RELEASE OF RECORD OF THE LIEN OF THIS INSTRUMENT.

**19. PROPERTY AND LIABILITY INSURANCE.**

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, business income coverage and extra expense insurance, coverage against acts of terrorism, mold and earthquake coverage. Borrower acknowledges and agrees that Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any portion of the Improvements is at any time located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area now or hereafter having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood in an amount equal to the maximum amount available under the National Flood Insurance Program or any successor thereto.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require consistent with Lender's then current practices and standards, and shall be issued by insurance companies satisfactory to Lender.

(d) During any period of construction and/or rehabilitation, and at all times prior to occupancy of the Project by any tenants following the completion of the construction and/or rehabilitation of the Project in accordance with the Loan Agreement, the following provisions shall apply, in addition to the other provisions of this Section 19 and without limiting the generality of the other provisions of this Section 19:

(i) Borrower shall provide (or cause to be provided), maintain and keep in force, the following insurance coverage:

(A) Builder's "all risk" insurance or the equivalent coverage, including theft, to insure all buildings, machinery, equipment, materials, supplies, temporary structures and all other property of any nature on-site, off-site and while in transit which is to be used in fabrication, erection, installation and construction and/or rehabilitation of the Project, and to remain in effect until the entire Project has been completed and accepted by Borrower and is first occupied by any tenants (provided that in any event, such coverage shall remain in effect until such time as Borrower has provided Lender with evidence of property insurance covering the Improvements and meeting the requirements of this Section 19). Such insurance shall be provided on a replacement cost value basis and shall include foundations, other underground property, tenant improvements and personal property. If tenant improvements and personal property are not included in the above coverage, they may be insured separately by Borrower provided coverage is acceptable to Lender. Builders "all risk" insurance shall (i) be on a nonreporting, completed value form, (ii) cover soft costs, debris removal expense (including removal of pollutants), resulting loss and damage to property due to faulty or defective workmanship or materials and error in design or specification, loss while the property is in the care, custody and control of others to whom the property may be entrusted, (iii) provide that Borrower can complete and occupy the Mortgaged Property without further written consent from the insurer, and (iv) cover loss of income resulting from delay in occupancy and use of the Mortgaged Property due to loss. During the initial construction and/or rehabilitation of the Project and until such time as the Project is first occupied by any tenants, the Borrower shall not be required to maintain property insurance as required by this

Section 19 for so long as Builder's "all risk" insurance or equivalent coverage is maintained in accordance with this paragraph.

(B) If any portion of the Mortgaged Property is or becomes located in an area identified by the United States Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, as amended, Borrower shall also keep the improvements and the equipment located thereon insured against loss by flood in an amount at least equal to the principal amount of the Loan or the maximum limits of coverage available with respect to the Mortgaged Property, whichever is less. All such insurance shall also cover continuing expenses not directly involved in the direct cost of construction, rehabilitation or renovation, including interest on money borrowed to finance construction, rehabilitation or renovation, continuing interest on the Loan, advertising, promotion, real estate taxes and other assessments, the cost of renegotiating leases, and other expenses incurred as the result of property loss or destruction by the insured peril. Such coverage shall not contain any monthly limitation.

(ii) If Lender fails to receive proof and evidence of the insurance required hereunder, Lender shall have the right, but not the obligation, to obtain or cause to be obtained current coverage and to make a Disbursement, as defined by the Loan Agreement (or, in its sole discretion, advance funds) to pay the premiums for it. If Lender makes an advance for such purpose, Borrower shall repay such advance immediately on demand and such advance shall be considered to be a demand loan to Borrower bearing interest at the Default Rate (as defined by the Note) and secured by the Mortgaged Property.

(e) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require, consistent with Lender's then current practices and standards.

(f) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(g) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as

attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (i) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration"), or (ii) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall apply the proceeds in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily and mixed use properties.

(h) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration (and complete construction of the Project in accordance with the Loan Agreement and the Plans and Specifications, as defined therein, if such construction has not been completed at such time); (iii) Lender determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (iv) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (v) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained pursuant to this Instrument.

(i) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(j) Unless Lender otherwise agrees in writing, any application of any insurance proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments, except as provided in the Note.

(k) Borrower agrees to execute such further evidence of assignment of any insurance proceeds as Lender may require.

(l) Borrower further agrees that to the extent that Borrower obtains any form of property damage insurance for the Mortgaged Property or any portion thereof that

insures perils not required to be insured against by Lender, such policy of property damage insurance shall include a standard mortgagee clause and shall name Lender as loss payee and, within ten (10) days following Borrower's purchase of such additional insurance, Borrower shall cause to be delivered to Lender a duplicate original policy of insurance with respect to such policy. Any insurance proceeds payable to Borrower under such policy shall be additional security for the Indebtedness and Lender shall have the same rights to such policy and proceeds as it has with respect to insurance policies required by Lender pursuant to this Section 19 (except that Lender shall not require that the premium for such additional insurance be included among the Imposition Deposits).

(m) If Lender fails to receive proof and evidence of the insurance required hereunder, Lender shall have the right, but not the obligation, to obtain or cause to be obtained current coverage and to pay the premiums for it. If Lender makes a payment for such purpose, Borrower shall repay same immediately on demand and such payment shall be considered to be a demand loan to Borrower bearing interest at the Default Rate (as defined by the Note) and secured by the Mortgaged Property.

## 20. CONDEMNATION.

(a) Borrower shall promptly notify Lender in writing of any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"), and shall deliver to the Lender copies of any and all papers served in connection with such Condemnation. Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts (including, without limitation, fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise), at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness in accordance with the provisions of the Note as to application of payments to the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of payments due under the Note, Section 7 of this Instrument or any Collateral Agreement or any other Loan Document, or change the amount of such payments, except as otherwise provided in the Note. Borrower agrees to

execute such further evidence of assignment of any awards or proceeds as Lender may require.

**21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.**

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

- (i) other than the lien of this Instrument and the Permitted Encumbrances, a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (ii) a Transfer of any interest in Borrower;
- (iii) a Transfer of any interest in any entity which owns, directly or indirectly through one or more intermediate entities, any interest in Borrower;
- (iv) a Transfer of all or any part of a Guarantor's ownership interests in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower;
- (v) if Guarantor is an entity, (A) a Transfer of any interest in Guarantor, or (B) a Transfer of any interest in any entity which owns, directly or indirectly through one or more intermediate entities, any interest in Guarantor;
- (vi) if Borrower or Guarantor is a trust, the termination or revocation of such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Guarantor must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);
- (vii) if Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);
- (viii) the merger, dissolution, liquidation, or consolidation of (i) Borrower, (ii) any Guarantor that is a legal entity, or (iii) any legal entity holding, directly or indirectly, any interest in Borrower or in

any Guarantor that is an entity;

- (ix) a conversion of Borrower from one type of legal entity into another type of legal entity (including the conversion of a general partnership into a limited partnership and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer; if such conversion results in a change in any assets, liabilities, legal rights or obligations of Borrower (or of any Guarantor, or any general partner of Borrower, as applicable), by operation of law or otherwise;
- (x) a Transfer of the economic benefits or right to cash flows attributable to the ownership interests in Borrower and/or, if Guarantor is an entity, Guarantor, separate from the Transfer of the underlying ownership interests, unless the Transfer of the underlying ownership interests would otherwise not be prohibited by this Instrument; and
- (xi) the filing, recording, or consent to filing or recording of any plat or map subdividing, replatting or otherwise affecting the Mortgaged Property or any other replat or subdivision of the Mortgaged Property, whether or not any such action affects the priority of the lien of this Instrument.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary (each, a "Permitted Transfer"):

- (i) a Transfer to which Lender has consented;
- (ii) except as provided in Section 21(a)(vi) and (vii), a Transfer that occurs by devise, descent, pursuant to the provisions of a trust, or by operation of law upon the death of a natural person;
- (iii) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (iv) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by or permitted pursuant to the Loan Documents or consented to by Lender;

- (v) the grant of an easement, servitude, or restrictive covenant if, before the grant, Lender determines that the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request;
- (vi) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 45 days after Borrower has actual or constructive notice of the existence of such lien;
- (vii) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument; and
- (viii) the termination of the Agency Leases pursuant to their respective terms.

(c) Lender shall consent to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (i) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (ii) the absence of any Event of Default;
- (iii) the transferee meets all of the eligibility, credit, management, and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgage finance structures on similar multifamily and mixed-use properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;
- (iv) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar multifamily and mixed-use properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;
- (v) if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more

individuals or entities acceptable to Lender of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender;

- (vi) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, Borrower causes one or more individuals or entities acceptable to Lender to execute and deliver to Lender a substitute guaranty in a form acceptable to Lender;
- (vii) Lender's receipt of all of the following:
  - (A) a non refundable review fee in the amount of \$3,000 and a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer; and
  - (B) Borrower's reimbursement of all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed \$3,000; and
- (viii) Borrower has agreed to Lender's conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Loan Documents to (i) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (ii) restore to original provisions of the standard Lender's form multifamily loan documents, to the extent such provisions were previously modified.

(d) Lender shall be provided with written notice of all Transfers under this Section 21, whether or not such Transfers are permitted under Section 21(b) or approved by Lender under Section 21(c), no later than 10 days prior to the date of the Transfer.

22. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

- (a) (i) any failure by Borrower to pay or deposit any payment of principal, interest, principal reserve fund deposit, any payment with a specified due date, or any other scheduled payment or deposit required by the Note, this Instrument or any other Loan Document when such payment or deposit is due or (ii) any failure by Borrower to pay or deposit any unscheduled payment or deposit, or other payment or deposit without a

specified due date, required by the Note, this Instrument or any other Loan Document, within five (5) days after written notice from Lender;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19;

(c) any failure by Borrower to comply with the provisions of Section 32;

(d) fraud or material misrepresentation or material omission by Borrower or Guarantor, any of their respective officers, directors, trustees, general partners, managing members, managers, agents or representatives in connection with (i) the application for the Loan, (ii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) any of Borrower's representations and warranties in this Instrument is false or misleading in any material respect;

(f) any Event of Default under Section 21;

(g) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

(h) any failure by Borrower to perform or comply with any of its obligations under this Instrument (other than those specified in this Section 22), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Lender to Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(i) any failure by Borrower or any Guarantor to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document;

(j) any exercise by the holder of any debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable;

- (k) the occurrence of a Bankruptcy Event;
- (l) any Event of Default (as defined in any of the Loan Documents), which continues beyond the expiration of any applicable cure period;
- (m) any breach of, or event of default under, any other document or agreement relating to the Loan to which Borrower is a party, which continues beyond the expiration of any applicable cure period thereunder;
- (n) the occurrence of any one or more of the following: (i) a breach or default under the Permanent Loan Commitment (as defined by the Loan Agreement), or (ii) prior to the closing of the Permanent Loan (as defined by the Loan Agreement) and repayment in full of the Indebtedness, the Permanent Loan Commitment is terminated, expires or otherwise fails to remain in full force and effect, or (iii) the Borrower fails to satisfy any of the conditions under the Permanent Loan Commitment for the closing of the Permanent Loan;
- (o) any amendment, modification, waiver or termination of any of the provisions of Borrower's Organizational Documents without the prior written consent of Lender, other than (i) modifications necessary to reflect the occurrence of a Permitted Transfer or (ii) modifications that do not: (A) impose any additional or greater obligations on Borrower or any of the partners, managers or members of Borrower, (B) reduce or relieve Borrower or any of the partners, managers or members of Borrower of any of their obligations, (C) modify the timing, amounts, number, conditions or other terms of the installments or other payment obligations of the partners or members of Borrower or (D) impair the collateral for the Loan; provided, however, that Borrower shall promptly provide to Lender a copy of any modifications to Borrower's Organizational Documents that do not require Lender's consent;
- (p) (i) any breach of any Material Property Agreement by Borrower or its officers, directors, employees, agents or tenants that continues beyond any applicable notice and cure period; (ii) any failure by Borrower or its officers, directors, employees or agents or any other party to deliver concurrently (in case of notices given) or promptly (in case of notices received) copies of any and all notices received or given thereby to Lender with respect to any Material Property Agreement; or (iii) any breach of the representations, warranties, or covenants set forth in the Borrower's Certificate and Agreement;
- (q) if Borrower or any Guarantor is a trust, the termination or revocation of any such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Guarantor must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged); or
- (r) if any Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of

such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged).

23. **REMEDIES CUMULATIVE.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. **FORBEARANCE.**

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. **WAIVER OF STATUTE OF LIMITATIONS.** BORROWER HEREBY WAIVES THE RIGHT TO ASSERT ANY STATUTE OF LIMITATIONS AS A BAR TO THE ENFORCEMENT OF THE LIEN OF THIS INSTRUMENT OR TO ANY ACTION BROUGHT TO ENFORCE ANY LOAN DOCUMENT.

26. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged

Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

27. **FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents. In furtherance thereof, on the request of Lender, Borrower shall re-execute or ratify any of the Loan Documents or execute any other documents or take such other actions as may be necessary to effect the assignment, pledge or other transfer of the Loan to any party that may purchase, insure, credit enhance or otherwise finance all or any part of the Loan, including, without limitation, any Credit Enhancer (including Freddie Mac or Fannie Mae), the U.S. Department of Housing and Urban Development, or any insurance company, conduit lender or any other lender or investor.

28. **ESTOPPEL CERTIFICATE.** Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

29. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the Property Jurisdiction.

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction - the state and federal courts and authorities with jurisdiction over the Mortgaged Property in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 29 is intended to limit Lender's right to bring any suit,

action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

30. **NOTICE.**

(a) All notices, demands and other communications (“notice”) under or concerning this Instrument shall be in writing, addressed as set forth below, and shall include a reference to “CPC Loan # 70664.” Each notice shall be deemed given on the earliest to occur of (i) the date when the notice is received by the addressee; (ii) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

If to the Borrower: 444 EAST GENESEE STREET LLC  
344 S. Warren Street  
Syracuse, New York 13202  
Attention: Graziano Zazzara, Jr.

and with a copy to: Michael Stanczyk, Esq.  
Lynn D’Elia Temes & Stanczyk LLC  
100 Madison Street  
Tower 1 – Suite 1905  
Syracuse, New York 13202

If to Lender: CPC Funding SPE 1 LLC  
c/o The Community Preservation Corporation  
220 East 42nd Street, 16th Floor  
New York, New York 10017  
Attention: Director of Portfolio Services  
Loan No.: 70664  
Facsimile: (212) 683-0737

With a copy to: CPC Funding SPE 1 LLC  
c/o The Community Preservation Corporation  
220 East 42nd Street, 16th Floor  
New York, New York 10017  
Attention: General Counsel  
Loan No.: 70664  
Facsimile: (212) 683-2909

If to the Agency: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

Bousquet Holstein PLLC  
One Lincoln Center, Suite 1000  
110 West Fayette Street, Suite 100  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 30. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 30, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 30 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document that does not specify how notices are to be given shall be given in accordance with this Section 30.

31. **CHANGE IN SERVICER.** If there is a change of the Servicer, Borrower will be given notice of the change.

32. **SINGLE ASSET BORROWER.** Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

33. **SUCCESSORS AND ASSIGNS BOUND.** This Instrument shall bind, and the rights granted by this Instrument shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower.

34. **JOINT AND SEVERAL LIABILITY.** If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

35. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person (other than a holder of the Note and Servicer) shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a "Servicing Arrangement") between Lender and any Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing

Arrangement, and (iii) no payment by Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

36. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought; provided, however, that in the event of a Transfer, any or some or all of the Modifications to this Instrument set forth in Exhibit B (if any) may be modified or rendered void by Lender at Lender's option by notice to Borrower or such transferee.

37. **CONSTRUCTION.** The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

38. **SERVICER.**

(a) Borrower further acknowledges that Lender may from time to time and in accordance with the terms of the Loan Agreement, appoint a Servicer or a replacement servicer to collect payments, escrows and deposits, to give and receive notices under the Note, this Instrument, or the other Loan Documents, and to otherwise service the Loan. Borrower hereby acknowledges and agrees that, unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by Servicer with the same force and effect, including, without limitation, the collection of payments, the giving of notice, the holding of escrows, inspection of the Mortgaged Property, inspections of books and records, the request for documents or information, and the granting of consents and approvals. Borrower further agrees that, unless Lender instructs Borrower to the contrary in writing, (i) any notices, books or records, or other documents or information to be delivered under this Instrument, the Note, or any other Loan Document shall also be simultaneously delivered to the Servicer at the address provided for notices to Servicer pursuant to Section 30 hereof, (ii) any payments to be made under the Note or for escrows under Section 7 of this Instrument or under any of the other Loan Documents shall be made to Servicer. In the event Borrower receives conflicting notices regarding the identity of the Servicer or any other subject, any such notice from Lender shall govern.

(b) Borrower further acknowledges and agrees that, for the purpose of determining whether a security interest is created or perfected under the Uniform Commercial Code of the Property Jurisdiction, any escrows or other funds held by Servicer pursuant to the Loan Documents shall be deemed to be held by Lender.

39. **DISCLOSURE OF INFORMATION.** Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Without limiting the generality of the foregoing, without notice to or the consent of Borrower, Lender may disclose to any title insurance company which insures any interest of Lender under this Instrument (whether as primary insurer, coinsurer or reinsurer) any information, data or material in its possession relating to Borrower, the Loan, the Improvements or the Mortgaged Property. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

40. **NO CHANGE IN FACTS OR CIRCUMSTANCES.** Borrower warrants that all information in Borrower's application for the Loan and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with Borrower's application for the Loan are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

41. **SUBROGATION.** If, and to the extent that, the proceeds of the Loan are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "Prior Lien"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

42. **FINANCING STATEMENT.** As provided in Section 2, this Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and for the purposes of such financing statement: (a) the Debtor shall be Borrower and the Secured Party shall be Lender; (b) the addresses of Borrower as Debtor and of Lender as Secured Party are as specified above in the first paragraph of this Instrument; (c) the name of the record owner is Borrower; (d) the types or items of collateral consist of any part of the Mortgaged Property which is or may become a Fixture; and (e) the organizational identification number of Borrower (if any) as Debtor is set forth on Exhibit C.

43. **ACCELERATION; REMEDIES.** If an Event of Default has occurred and is continuing, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may foreclose this Instrument by judicial or nonjudicial proceedings (including a nonjudicial foreclosure by power of sale in accordance with the provisions of any applicable law), shall be entitled to the appointment of a receiver, without notice, and may invoke any other remedies permitted by New York law or provided in this Instrument or in any other Loan Document. Lender may, at Lender's option, also foreclose this Instrument for any portion of the Indebtedness which is then due and payable, subject to the continuing lien of this Instrument for the balance of the Indebtedness. Lender shall be entitled to collect all costs and expenses allowed by New York law, including attorneys' fees, costs of documentary evidence, abstracts, title reports, statutory costs and any additional allowance made pursuant to Section 8303

of the Civil Practice Law and Rules. The rights and remedies of Lender specified in this Instrument shall be in addition to Lender's rights and remedies under New York law, specifically including Section 254 of the Real Property Law. In the event of any conflict between the provision of this Instrument and the provisions of Section 254 of the Real Property Law, the provisions of this Instrument shall control.

44. **SATISFACTION OF DEBT.** Upon the payment in full of the Indebtedness and termination of the Loan Agreement, Lender shall promptly discharge this Instrument.

45. **LIEN LAW.** Borrower will receive advances under this Instrument subject to the trust fund provisions of Section 13 of the Lien Law.

46. **MAXIMUM PRINCIPAL AMOUNT.** Notwithstanding any provision set forth in this Instrument to the contrary, the maximum amount of principal indebtedness secured by this Instrument at execution, or which under any contingency may become secured by this Instrument at any time hereafter, is US \$177,256 plus all interest payable under the Note and all amounts expended by Lender after an Event of Default (a) for the payment of taxes, charges or assessments which may be imposed by legal requirements upon the Mortgaged Property; (b) to maintain the insurance required under this Instrument; (c) for any expenses incurred in maintaining the Mortgaged Property and upholding the lien of this Instrument, including the expense of any litigation to prosecute or defend the rights and lien created by this Instrument; (d) protective advances; and (e) for any amount, cost or charge to which Lender becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority, together with interest on all of the foregoing amounts at the Default Rate (as defined in the Note).

47. **SECTION 291-f OF THE REAL PROPERTY LAW.** In addition to any other right or remedy contained in this Instrument or in any other Loan Document, Lender shall have all the rights against lessees of all or any part of the Mortgaged Property as are set forth in Section 291-f of the Real Property Law of New York.

48. **TRANSFER TAX PROVISIONS.** Borrower covenants and agrees that:

(a) in the event of a sale of the Mortgaged Property or other Transfer, Borrower will duly complete, execute and deliver to Lender, contemporaneously with the submission to the applicable taxing authority or recording officer, all forms and supporting documentation required by such taxing authority or recording officer to estimate and fix any and all applicable state and local real estate transfer taxes (collectively "Transfer Taxes") assessable by reason of such sale or other Transfer or recording of the deed evidencing such sale or other Transfer; and

(b) Borrower shall pay all Transfer Taxes that may hereafter become due and payable with respect to any Transfer, and if Borrower fails to pay or fails to cause to be paid any such Transfer Taxes, Lender may pay such Transfer Taxes and the amount of such payment shall be added to the Indebtedness and, unless incurred in connection with a foreclosure of this Instrument, be secured by this Instrument.

(c) The provisions of this Section shall survive any Transfer and the delivery of the deed in connection with any Transfer.

49. This Instrument does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six (6) residential dwelling units, each having their own separate cooking facilities.

50. **ATTACHED EXHIBITS.** The following Exhibits are attached to this Instrument and are incorporated by reference herein as if more fully set forth in the text hereof:

- Exhibit A Description of the Land.
- Exhibit B Modifications to Instrument.
- Exhibit C Financing Statement Information.
- Exhibit D HFA Participation Rider.

The terms of this Instrument are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Instrument, the terms of said Exhibits shall be controlling in all respects.

51. WAIVER OF TRIAL BY JURY.

**TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Instrument or caused this Instrument to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

**444 EAST GENESEE STREET LLC**  
a Delaware limited liability company

By:   
Name: Graziano Zazzara, Jr.  
Title: Manager

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

On May 26, 2021, before me, the undersigned, personally appeared Graziano Zazzara, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

**MICHAEL STANCZYK**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02ST6220670  
Qualified in Onondaga County  
Commission Expires April 19, 2022

**AGENCY:**

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY,  
a public benefit corporation

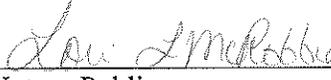
By:   
Name: Judith DeLaney  
Title: Executive Director

STATE OF NEW YORK )

) ss.:

COUNTY OF Orontaga )

On May 27, 2021, before me, the undersigned, personally appeared Judith DeLaney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) 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, 2022

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

## LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

Being the same premises conveyed by the City of Syracuse to Route 20/20, LLC by Warranty Deed dated June 7, 2006 and recorded in the Onondaga County Clerk's Office on March 5, 2007 in Book 4984 of Deeds at page 637.

BEING MORE MODERNLY DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

BEGINNING at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

thence S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

thence N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

thence N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

thence S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the POINT OF BEGINNING.

## EXHIBIT B

### MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. Section 22 of the Instrument is amended by adding the following at the end of such Section:

“(s) if an “Event of Default”, as therein defined, shall occur under the Agency Leases or PILOT Agreement, or any of the same are terminated, amended or modified without the written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.”

2. The following new Sections are added to the Instrument after the last numbered Section:

#### **52. TAX EXEMPTION OR ABATEMENT.**

(a) Borrower represents, warrants and covenants to Lender that the Mortgaged Property is expected to receive an abatement of real property taxes pursuant to New York State General Municipal Law Section 874 and New York State Real Property Tax Law Section 412-a (the “Tax Abatement”) upon terms and conditions contained in the PILOT Agreement.

(b) Borrower must file or cause to be filed on a timely basis all documentation necessary to maintain the Tax Abatement.

(c) Borrower must comply or cause compliance fully with the PILOT Agreement in order to obtain and maintain the Tax Abatement.

(d) Borrower shall promptly provide Lender with a copy of any notice Borrower may receive alleging that Borrower is in breach of the requirements of the PILOT Agreement or that the Mortgaged Property is not being maintained as required by the PILOT Agreement or the Agency Leases.

(e) In any application for a Transfer of the Mortgaged Property, any interest in the Mortgaged Property or any interest in Borrower, Borrower shall notify Lender if the completion of such Transfer without the consent of the Agency would result in the termination of the Tax Abatement and the PILOT Agreement.

(f) Borrower shall avail itself of all rights and opportunities to renew or extend the Tax Abatement.

(g) Borrower shall not voluntarily take or cause to be taken any action that would threaten the Tax Abatement or cause the Tax Abatement to terminate without the prior written consent of Lender.

(h) Borrower represents and warrants that:

(1) Borrower has not received any notice indicating that the Tax Abatement will be terminated or will not be obtained.

(2) Borrower has adhered to any income, rent or other restrictions imposed by the Tax Abatement.

(i) Each of the following shall constitute an Event of Default:

(1) Any breach of any of the representations and warranties in Subsection (h).

(2) Any transfer of the Mortgaged Property, any interest in the Mortgaged Property, or any interest in Borrower that would cause the Tax Abatement to terminate.

**53. VARIABLE RATE NOTE.** The Note is subject to interest rate adjustment from time to time in accordance with its terms, which terms are incorporated herein by this reference.

**54. DISPLAY OF LENDER'S SIGN.** The Borrower grants permission for the Lender and any of its participants (including public participants) or their respective agents to enter upon the Mortgaged Property and to erect or cause to be erected, a sign to be permanently affixed (by holes drilled into the facade of any of the Improvements to accommodate metal studs attached to the sign or otherwise) to the exterior facade of any of the Improvements in a location satisfactory to the Lender during the term of this Instrument indicating that the property is a CPC - Financed Building. The Borrower shall fully cooperate towards the erection of such sign at the Mortgaged Property.

**55. DISPLAY OF SONYMA SIGN.** In the event that SONYMA is the Mortgage Insurer at any time, and if SONYMA so requests, the Borrower shall permit a sign to be securely affixed to and maintained on the exterior wall of any of the Improvements in a location and manner satisfactory to SONYMA, which sign shall indicate that the financing of the construction, rehabilitation or acquisition of the property was made possible through the efforts of SONYMA. SONYMA will provide the sign, available to the Borrower at the office of the New York State Office of General Services ("OGS") nearest to the Mortgaged Property. The Borrower shall be responsible, at its own cost, for transporting the sign from such OGS office to the Mortgaged Property, for affixing the sign, maintaining it in good condition, and for providing insurance coverage with respect to the sign.

**56. MORTGAGE INSURANCE.** The Lender shall apply for mortgage insurance for this Instrument at the Borrower's expense with respect to initial application fees and other requisite fees. Until the date of repayment of the Permanent Loan (as defined in the Loan Agreement), the Borrower shall be obligated to pay the premium on such insurance. If any Mortgage Insurer shall at any time commit to insure this Instrument, the Borrower shall take all actions which shall be

required by such Mortgage Insurer in order to finalize such insurance for this Instrument and keep such insurance in full force and effect.

**57. PERMANENT LOAN CONDITIONS.** If the conditions of the Permanent Loan (as defined in the Loan Agreement) are satisfied on or prior to the Maturity Date, the Lender shall assign this Instrument to the CPC Permanent Lender (as defined in the Permanent Loan Commitment) and the Borrower and the CPC Permanent Lender shall enter into a consolidation, modification and extension agreement, which shall consolidate the lien of this Instrument with the lien of the First Construction Loan Mortgage, and shall modify and extend the terms of this Instrument (the "Consolidation Agreement").

**58. PENSION FUND DELIVERY.** The Borrower has previously deposited with the Permanent Lender (as defined in the Loan Agreement) a "Pension Fund Late Delivery Fee" in the amount of Twenty One Thousand One Hundred and No/100 Dollars (\$21,100.00). In the event that the Loan is converted to the Permanent Loan (as defined in the Loan Agreement) and the sale thereof to the appropriate pension fund occurs on or before April 1, 2023 (the "Pension Fund Delivery Date") as provided for in the Permanent Loan Commitment (as defined in the Loan Agreement), the Pension Fund Late Delivery Fee shall be refunded to the Borrower upon the sale of the Permanent Loan to the appropriate pension fund. In the event that the Loan is not converted to the Permanent Loan and sold to the appropriate pension fund on or before the Pension Fund Delivery Date for any reason whatsoever, the Pension Fund Late Delivery Fee shall be subject to forfeiture at the rate of 1/12th of such Pension Fund Late Delivery Fee for each month (or fraction thereof) which elapses from the Pension Fund Delivery Date until the conversion of the Loan to the Permanent Loan and the sale thereof to the appropriate pension fund. In the event that more than twelve (12) months elapse from the Pension Fund Delivery Date without the conversion of the Loan to the Permanent Loan and the sale thereof to the appropriate pension fund, additional penalties shall accrue and be payable by the Borrower at a rate equal to 1/12th of 1% of the amount of the Permanent Loan for each month of additional delay. Notwithstanding the foregoing, failure for any reason to close the Permanent Loan and sell it to the appropriate pension fund within six (6) months of the Pension Fund Delivery Date shall result in the automatic termination of Permanent Loan Commitment.

**59. CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
SPECIAL OBLIGATIONS.**

(a) This Instrument is executed by the Agency solely for the purpose of subjecting its interest in the Mortgaged Property, and in the event of a default, the holder of this Instrument shall look, only with respect to the Agency, solely to the Mortgaged Property described in this Instrument in satisfaction of the indebtedness evidenced under the Note and will not seek or obtain any deficiency or personal judgment against the Agency or any members or officers thereof except such judgment or decree as may be necessary to foreclose its interest in the Mortgaged Property as pledged hereunder and all other property mortgaged, pledged, conveyed or assigned to secure payment under the Note.

(b) **Borrower's Obligations to Comply with the Company Lease, the Agency Lease and the PILOT Agreement.** Borrower shall: (i) pay all other sums of money due and payable at any time and from time to time under the Agency Leases and the PILOT Agreement when such sums become due and payable, but in any event, before the expiration of any grace period provided in the Agency Leases and/or the PILOT Agreement for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Leases and/or the PILOT Agreement to be performed, observed or complied with by Borrower as a lessor under the Company Lease, as a lessee under the Agency Lease and as a party to the PILOT Agreement. If the Company Lease, the Agency Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Borrower shall make the payment on or before the date on which the payment becomes due and payable. Borrower shall deliver evidence of the payment to Lender within ten (10) days after receipt of a written request from Lender for evidence of the payment.

(c) **Subordination Provisions.** Notwithstanding anything herein to the contrary, Lender by accepting this Instrument, acknowledges and agrees that the rights of Lender hereunder shall be subordinate to the rights of the Agency to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by the Borrower to the Agency shall have the same force, priority and effect as a real property tax lien under New York State law against the Mortgaged Property.

(d) **Agency Executing at the Direction of Borrower.** The Borrower directs the Agency to execute and deliver this Instrument to the Lender, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Instrument, including but not limited to attorney's fees and costs.

(e) **Hold Harmless Provisions.** The Borrower hereby acknowledges that the terms of the Agency Lease, as amended and restated from time to time, is in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

(f) **Miscellaneous Provision.** The Borrower and the Lender hereto, by accepting this Instrument, acknowledge that the Agency is executing this Instrument solely to subject its interest in the Mortgaged Property, if any, to this Instrument. Notwithstanding anything herein to the

(f) **Miscellaneous Provision.** The Borrower and the Lender hereto, by accepting this Instrument, acknowledge that the Agency is executing this Instrument solely to subject its interest in the Mortgaged Property, if any, to this Instrument. Notwithstanding anything herein to the contrary, the Lender acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be with respect to the Agency's interest in the Mortgaged Property.

All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

BORROWER'S INITIALS:   GZ  

AGENCY'S INITIALS: \_\_\_\_\_

(f) **Miscellaneous Provision.** The Borrower and the Lender hereto, by accepting this Instrument, acknowledge that the Agency is executing this Instrument solely to subject its interest in the Mortgaged Property, if any, to this Instrument. Notwithstanding anything herein to the contrary, the Lender acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be with respect to the Agency's interest in the Mortgaged Property.

All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

BORROWER'S INITIALS: \_\_\_\_\_

AGENCY'S INITIALS: 

EXHIBIT C

**FINANCING STATEMENT INFORMATION**

1. Name and Address of Debtor: 444 EAST GENESEE STREET LLC  
344 S. Warren Street  
Syracuse, New York 13202  
  
Name and Address of Agency: City of Syracuse Industrial  
Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202
2. Debtor's State of Formation: Delaware  
  
Type of Entity Limited liability company  
  
Agency State of Formation: New York
3. Name and Address of Secured Party: CPC Funding SPE 1 LLC  
c/o The Community Preservation  
Corporation  
220 East 42<sup>nd</sup> Street, 16<sup>th</sup> Floor  
New York, New York 10017
4. The Collateral is: Fixtures (as that term is described in the  
Uniform Commercial Code of New York)  
attached to the Land described in Exhibit A  
attached to this Instrument.

## EXHIBIT D

RIDER TO FIRST MULTIFAMILY PROJECT LOAN MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING, DATED JUNE 3, 2021, BY 444 EAST GENESEE STREET LLC, AS BORROWER, AND CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY TO CPC FUNDING SPE 1 LLC, AS LENDER

1. The following definition shall be added to Section 1 of this Instrument:

“HFA Regulatory Agreement” shall mean that certain Regulatory Agreement between the Borrower and HFA and dated as of the date hereof.

2. The definition of “Rental Achievement Requirement” set forth in Section 1 of this Instrument is hereby amended as follows:

- (i) by adding to the end of the first sentence thereof the following: “and one hundred fifteen percent (115%) of the Loan, and the loans secured by First Construction Loan Mortgage, Second Construction Loan Mortgage and the Second Project Loan Mortgage combined”; and

- (ii) by adding to the last line thereof immediately following the words “of the Lender” the following: “and HFA”.

3. The following new clause (h) is hereby added to Section 3 of this Instrument:

(h) Notwithstanding any provision to the contrary contained herein, the Borrower shall not make application to HCR (or its successor agencies) for any rent increase to which it might be entitled under the Tenant Protection Regulations of the Emergency Tenant Protection Act of 1974, for rehabilitation work performed on the Mortgaged Property when such work was performed pursuant to or in connection with the Loan.

4. The following new clause (m) is hereby added to Section 4 of this Instrument:

(m) All new Leases executed during or after the construction and/or rehabilitation of the Project in accordance with the Loan Agreement must be satisfactory in form and substance to HFA and its attorneys and subordinate to the lien of Lender’s permanent loan mortgage. The Borrower shall provide HFA with the form of such lease and with access to copies of all such new Leases.

5. The following new clause (ix) shall be added to Section 21(c) of this Instrument:

(ix) such transfer is permitted pursuant to the terms of the HFA Regulatory Agreement.

6. The following new clause (t) is hereby added to Section 22 of this Instrument:

(t) if an "Event of Default", as therein defined, shall occur under the First Construction Loan Note and/or the First Construction Loan Mortgage, or under the Second Construction Loan Note, Second Construction Loan Mortgage, Second Project Loan Note and/or the Second Project Loan Mortgage, each executed on the date hereof by the Borrower and/or City of Syracuse Industrial Development Agency in favor of the Lender.

7. The following new Sections are hereby added to this Instrument:

60. **Compliance With Regulatory Agreement.** The Borrower shall comply fully with all of the terms and conditions of the HFA Regulatory Agreement entered into as a condition of the closing of the Loan. The Borrower's obligations under such HFA Regulatory Agreement shall continue for the periods specified therein. The HFA Regulatory Agreement is incorporated into and made a part of this Instrument and failure to comply with the terms of the HFA Regulatory Agreement and/or a default under the HFA Regulatory Agreement shall constitute an Event of Default under this Instrument and Lender may exercise all of its rights under this Instrument.

61. **Lien Priority.** Until the assignment of the Second Construction Loan Mortgage and the Second Project Loan Mortgage to HFA, the lien of this Instrument shall be subordinate to the lien of the First Construction Loan Mortgage and the lien of the Second Construction Loan Mortgage and equal and coordinate with the lien of the Second Project Loan Mortgage on the Mortgaged Property, except as may be otherwise provided in that certain Construction Loan Participation Certificate between Lender and HFA dated as of the date of this Instrument. After the assignment of the Second Construction Loan Mortgage and Second Project Loan Mortgage to HFA, the lien of this Instrument, as consolidated with the lien of the First Construction Loan Mortgage, and modified and extended pursuant to the Consolidation Agreement, shall be superior to the lien of the Second Construction Loan Mortgage and Second Project Loan Mortgage, as consolidated, amended and restated.

62. **Curing of Defaults.** If default shall be made in the payment of any interest or principal installment or other amount when due under any or all of the Second Project Loan Mortgage, the First Construction Loan Mortgage and/or the Second Construction Loan Mortgage, the Lender shall have the right (but not the obligation) to pay same and the Borrower on demand will repay the amount so paid with interest at the Involuntary Rate, and such amount, if not paid with such interest thereon, shall be added to the Indebtedness and shall be a lien on the Mortgaged Property and be collected as part of the debt secured by this Instrument.

63. **Compliance with Agreements.** The Borrower shall comply fully with all of the terms and conditions of that certain (i) Equal Employment Opportunity Agreement and (ii) Minority And Women-Owned Business Utilization And Service-Disabled Veteran-Owned Business Agreement, each entered into among HFA, the Borrower, and the construction contractor with respect to the Project, and each dated as of the date hereof. Additionally, Borrower shall ensure that the General Contractor complies with such agreements.

64. **Fair Market Housing.** Borrower shall submit to HFA for its records a marketing and tenant selection plan that is in compliance with HFA's affirmative fair housing marketing guidelines as more fully provided in the HFA Regulatory Agreement.

65. **HFA Guidelines.** Borrower shall ensure that the Project will comply with (a) applicable green building guidelines as may be established by HFA and (b) all applicable requirements of the Americans with Disabilities Act of 1990 or Section 504 of the Rehabilitation Act of 1973.



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

### Onondaga County Clerk Recording Cover Sheet

Received From :  
CHICAGO TITLE - EMILY

Return To :  
COMMUNITY PRESERVATION CORPORATION  
220 EASTS 42ND ST 16TH FL  
NEW YORK, NY 10017

Method Returned : MAIL

**First PARTY 1**

444 EAST GENESEE STREET LLC

**First PARTY 2**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2021-00025811

Book : Page :

Type of Instrument : Assignment Of Rents & Leases

Type of Transaction : Mtg Type D-3

Recording Fee: \$116.00

Recording Pages : 14

The Property affected by this instrument is situated in No Tax District, in the County of Onondaga, New York

**Mortgage Taxes**

Property Located : No Tax District

Serial Number : DM3751

Mortgage Amount : \$0.00

Basic Tax : \$0.00

Local Tax : \$0.00

Additional Tax : \$0.00

Transportation Auth Tax : \$0.00

SONYMA : \$0.00

County Tax : \$0.00

Total : \$0.00

Total Fees : \$116.00

State of New York

County of Onondaga

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

On (Recorded Date) : 06/08/2021

At (Recorded Time) : 1:46:31 PM



Doc ID - 042814520014

*Lisa Dell*  
Lisa Dell, County Clerk



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

Entered By: RSWEENIE Printed On : 06/08/2021 At : 1:52:21PM

ASSIGNMENT OF LEASES AND RENTS

BY

444 EAST GENESEE STREET LLC

AND

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

TO

CPC FUNDING SPE 1 LLC

Dated: June 3, 2021

LOCATION OF PREMISES:

Address: 444 East Genesee Street,  
Syracuse, New York  
County: Onondaga  
SBL: 102-08-04.0

---

After recording, please return to:

The Community Preservation Corporation  
220 East 42<sup>nd</sup> Street, 16<sup>th</sup> Floor  
New York, New York 10017  
Attention: Andrea Gladstone, Esq.

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (“**Assignment**”), made June 3, 2021, by **444 EAST GENESEE STREET LLC**, a Delaware limited liability company having an office at 344 S. Warren Street, Syracuse, New York 13202 (“**Assignor**”) and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation having an address at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (“**Agency**”) to **CPC FUNDING SPE 1 LLC**, a New York limited liability company, having an office c/o The Community Preservation Corporation, 220 East 42<sup>nd</sup> Street, 16<sup>th</sup> Floor, New York, New York 10017 (“**Assignee**”). The date of this Agreement as set forth above is for reference purposes only, and this Agreement will not be effective and binding until the Closing Date (as defined by the Mortgage).

### WITNESSETH:

WHEREAS, Assignor is the fee owner and sub-leasehold tenant of certain improved real property situated in the County of Onondaga, City of Syracuse and State of New York, and more particularly described in Schedule A annexed hereto and made a part hereof (the “**Premises**”);

WHEREAS, Agency and Assignor have previously entered into (i) a certain Company Lease Agreement dated as of June 1, 2021 (the “**Company Lease**”, a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith), wherein the Premises was leased by the Assignor to the Agency; and (ii) a certain Agency Lease Agreement from Agency to Assignor, also dated as of June 1, 2021 (the “**Agency Lease**”, a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith, and collectively with the Company Lease, the “**Agency Leases**”), wherein the Premises was leased by the Agency back to the Assignor.

WHEREAS, Assignor and Agency are about to execute and deliver to Assignee the mortgage or mortgages as more particularly described on Exhibit A annexed hereto and made a part hereof (as modified, consolidated, amended or extended from time to time, collectively, the “**Mortgage**”); and

WHEREAS, Assignee is unwilling to accept the Mortgage unless Assignor and Agency execute this Assignment.

NOW, THEREFORE, in consideration of the Premises and the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged, and to better secure the payment to Assignee of (i) all monies which may be due and payable to Assignee under the Mortgage, and (ii) all monies which may be advanced by Assignee on behalf of Assignor under the terms of the Mortgage, Assignor and Agency hereby agree as follows:

1. Assignor and Agency (subject to the Agency’s reservation of the Unassigned Rights, as defined within the Agency Lease) hereby grant, transfer, bargain, sell, assign, convey and set over unto Assignee, its successors and assigns, from and after the date hereof (including any period allowed by law for redemption after any foreclosure or other sale),

all right, title and interest of Assignor in and to (i) all leases, subleases, licenses, concessions, management and other occupancy or operating agreements which now or may hereafter affect the Premises or any part or parts thereof and all guarantees, modifications, renewals and extensions thereof, excepting therefrom the Agency Leases (collectively, the “**Leases**”), (ii) all documents and instruments made or hereafter made in respect of the Leases, and (iii) all of the rents, income, revenues, issues and profits, due and to become due or to which Assignor is now or may hereafter become entitled, arising out of the Leases or the Premises or any part or parts thereof (collectively, the “**Profits**”).

2. Assignor further gives and grants unto Assignee the power and authority to: (i) enter upon and take possession of the Premises and manage the same; (ii) enforce, modify, cancel or accept a surrender of any or all of the Leases; (iii) demand, collect, sue for, attach, levy, recover, receive, compromise and adjust and make, execute and deliver receipts and releases for, Profits which may be or may hereafter become due, owing or payable from any present or future lessees, sublessees, licensees, concessionaires or other occupants of the Premises or any part thereof (excluding therefrom the Agency Leases, collectively, the “**Lessees**”); (iv) receive, endorse and deposit for collection in the name of Assignor or Assignee any checks, promissory notes or other evidences of indebtedness, whether made payable to Assignor or Assignee, which are given in payment or on account of rent for the Premises or any part or parts thereof, or by way of compromise or settlement of any indebtedness for such rents; (v) give acquittances for rents received; (vi) institute, prosecute, settle or compromise any summary or other proceedings for the recovery of the Profits or for removing any and all of the Lessees; (vii) institute, prosecute, settle or compromise any proceedings for the protection of the Premises, for the recovery of any damage done to the Premises or for the abatement of any nuisance thereon or thereabouts; (viii) defend, settle or compromise any legal proceedings brought, or claims made against, Assignee or its agents, employees or servants which may affect the Premises, and, at the option of Assignee, defend, settle or compromise any claims made or legal proceedings brought against Assignor which may affect the Premises or any part thereof; (ix) lease or rent the Premises or any part thereof for such time and at such rentals as Assignee, in its sole discretion, may deem advisable; (x) make any changes or improvements, structural or otherwise on, in or to the Premises or any part thereof which Assignee may deem necessary or expedient for the leasing, renting or preservation thereof; (xi) keep and maintain the Premises in tenantable and rentable condition and in a good state of repair; (xii) pay, from and out of the Profits collected by Assignee hereunder, or from or out of any other funds, all taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Premises or any part thereof, and any and all other charges, costs and expenses (including, without limitation, brokers’ fees) which Assignee may deem necessary or advisable to pay in connection with the management and operation of the Premises; (xiii) contract for and purchase such insurance as Assignee may deem advisable or necessary for the protection of Assignee and the Premises, including, without limitation, fire, general liability, boiler, plate glass, rent, demolition and worker’s compensation insurance; (xiv) execute and comply with all laws, rules, orders, ordinances and requirements of the United States, the state in which the Premises is located and any political subdivision thereof, and any agency, department, bureau, board, commission or instrumentality of any of them (collectively, the “**Governmental Authorities**”), and remove any and all violations which may be filed against the Premises; (xv) enforce, enjoin or restrain the violation of any of the terms, provisions and conditions of the Leases; and (xvi) do anything and everything which Assignor could or would do which might

increase the Profits or which might diminish the expense of operating the Premises, whether herein expressly authorized or not, and in all respects act in the place and stead of Assignor and have all of the powers as owner as possessed by Assignor for the purposes aforesaid.

All of the foregoing powers may be executed by Assignee or by its agents, servants or attorneys, in the name of Assignee or in the name of Assignor, and in such manner as Assignee, its agents, servants or attorneys consider to be necessary, desirable, expedient or appropriate; provided, however, that under no circumstances shall Assignee be under any obligation to exercise any of the foregoing rights and shall not, in any manner, be liable to Assignor or any other party for failure to exercise such rights.

3. Assignee shall have the unqualified right to receive, use and apply the Profits collected and received by it under this Assignment (a) for the payment of any and all costs and expenses incurred in connection with (i) enforcing the terms of this Assignment, (ii) upholding and defending the rights of Assignee hereunder, and (iii) collecting rents due under the Leases; and (b) for the operation and maintenance of the Premises and the payment of all costs and expenses in connection therewith including, without limitation, the payment of (i) interest, principal and any other charges due on or in connection with any and all mortgages on the Premises, including the Mortgage, (ii) taxes, assessments, water charges and sewer rents and other governmental charges levied, assessed or imposed against the Premises or any part thereof, (iii) insurance premiums, (iv) costs and expenses in prosecuting or defending any litigation referred to herein, and (v) wages and salaries of employees, commissions of agents and attorneys' fees. After the payment of all such costs and expenses and after Assignee shall have set up such reserves as Assignee, in its sole discretion, shall deem necessary for the proper management of the Premises, Assignee shall apply all remaining Profits collected and received by it to the reduction of the indebtedness secured by the Mortgage.

4. Assignor hereby irrevocably constitutes and appoints Assignee its true and lawful attorney, to undertake and execute any or all of the powers described herein either in express terms or generally, with the same force and effect as if undertaken or executed by Assignor, and Assignor hereby ratifies and confirms any and all things done or omitted to be done by Assignee, its agents, servants, employees or attorneys in, to or about the Premises.

5. Assignee shall not in any way be liable to Assignor for any act done or anything omitted to be done by it in good faith in connection with the management of the Premises, nor shall Assignee be liable for any act or omission of its agents, servants, employees or attorneys, provided that due care is used by Assignee in the selection of such agents, servants, employees and attorneys. Assignee shall be accountable to Assignor only for monies actually received by it pursuant to this Assignment.

6. Assignor hereby covenants and agrees: (i) to perform faithfully every obligation which Assignor is required to perform under the Leases; (ii) to enforce, or to secure the performance, at its sole cost and expense, of every obligation to be performed by Lessees; (iii) to give prompt notice to Assignee of any notice of default received by Assignor from any and all Lessees and any notice of default given by Assignor to any and all Lessees, together with a copy of such notice; (iv) not to collect any rent under the Leases for more than thirty (30) days in advance of the time when the same shall become due, or anticipate the rents thereunder,

except for security deposits not in excess of an amount equal to one (1) month's rent; (v) not to further assign the Leases or the Profits due or to become due or to which Assignor may now or hereafter become entitled; (vi) not to waive, condone or in any manner discharge any Lessees from their obligations under the Leases; (vii) except as may be expressly permitted by the Mortgage, not to cancel, abridge, accept surrender of or otherwise modify, or amend, by sufferance or otherwise, the Leases or any of the terms, provisions or covenants thereof; (viii) to provide in all future Leases that any cancellation, abridgement, surrender, modification or amendment of such Leases, without the prior written consent of Assignee, shall be voidable as against Assignee, at its option; (ix) to comply with all laws, rules, orders, ordinances and requirements of all Governmental Authorities; (x) to deliver copies of all Leases to Assignee; (xi) to appear in and defend, at Assignor's sole cost and expense, any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of the lessor, Lessees or guarantors thereunder; and (xii) not to violate any of the provisions of the Mortgage.

7. Assignor hereby represents and warrants the following to Assignee: (i) the Leases, if any, which now affect the Premises have been duly executed and unconditionally delivered by the parties thereto and are valid, subsisting and in full force and effect; (ii) Assignor has not executed or granted any modifications or amendments of the Leases either orally or in writing; (iii) there are no defaults now existing under any of the Leases and no event has occurred which, with the delivery of notice or the passage of time or both, would constitute a default or which would entitle the lessor under the Leases or the Lessees to cancel the same or otherwise avoid their obligations thereunder; (iv) except as disclosed to Assignee, Assignor has not accepted advance rent under the Leases for more than sixty (60) days in advance of the time the same shall become due except for security deposits not in excess of an amount equal to one (1) month's rent; (v) Assignor has not executed an assignment of any of the Leases or of its right, title and interest therein or the rentals to accrue thereunder, except as provided in the Mortgage; and (vi) the representations set forth in the Mortgage are true and correct.

8. It is understood and agreed that nothing contained in this Assignment shall prejudice or be construed to prejudice the right of Assignee, without notice, to institute, prosecute and compromise any action which it would deem advisable to protect its interest in the Premises, including an action to foreclose the Mortgage, or any of them (if more than one) and in such action, to move for the appointment of a receiver of the Profits, or prejudice any rights which Assignee shall have by virtue of any default under the Mortgage, or any of them (if more than one). This Assignment shall survive, however, the commencement of any such action and shall continue in full force and effect in the event of any foreclosure action until a sale of the Premises shall be had thereunder.

9. Assignor hereby indemnifies and holds Assignee harmless from and against any and all liability, loss, damage, cost and expense, including reasonable attorneys' fees which it may or shall incur under any of the Leases, or by reason of this Assignment, or by reason of any action taken by Assignee hereunder, and from and against any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants and conditions contained in any of the Leases. Should Assignee incur any such liability, loss, damage, cost or expense, the amount thereof, together with interest thereon from the date such

amount was suffered or incurred by Assignee until the same is paid by Assignor to Assignee, at a rate equal to the lesser of (i) the Default Rate (as defined in the notes secured by the Mortgage) or (ii) the maximum rate permitted by applicable law (the lesser of (i) and (ii) being referred to as the "**Applicable Rate**"), shall be payable by Assignor to Assignee immediately upon demand, or at the option of Assignee, Assignee may reimburse itself therefor out of any Profits collected by Assignee. Assignor agrees that any such charge shall not be deemed to be additional interest or a penalty but shall be deemed to be liquidated damages because of the difficulty in computing the actual amount of damages in advance; provided, however, that any sums collected by Assignee as liquidated damages, as aforesaid, which are held to be interest in excess of the maximum rate permitted by law, shall be deemed a payment in reduction of the principal sum then outstanding under the Mortgage and shall be so applied. Nothing contained herein shall operate or be construed to obligate Assignee to perform any of the terms, covenants or conditions contained in the Leases or otherwise to impose any obligation upon Assignee with respect to any of the Leases.

10. Upon request of Assignee, Assignor shall execute and deliver to Assignee such further instruments as Assignee may deem necessary to effect this Assignment and the covenants of Assignor contained herein. Assignor, at its sole cost and expense, shall cause such further instruments to be recorded in such manner and in such places as may be required by Assignee.

11. Assignor shall pay all recording and filing fees with respect to this Assignment and any agreements, instruments and documents made pursuant to the terms hereof or ancillary hereto, as well as any and all taxes which may be due and payable on the recording of this Assignment and any taxes hereafter imposed on this Assignment. Should Assignor fail to pay the same, all such recording and filing fees and taxes may be paid by Assignee on behalf of Assignor and the amount thereof, together with interest at the Applicable Rate, shall be payable by Assignor to Assignee immediately upon demand, or at the option of Assignee, Assignee may reimburse itself therefor out of the Profits collected by Assignee. Assignor agrees that any such charge shall not be deemed to be additional interest or a penalty but shall be deemed to be liquidated damages because of the difficulty in computing the actual amount of damages in advance; provided, however, that any sums collected by Assignee as liquidated damages, as aforesaid, which are held to be interest in excess of the maximum rate permitted by law, shall be deemed a payment in reduction of the principal sum then outstanding under the Mortgage and shall be so applied.

12. Assignee shall be entitled to the appointment of a receiver for the Premises without notice to Assignor.

13. Failure of Assignee to avail itself of any of the terms, covenants and conditions of this Assignment shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of the Assignee under this instrument are cumulative and are not in lieu of but are in addition to, and shall not be affected by the exercise of, any other rights and remedies which Assignee shall have under or by virtue of law or equity, the Mortgage or any other document executed in connection therewith (collectively, the "**Other Rights**"). The rights and remedies of the Assignee hereunder may be exercised concurrently with any of the Other Rights.

14. So long as no default under the Mortgage, or any of them (if more than one) or this Assignment has occurred and is continuing, Assignee hereby gives Assignor a license to collect all the Profits, and to retain, use and enjoy same and Assignee agrees that it shall not exercise any power or authority granted to Assignee hereunder. Assignor agrees to collect and receive said Profits in trust for the benefit of Assignee and to use said Profits in payment of principal and interest becoming due under the Mortgage and in payment of taxes, assessments, water charges, sewer rents and carrying charges becoming due against the Premises. Such license hereby granted to Assignor to collect and receive said Profits may be revoked by Assignee upon the occurrence of a default under the Mortgage, or any of them (if more than one) which remains uncured beyond the expiration of any applicable grace period by Assignee's giving Assignor written notice of such revocation, delivered by hand or sent by registered or certified mail or by courier offering next day delivery to the record owner of the Premises. This Assignment shall continue in full force and effect until (a) all sums due and payable under the Mortgage shall have been fully paid and satisfied, together with any and all other sums which may become due and owing under this Assignment and (b) all other obligations of Assignor under the Mortgage, this Assignment and any other document executed in connection therewith are satisfied. Upon termination of this Assignment as hereinbefore provided, this Assignment and the authority and powers herein granted by Assignor to Assignee shall cease and terminate, and, in that event, Assignee shall (i) execute and deliver to Assignor such instrument or instruments effective to evidence the termination of this Assignment and the reassignment to Assignor of the rights, powers and authorities granted herein and (ii) deliver to Assignor any monies held by Assignee for the benefit of Assignor. Assignor agrees that upon termination of this Assignment it shall assume payment of all unmatured or unpaid charges, expenses or obligations incurred or undertaken by Assignee in connection with the management of the Premises.

15. All of the representations, warranties, covenants, agreements and provisions in this Assignment shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

16. Nothing in this Assignment shall be construed to give to any person other than Assignee and its successors and assigns any legal or equitable right, remedy or claim under this Assignment, and this Assignment shall be held to be for the sole and exclusive benefit of Assignee and its successors and assigns.

17. All notices and/or consents, hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when delivered in person or sent by certified mail, return receipt requested, or by reputable overnight courier, to any party hereto at its address above stated (in the case of the Assignee, to the attention of the Director of its Portfolio Services Department, with a copy to its General Counsel; in the case of the Assignor, with a copy to Lynn D'Elia Temes & Stanczyk LLC, 100 Madison Street, Tower 1 – Suite 1905, Syracuse, New York 13202, Attention: Michael Stanczyk, Esq.; and in the case of the Agency, to the attention of the Chair, with a copy to Bousquet Holstein PLLC at 110 West Fayette Street, Suite 1000, Syracuse, New York 13202, Attention: Susan R. Katzoff, Esq.), or at such other address of which it shall have notified the party giving such notice in writing as aforesaid. All notices and consents shall be deemed given when tendered for delivery (in the case of hand delivery or overnight courier) or three (3) days after being postmarked (in the case

of certified mail).

18. This Assignment may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

19. This Assignment shall be governed by, and construed and enforced in accordance with the laws of the State of New York (without giving effect to New York's principles of conflicts of law).

20. This Assignment may be executed in counterpart copies, each of which shall be deemed an original and all of which shall constitute but a single instrument.

21. City of Syracuse Industrial Development Agency Special Obligations.

(a) This Assignment is executed by the Agency solely for the purpose of subjecting its rights under the Lease Agreement and the Leaseback Agreement to the rights of the Assignee and for no other purpose. All representations, covenants, and warranties of the "Assignor" herein are hereby deemed to have been made by the Assignor and not by the Agency. Notwithstanding anything else contained herein to the contrary, it is agreed and understood that the Agency has not assigned its interest in the Lease Agreement or the Leaseback Agreement.

(b) Assignor shall: (i) pay all other sums of money due and payable at any time and from time to time under the Agency Leases and the payment in lieu of taxes agreement dated as of June 1, 2021 by and between the Agency and the Assignor (the "PILOT Agreement") when such sums become due and payable, but in any event, before the expiration of any grace period provided in the Agency Leases and/or the PILOT Agreement for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Leases and/or the PILOT Agreement to be performed, observed or complied with by Assignor as a lessor under the Lease Agreement, as a lessee under the Leaseback Agreement and as a party to the PILOT Agreement. If the Agency Leases and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Assignor shall make the payment on or before the date on which the payment becomes due and payable. Assignor shall deliver evidence of the payment to Assignee within ten (10) days after receipt of a written request from Assignee for evidence of the payment.

(c) Notwithstanding anything herein to the contrary, Assignee by accepting this Assignment, acknowledges and agrees that the rights of Assignee hereunder shall be subordinate to the rights of the Agency to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by the Assignor thereunder shall have the same force, priority and effect as a real property tax lien under New York State law against the Premises.

(d) The Assignor directs the Agency to execute and deliver this Assignment to the Assignee, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Assignment, including but not limited to attorney's fees and costs.

(e) The Assignor hereby acknowledges that the terms of the Agency Leases and the PILOT Agreement are in full force and effect, including but not limited to the “Hold Harmless Provisions” contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

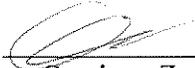
(f) The Assignor and the Assignee hereto, by accepting this Assignment, acknowledge that the Agency is executing this Assignment solely to subject its interest in the Premises. Notwithstanding anything herein to the contrary, the Assignee acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be with respect to the Agency’s interest in the Premises.

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

**ASSIGNOR:**

444 EAST GENESEE STREET LLC,  
a Delaware limited liability company

By:   
Name: Graziano Zazzara, Jr.  
Title: Manager

STATE OF NEW YORK            )  
  ) S.S.  
COUNTY OF Onondaga        )

On the 26 day of May in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared **Graziano Zazzara, Jr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**MICHAEL STANCZYK**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02ST6220670  
Qualified in Onondaga County  
Commission Expires April 19, 2022

Agency:

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY,**  
a public benefit corporation

By:   
Name: Judith DeLaney  
Title: Executive Director

STATE OF NEW YORK            )  
  ) S.S.  
COUNTY OF Onondaga        )

On the 27<sup>th</sup> day of May in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared Judith DeLaney, 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, 2022

**EXHIBIT A**

**SCHEDULE OF MORTGAGES**

1. First Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing made by 444 EAST GENESEE STREET LLC and City of Syracuse Industrial Development Agency to CPC Funding SPE 1 LLC in the amount of \$1,932,744.00, dated as of the date hereof and intended to be recorded in the Office of the Clerk of Onondaga County, State of New York (the "Clerk's Office");
2. Second Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing made by 444 EAST GENESEE STREET LLC and City of Syracuse Industrial Development Agency to CPC Funding SPE 1 LLC in the amount of \$1,866,464.00, dated as of the date hereof and intended to be recorded in the Clerk's Office;
3. First Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing made by 444 EAST GENESEE STREET LLC and City of Syracuse Industrial Development Agency to CPC Funding SPE 1 LLC in the amount of \$177,256.00, dated as of the date hereof and intended to be recorded in Clerk's Office; and

SCHEDULE A  
LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

Being the same premises conveyed by the City of Syracuse to Route 20/20, LLC by Warranty Deed dated June 7, 2006 and recorded in the Onondaga County Clerk's Office on March 5, 2007 in Book 4984 of Deeds at page 637.

BEING MORE MODERNLY DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

BEGINNING at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

thence S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

thence N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

thence N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

thence S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the POINT OF BEGINNING.



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
CHICAGO TITLE - EMILY

Return To :  
CANNON HEYMAN & WEISS LLP  
726 EXCHANGE STREET STE 500  
BUFFALO, NY 14210

Method Returned : MAIL

**First PARTY 1**

444 EAST GENESEE STREET LLC

**First PARTY 2**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2021-00025809

Book : Page :

Type of Instrument : Mortgage

Type of Transaction : Mtg Type A

Recording Fee: \$390.50

Recording Pages : 69

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

**Mortgage Taxes**

Property Located : Syracuse

Serial Number : DM3749

Mortgage Amount : \$1,866,464.00

Basic Tax : \$0.00

Local Tax : \$0.00

Additional Tax : \$4,666.25

Transportation Auth Tax : \$0.00

SONYMA : \$0.00

County Tax : \$0.00

Total : \$4,666.25

Total Fees : \$5,056.75

State of New York

County of Onondaga

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

On (Recorded Date) : 06/08/2021

At (Recorded Time) : 1:45:05 PM



Doc ID - 042814500069

*Lisa Dell*  
Lisa Dell, County Clerk



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

Entered By: RSWEENIE Printed On: 06/08/2021 At: 1:52:18PM

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Cannon Heyman & Weiss, LLP  
726 Exchange Street, Suite 500  
Buffalo, New York 14210  
Attn: Steven J. Weiss, Esq.  
CPC # 70664

**SECOND MULTIFAMILY CONSTRUCTION LOAN MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

**LOCATION OF PREMISES:**

444 East Genesee Street  
Syracuse, New York

SBL No.: 102.-08-04.0 of the  
Tax Map of the City of Syracuse, Onondaga County, State of New York

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EXHIBITS

EXHIBIT A	Description of the Land
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**SECOND MULTIFAMILY CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF  
RENTS, SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

This **SECOND MULTIFAMILY CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Instrument") is dated for reference purposes only as of the 3rd day of June, 2021, but will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), by **444 EAST GENESEE STREET LLC**, a Delaware limited liability company, whose address is 344 S. Warren Street, Syracuse, New York 13202 (the "Borrower"), and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation having an address at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202 (the "Agency"), for the benefit of **CPC FUNDING SPE 1 LLC**, a New York limited liability company, whose address is c/o The Community Preservation Corporation, 220 East 42<sup>nd</sup> Street, 16th Floor, New York, New York 10017, as beneficiary, and its successors and assigns ("Lender").

The Loan is made and the Indebtedness is evidenced by the Note in the maximum principal amount of ONE MILLION EIGHT HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED SIXTY-FOUR AND 00/100 DOLLARS (\$1,866,464.000), maturing on July 1, 2023 (the "Maturity Date") and secured by this Instrument.

WHEREAS, Agency and Borrower previously entered into (i) a certain Company Lease (as hereafter defined), (a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith), wherein the Mortgaged Property was leased by the Borrower to the Agency; and (ii) a certain Agency Lease (as hereafter defined), (a memorandum of which shall be recorded in the Office of the Onondaga County Clerk simultaneously herewith), wherein the Mortgaged Property was leased by the Agency back to the Borrower.

NOW THEREFORE:

Borrower and Agency, each for themselves and not the other, as security for the repayment of the Indebtedness (as hereafter defined) hereby irrevocably mortgage, warrant (solely as to the Borrower), grant, convey and assign to Lender the Mortgaged Property, including the Land located in the City of Syracuse, Onondaga County, New York, and described in Exhibit A attached to this Instrument.

TO SECURE TO LENDER and its successors and assigns the repayment of the Indebtedness evidenced by the Note executed by Borrower and maturing on the Maturity Date, and all renewals, extensions and modifications of the Indebtedness, including, without limitation, the payment of all sums advanced by or on behalf of Lender to protect the security of this Instrument under Section 12 and the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower represents and warrants that Borrower is lawfully seized of the fee estate and sub-leasehold estate in the Mortgaged Property and the Agency is lawfully seized of the leasehold estate in the Mortgaged Property and the Borrower has the right, power and authority to mortgage, grant, convey and assign the Mortgaged Property, and that the Mortgaged Property

is unencumbered except for the Permitted Encumbrances. Agency represents that it has the right, power and authority to grant and convey its interest in the Mortgaged Property. Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any Permitted Encumbrances.

This Instrument is also a financing statement and a fixture filing under the Uniform Commercial Code of the Property Jurisdiction and the information set forth on Exhibit C is included for that purpose.

**Covenants.** Borrower and Lender covenant and agree as follows:

1. **DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person. The term "control" for these purposes means, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

(b) "Agency" shall mean the City of Syracuse Industrial Development Agency, a body corporate and politic and a public instrumentality of the State of New York, having its office at 201 East Washington Street, 6<sup>th</sup> Floor, Syracuse, New York 13202.

(c) "Agency Lease" shall mean that certain agency lease agreement dated as of June 1, 2021 by and between the Agency and the Borrower.

(d) "Agency Leases" shall mean, collectively, the Agency Lease and the Company Lease.

(e) "Bankruptcy Event" means any one or more of the following:

(i) (A) the commencement of a voluntary case under one or more of the Insolvency Laws by the Borrower; (B) the acknowledgment in writing by the Borrower that it is unable to pay its debts generally as they mature; (C) the making of a general assignment for the benefit of creditors by the Borrower; (D) the commencement of an involuntary case under one or more Insolvency Laws against the Borrower; or (E) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over the Borrower or any substantial part of the assets of the Borrower provided that any proceeding or case under (D) or (E) above is not dismissed within 90 days after filing;

- (ii) Any Guarantor or any Affiliate of a Guarantor files an involuntary petition against Borrower under one or more of the Insolvency Laws; or
- (iii) Both (A) an involuntary petition under any one or more of the Insolvency Laws is filed against Borrower or Borrower directly or indirectly becomes the subject of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or in equity, and (B) Borrower or any Affiliate of Borrower has acted in concert or conspired with such creditors of Borrower (other than Lender) to cause the filing thereof with the intent to interfere with enforcement rights of Lender after the occurrence of an Event of Default.

(f) "Beneficiary Parties" means Lender, Servicer and their respective successors and assigns, together with any lawful owner, holder or pledgee of the Note.

(g) "Borrower" means all persons or entities identified as "Borrower" in the first paragraph of this Instrument, together with their successors and assigns.

(h) "Borrower's Organizational Documents" means, collectively: (i) the certificate of formation of Borrower filed with the Office of the Secretary of State of Delaware on March 17, 2016, as the same may be amended and/or restated from time to time; and (ii) the operating agreement of Borrower dated as of March 17, 2016, as the same may be amended and/or restated from time to time.

(i) "Business Day" means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(j) "Closing Date" has the meaning ascribed thereto in the Loan Agreement.

(k) "Collateral Agreement" means any separate agreement between Borrower and Lender for the purpose of establishing tax, repair or replacement reserve or escrow accounts for the Mortgaged Property or granting Lender a security interest in any such accounts, or any other agreement or agreements between Borrower and Lender which provide for the establishment of any other fund, reserve or account.

(l) "Collateral Assignments" means, collectively, (i) the Assignment of Construction Contract dated as of the date hereof by Borrower to Lender and any consents relating thereto, (ii) the Assignment of Architect's Agreement and Plans and Specifications dated as of the date hereof by Borrower to Lender and any consents relating thereto, (iii) the Assignment of Project Documents dated as of the date hereof by Borrower to Lender, and (iv) the Assignment of Management, Maintenance, Service, Operating, Brokerage and Leasing Contracts dated as of the date hereof by Borrower to Lender.

(m) "Commitment" has the meaning ascribed thereto in the Loan Agreement.

(n) "Company Lease" shall mean that certain company lease agreement, dated as of June 1, 2021, by and between the Borrower and the Agency.

(o) "Credit Enhancer" means a government sponsored enterprise that at any time, directly or indirectly, purchases the Loan or provides credit enhancement with respect to the Loan.

(p) "Environmental Agreement" means that certain Agreement of Environmental Indemnification dated as of the date hereof by Borrower and Guarantor for the benefit of Beneficiary Parties.

(q) "Environmental Permit" means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(r) "Event of Default" means the occurrence of any event listed in Section 22.

(s) "First Multifamily Construction Loan Mortgage" shall mean that certain First Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, in the amount of the First Project Loan Note, made by Borrower and the Agency for the benefit of Lender.

(t) "First Multifamily Construction Loan Note" shall mean that certain First Multifamily Construction Note, dated as of the date hereof, in the original maximum principal amount of \$1,932,744.00, made by Borrower and payable to Lender, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(u) "First Project Loan Mortgage" shall mean that certain First Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, in the amount of the First Project Loan Note, made by Borrower and the Agency for the benefit of Lender.

(v) "First Project Loan Note" shall mean that certain First Multifamily Project Note, dated as of the date hereof, in the original maximum principal amount of \$177,256.00, made by Borrower and payable to Lender, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(w) "Fixtures" means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and

equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(x) "Governmental Authority" means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(y) "Guarantor" means collectively, GRAZIANO ZAZZARA, SR., an individual, GRAZIANO ZAZZARA, JR., an individual, and I. MICHAEL VELLA, an individual, or any other person or entity which may hereafter become a guarantor of any of Borrower's obligations under the Loan.

(z) "Hazardous Materials" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; radon; Mold; toxic or mycotoxin spores; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance (whether or not naturally occurring) now or in the future that (i) is defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "solid waste", "pesticide", "contaminant," or "pollutant", or otherwise classified as hazardous or toxic by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

(aa) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, rule of common law (including, without limitation, nuisance and trespass), consent order, administrative rulings and court judgments and decrees or other government directive in effect now or in the future and including all amendments, that relate to Hazardous Materials or to the protection or conservation of the environment or human health and apply to Borrower or to the Mortgaged Property, including, without limitation, those relating to industrial hygiene, or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation, or remediation of Hazardous Materials. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section

1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, and their state analogs.

(bb) "HFA" shall mean the New York State Housing Finance Agency.

(cc) "Impositions" and "Imposition Deposits" shall have the meanings ascribed thereto in Section 7.

(dd) "Improvements" means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(ee) "Indebtedness" means collectively, the principal of, interest on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument, and any fees or expenses paid by Lender on behalf of Borrower to Lender, or any other party for the Loan or other amounts relating to the Loan Documents which are paid by Lender;

(ff) "Initial Owners" means, with respect to Borrower or any other entity, the persons or entities who on the date of the Note, directly or indirectly, own in the aggregate 100% of the ownership interests in Borrower or that entity.

(gg) "Insolvency Laws" means the United States Bankruptcy Code, 11 U.S.C. § 101, et seq., together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding, as amended from time to time, to the extent applicable to the Borrower.

(hh) "Land" means the land described in Exhibit A.

(ii) "Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals, excepting therefrom the Agency Leases.

(jj) "Lender" means the entity identified as "Lender" in the first paragraph of this Instrument, or any subsequent holder of the Note.

(kk) "Loan" means the loan made by Lender to Borrower in an amount not to exceed the original principal amount of the Note, which loan is evidenced by the Note and secured by, among other things, this Instrument.

(ll) "Loan Agreement" means that certain Construction and Project Loan Agreement dated as of the date hereof by and between Borrower and Lender relating to the Loan, as the same may be amended, modified or supplemented from time to time.

(mm) "Loan Documents" means collectively, the Loan Agreement, the Note, the First Project Loan Note, this Instrument, the First Construction Loan Mortgage, the First Project Loan Mortgage, the Commitment, the Permanent Loan Commitment, the Environmental Agreement, all guaranties, all indemnity agreements, all Collateral Agreements, all Collateral Assignments, all O&M Programs, the MMP, and any other documents now or in the future executed by Borrower, any guarantor or any other person in connection with the Loan, as such documents may be amended from time to time.

(nn) "Material Property Agreements" means any agreement which, in Lender's sole discretion, acting in good faith, materially affects the Mortgaged Property, the use thereof or otherwise materially affects the rights of Borrower or Beneficiary Parties in, to, and with respect to the Mortgaged Property or the proceeds therefrom, including, without limitation, each of the following: (i) the PILOT Agreement, (ii) all covenants, conditions and restrictions, including, without limitation, any declaration subjecting the Mortgaged Property to an association of owners or other community governance, (iii) any agreement regarding the abatement or exemption of real estate taxes, (iv) any easement pursuant to which the Mortgaged Property is granted access to a public right of way, (v) any material lease of all or any portion of the Mortgaged Property, (vi) any operating agreements relating to the Land or the Improvements, and (vii) any regulatory agreements, declarations, land use restriction agreements or similar instruments affecting the Mortgaged Property including the operation or use thereof.

(oo) "Maturity Date" has the meaning ascribed thereto in the recitals to this Instrument.

(pp) "MMP" means an operations and maintenance plan, moisture management program and/or microbial operations and maintenance program approved by Lender to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property throughout the term of this Instrument. If required by Lender, the MMP shall contain a provision for (i) staff training, (ii) information to be provided to tenants, (iii) documentation of the plan, (iv) the appropriate protocol for incident response and remediation and (v) routine, scheduled inspections of common space and unit interiors.

(qq) "Mold" means mold, fungus, microbial contamination or pathogenic organisms.

(rr) "Mortgage Insurer" means SONYMA, REMIC or such other insurer of the mortgage lien created hereby, during such time as such insurer provides such insurance.

(ss) "Mortgaged Property" means all of Borrower's and Agency's present and future right, title and interest in and to all of the following, which for the avoidance of

doubt does not include the Unassigned Rights, as that term is defined in the Agency Leases:

- (i) the Land;
- (ii) the Improvements;
- (iii) the Fixtures;
- (iv) the Personalty;
- (v) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (vi) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirements;
- (vii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (ix) all Rents and Leases;
- (x) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, whether the foregoing are now due, past due, or to become due, all undisbursed proceeds of the loan secured by this Instrument, deposits forfeited by tenants, and, if Borrower is a

cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

- (xi) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
- (xii) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits;
- (xiii) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;
- (xiv) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether now existing or hereafter created; and
- (xv) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds, and all other cash and non-cash proceeds and products of any of the foregoing.

(tt) "Note" means that certain Second Multifamily Construction Note dated as of the date of this Instrument, executed and delivered by the Borrower, payable to Lender in an amount not to exceed the original maximum principal amount of the Loan set forth in the recitals to this Instrument, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(uu) "O&M Program" has the meaning ascribed thereto in Section 18(d).

(vv) "Permanent Loan Commitment" has the meaning ascribed thereto in the Loan Agreement.

(ww) "Permitted Encumbrances" means any easements, encumbrances or restrictions listed on the schedule of exceptions in the title insurance policy issued to Lender as of the date of recordation of this Instrument insuring Lender's interest in the Mortgaged Property, together with the First Construction Loan Mortgage, and the First Project Loan Mortgage.

(xx) "Permitted Transfer" has the meaning ascribed thereto in Section 21(b).

(yy) "Person" shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(zz) "Personalty" means all:

- (i) accounts (including deposit accounts) of Borrower related to the Mortgaged Property;
- (ii) Imposition Deposits;
- (iii) equipment, goods, supplies and inventory owned by Borrower that are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements (other than Fixtures), including furniture, furnishings, machinery, building materials, tools, books, records (whether in written or electronic form), computer equipment (hardware and software);
- (iv) other tangible personal property owned by Borrower which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or in the Improvements (other than Fixtures), including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances;
- (v) any operating agreements relating to the Land or the Improvements;
- (vi) any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;
- (vii) documents, instruments, chattel paper, claims, deposits, deposit accounts, payment intangibles, other intangible property, general intangibles, and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a governmental authority; and
- (viii) any rights of Borrower in or under letters of credit.

(aaa) "PILOT Agreement" shall mean that certain payment in lieu of taxes agreement dated as of June 1, 2021 by and among the Agency and Borrower.

(bbb) "Project" means that multifamily mixed-use project with twenty-four (24) residential units, approximately 1,813 square feet of commercial space and covered parking known as 444 East Genesee Street and located in the City of Syracuse, Onondaga County, New York.

(ccc) "Property Jurisdiction" means the State of New York.

(ddd) "Rental Achievement Requirement" means legally collectible rents at least equal to (i) \$304,243.00 annually in respect of residential units, and (ii) \$18,630.00 annually in respect of commercial units, or such higher amount as shall be sufficient to provide coverage of not less than one hundred twenty-five percent (125%) of the Loan secured by the First Construction Loan Mortgage and the loan secured by the First Project Loan Mortgage combined. Such coverage shall mean the ratio of net collectible rents (assuming vacancy and collection loss), less building operating expenses divided by the debt service (including mortgage insurance premiums and loan servicing fees) and shall be based on the most current actual maintenance and operation expenses as adjusted for projected inflation during the two-year lease period following rent setting and as documented to the satisfaction of Lender at the time rents are established.

(eee) "Rents" means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract or similar agreements), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants, excepting therefrom any monies due the Agency under the Agency Leases.

(fff) "Servicer" means the servicing party that is designated by Lender to service the Loan, together with its successors in such capacity.

(ggg) "SONYMA" means the State of New York Mortgage Agency or any successor agency or entity.

(hhh) "Taxes" means, collectively, all taxes or payments in lieu thereof, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(iii) "Transfer" means (i) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (ii) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (iii) the issuance or other creation of a direct or indirect ownership interest; or (iv) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

(jjj) "United States Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

## 2. **UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.**

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file any and all financing statements, continuation statements and financing statement amendments, in such form as Lender may require to perfect or continue the perfection of this security interest without execution by Borrower. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

(b) Unless Borrower gives at least thirty (30) days' prior written notice to Lender and subject to Section 21 hereof, Borrower shall not: (i) change its name, identity, or structure of organization; (ii) change its state of organization through dissolution, merger, transfer of assets or otherwise; (iii) change its principal place of business (or chief executive office if more than one place of business); or (iv) add to or change any location at which any of the Mortgaged Property is stored, held or located. Such notice shall be accompanied by new financing statements and/or financing statement amendments in the same form as the financing statements delivered to Lender on the date hereof. Without limiting the foregoing, Borrower hereby authorizes and irrevocably appoints Lender and each of its officers attorneys-in-fact for Borrower to execute, deliver, and file, as applicable, such financing statements, continuation statements or amendments deemed necessary by Lender in its sole discretion for and on behalf of Borrower, without execution by Borrower. Borrower shall also execute and deliver to Lender modifications or supplements of this Instrument as Lender may require in connection with any change described in this Section.

## 3. **ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in the Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part

of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments of Rents as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument

(b) Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument. Upon the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid (such license shall be reinstated upon Borrower's cure of the Event of Default to the satisfaction of Lender). Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the occurrence of an Event of Default, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the right of Lender to collect, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the Loan), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of

this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month's rent). Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month's rent).

(d) If an Event of Default has occurred and is continuing, Lender may, but shall in no event be required, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, except for the gross negligence or willful misconduct of Lender or its agents.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

#### **4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.**

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property" as that term is defined in Section 1. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower, and Agency that in this circumstance this Instrument create and perfect a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Unless an Event of Default has occurred and is continuing, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. During the continuance of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for

any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property, except to the extent arising from the gross negligence or willful misconduct of Lender. Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time during the continuance of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall (i) be on forms approved by Lender, (ii) be for initial terms of at least one (1) year and not more than two (2) years, (iii) not include options to purchase, (iv) be legally valid, binding, and enforceable obligations of the tenants, (v) contain language expressly stating that such Lease is subordinate to the lien of this Instrument and (vi) comply with all applicable laws.

(f) Except for laundry facilities and cable television services for tenants on market terms and conditions, Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at

Lender's or such purchaser's option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance (other than a security deposit not in excess of one month's rent).

(h) The Borrower agrees that it will not agree with any person to accept rent in an amount below the maximum rent permitted by law for any rent-regulated apartment at the Mortgaged Property, without, in each instance, the prior written consent of the Lender.

(i) Intentionally Omitted.

(j) All residential rentals and Lease renewals will be subject to all applicable rules and regulations of HCR ("HCR Regulations").

(k) Intentionally Omitted.

(l) The Borrower agrees to use its best efforts to lease the Mortgaged Property so as to attain and maintain the Rental Achievement Requirement.

**5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS; PREPAYMENT PREMIUM.** Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe and comply with all other provisions of the Note and the other Loan Documents.

**6. EXCULPATION.** The personal liability of Borrower for payment of the Note and for performance of the other obligations to be performed by Borrower under this Instrument is limited in the manner, and to the extent, provided in the Note.

**7. PAYMENT OF TAXES, INSURANCE AND OTHER CHARGES.**

(a) Borrower shall pay directly to the appropriate public office of insurance company, until the Indebtedness is paid in full, the entire sum required to pay, when due (i) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (ii) the premiums for fire and other hazard insurance, rental loss insurance and such other insurance as Lender may require under Section 19, (iii) Taxes, and (iv) amounts for other charges and expenses which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender's interests. The obligations of Borrower for which the payments referenced above are required are collectively referred to in this Instrument as "Impositions".

(b) On or before the date each such Imposition is due, or on the date this Instrument requires each such Imposition to be paid, Borrower shall, if required by Lender, provide Lender with proof of payment of each such Imposition. Lender may, at

any time and in Lender's discretion require Borrower to deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note, an additional amount sufficient to accumulate with Lender the entire sum required to pay, when due, the Impositions, as reasonably estimated from time to time by Lender plus one-twelfth of such estimate (the "Imposition Deposits").

8. **COLLATERAL AGREEMENTS.** Borrower shall deposit with Lender such amounts as may be required by the Loan Agreement and any Collateral Agreement and shall perform all other obligations of Borrower under the Loan Agreement and each Collateral Agreement.

9. **APPLICATION OF PAYMENTS.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument and the Note shall remain unchanged.

10. **COMPLIANCE WITH LAWS.** Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, disability accommodation, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

11. **USE OF PROPERTY.** Unless required by applicable law, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, except for any change in use approved by Lender, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate a change in the zoning classification of the Mortgaged Property or acquiesce in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property; (e) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, or (f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender.

**12. PROTECTION OF LENDER'S SECURITY; INSTRUMENT SECURES FUTURE ADVANCES.**

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document after the expiration of any applicable notice and cure period, or if any action or proceeding (including a Bankruptcy Event) is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (i) payment of fees, expenses and reasonable fees of attorneys, accountants, inspectors and consultants, (ii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iii) procurement of the insurance required by Section 19 (specifically including, without limitation, flood insurance if required by Section 19), and (iv) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be secured by this Instrument, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "Default Rate", as defined in the Note.

(c) If the Lender shall elect to pay any sum due with reference to the Project or the Mortgaged Property, the Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by this Instrument and/or the other Loan Documents, the Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same.

(d) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

**13. INSPECTION.**

(a) Lender and its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests to the extent permitted under Section 18) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Borrower shall not be required in the case of an emergency, as

determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

(b) If Lender determines that Mold has developed as a result of a water intrusion event or leak, Lender, at Lender's discretion, may require that a professional inspector inspect the Mortgaged Property as frequently as Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Lender's satisfaction. Such inspection shall be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower shall be responsible for the cost of such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold, water intrusion or leaks is remedied to Lender's satisfaction, Lender shall not require a professional inspection any more frequently than once every three years unless Lender is otherwise aware of Mold as a result of a subsequent water intrusion event or leak.

(c) If Lender determines not to conduct an annual inspection of the Mortgaged Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect: that Borrower represents and warrants that Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities regarding odors, indoor air quality, Mold or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property, or if Borrower has received any such written complaint, notice, letter or other written communication, that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the MMP for the Mortgaged Property. If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

#### 14. **BOOKS AND RECORDS; FINANCIAL REPORTING.**

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender upon reasonable advance oral notice.

(b) Borrower shall furnish to Lender all of the following:

- (i) (1) except as provided in clause (2) below, within 45 days after the end of each fiscal quarter of Borrower, a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each fiscal quarter, (2) within

120 days after the end of each fiscal year of Borrower, (A) a statement of income and expenses for Borrower's operation of the Mortgaged Property for such fiscal year, (B) a statement of changes in financial position of Borrower relating to the Mortgaged Property for such fiscal year, and (C) when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of such fiscal year; and (3) any of the foregoing at any other time upon Lender's request;

- (ii) Within 45 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;
- (iii) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;
- (iv) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender's request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;
- (v) upon Lender's request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender;
- (vi) upon Lender's request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower's most recent fiscal year; and
- (vii) if required by Lender, within 30 days of the end of each calendar month, a monthly statement of income and expenses for such calendar month on a year-to-date basis for Borrower's operation of the Mortgaged Property.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower and shall be in such form and contain such detail as Lender may require. Lender also may require that any statements, schedules or reports be audited at Borrower's expense by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

#### **15. TAXES; OPERATING EXPENSES.**

(a) Subject to the provisions of Section 15(c) and Section 15(d), Borrower shall pay, or cause to be paid, all Taxes and/or PILOT payments when due and before the imposition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 15(c), Borrower shall pay (i) the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

(c) If an Event of Default exists, Lender may exercise any rights Lender may have with respect to Imposition Deposits, to the extent Lender is collecting same, without regard to whether Impositions are then due and payable. Lender shall have no liability to Borrower for failing to pay any Impositions to the extent that any Event of Default has occurred and is continuing, insufficient Imposition Deposits are held by Lender at the time an Imposition becomes due and payable or Borrower has failed to provide Lender with bills and premium notices as provided above.

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is

requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(e) Borrower shall promptly furnish to Lender on or before the date this Instrument requires such Impositions to be paid, copies of receipts evidencing that such payments were made.

(f) All payments made by Borrower to Lender pursuant to this Instrument or any of the Loan Documents shall be free and clear of any and all tax liabilities whatsoever (other than United States federal income taxation payable by Lender) and, to the extent Lender is required to pay any such tax liabilities, Borrower shall reimburse Lender in respect of any such payment of taxes and, immediately upon request from Lender, shall deliver to Lender copies of receipts evidencing the payment of such taxes.

16. **LIENS; ENCUMBRANCES.** Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a "Lien") on the Mortgaged Property (other than the lien of this Instrument and the Permitted Encumbrances) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a "Transfer" which constitutes an Event of Default and subjects Borrower to personal liability under the Note. Borrower shall maintain the lien created by this Instrument as a first mortgage lien upon the Mortgaged Property, subject to no other Liens or encumbrances other than Permitted Encumbrances.

**17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.**

(a) Borrower shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Borrower shall not abandon the Mortgaged Property.

(c) Borrower shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair.

(d) Borrower shall keep the Mortgaged Property in good repair (normal wear and tear excepted), including the replacement of Personalty and Fixtures with items of equal or better function and quality.

(e) Borrower shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender at all times, under a contract approved by Lender, in writing, which contract must be terminable upon not more than thirty (30) days notice without the necessity of establishing cause and without payment of a penalty or termination fee by Borrower or its successors. There shall be no change in the property manager or any contract for the management of the

Mortgaged Property without Lender's prior written approval. Lender shall have the right to require that Borrower and any new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. "Affiliate of Borrower" means any Person controlled by, under common control with, or which controls Borrower (the term "control" for these purposes means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(f) Borrower shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except (i) in connection with the replacement of tangible Personalty and (ii) repairs and replacements in connection with making an individual unit ready for a new occupant.

(g) Unless otherwise waived by Lender in writing, Borrower must have or must establish and must adhere to the MMP. If Borrower is required to have an MMP, Borrower must keep all MMP documentation at the Mortgaged Property or at the management agent's office and available for Lender or its agents to review during any annual assessment or inspection of the Mortgaged Property that is required by Lender.

#### 18. ENVIRONMENTAL HAZARDS.

(a) Except for matters described in Section 18(b), Borrower shall not cause or permit any of the following:

- (i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property;

- (ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties);
- (iii) any occurrence or condition on the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;
- (iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property;
- (v) the imposition of any environmental lien against the Mortgaged Property; or
- (vi) any violation or noncompliance with the terms of any O&M Program.

The matters described in clauses (i) through (vi) above, except as otherwise provided in Section 18(b), are referred to collectively in this Section 18 as "Prohibited Activities or Conditions".

(b) Prohibited Activities or Conditions shall not include lawful conditions permitted by an O&M Program or the safe and lawful use and storage of quantities of (i) pre-packaged supplies, cleaning materials, petroleum products, household products, paints, solvents, lubricants and other materials customarily used in the construction, renovation, operation, maintenance or use of comparable multifamily and mixed-use properties, (ii) cleaning materials, household products, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (iii) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property's parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If and as required by Lender, Borrower shall also establish a written operations and maintenance program with respect to certain Hazardous Materials. Each

such operations and maintenance program and any additional or revised operations and maintenance programs established for the Mortgaged Property pursuant to this Instrument must be approved by Lender and shall be referred to herein as an "O&M Program." Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with each O&M Program. Borrower shall pay all costs of performance of Borrower's obligations under any O&M Program, and any Beneficiary Party's out-of-pocket costs incurred by such Beneficiary Party in connection with the monitoring and review of each O&M Program and Borrower's performance shall be paid by Borrower upon demand by such Beneficiary Party. Any such out-of-pocket costs of such Beneficiary Party which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Without limitation of the foregoing, (i) Borrower hereby agrees to implement and maintain during the entire term of the Loan the O&M Program(s) described in that certain Borrower's Certificate and Agreement dated as of the date hereof, and (ii) if asbestos-containing materials are found to exist at the Mortgaged Property, the O&M Program with respect thereto shall be undertaken consistent with the Guidelines for Controlling Asbestos-Containing Materials in Buildings (USEPA, 1985) and other relevant guidelines and applicable Hazardous Materials Laws.

(f) With respect to any O&M Program, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify; (ii) amendments to such O&M Program to address changing circumstances, laws or other matters, including, without limitation, variations in response to reports provided by environmental consultants; and (iii) execution of an Operations and Maintenance Agreement relating to such O&M Program satisfactory to Lender.

(g) Borrower represents and warrants to Beneficiary Parties that, except as otherwise disclosed in the Environmental Reports (as defined in the Environmental Agreement):

- (i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;
- (ii) to the best of Borrower's knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed, and Borrower has provided Lender with copies of all reports and information acquired in such inquiries;
- (iii) the Mortgaged Property does not now contain any underground storage tanks, and, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been disclosed in Exhibit A to the Environmental Agreement, that tank complies with all requirements of Hazardous Materials Laws;

- (iv) Borrower has complied with and will continue to comply with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;
- (v) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit or Hazardous Materials Law;
- (vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower's knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition;
- (vii) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (viii) no prior Remedial Work (as defined below) has been undertaken, and no Remedial Work is ongoing, with respect to the Mortgaged Property during Borrower's ownership thereof or, to the best of Borrower's knowledge, at any time prior to Borrower's ownership thereof; and
- (ix) Borrower has disclosed in the Environmental Agreement all material facts known to Borrower or contained in Borrower's records the nondisclosure of which could cause any representation or warranty made herein or any statement made in the Environmental Agreement to be false or materially misleading.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until the Indebtedness has been paid in full or otherwise discharged.

(h) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

- (i) Borrower's discovery of any Prohibited Activity or Condition;

- (ii) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;
- (iii) Borrower's receipt of or knowledge of any personal injury claim, proceeding or cause of action directly or indirectly arising as a result of the presence of asbestos or other hazardous materials on or from the Mortgaged Property;
- (iv) Borrower's discovery that any representation or warranty in this Section 18 has become untrue after the date of this Instrument; and
- (v) Borrower's breach of any of its obligations under this Section 18.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Note, or any other Loan Document.

(i) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("Environmental Inspections") required by Lender or any Beneficiary Party in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 21, or required by Lender following a determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including, without limitation, fees and expenses of attorneys, expert witnesses, engineers, technical consultants and investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with such Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any

and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(j) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with or cure a violation of any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower shall, by the earlier of (i) the applicable deadline required by such Hazardous Materials Law or (ii) thirty (30) days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by such Hazardous Materials Law. Borrower shall promptly provide Lender with a cost estimate from an environmental consultant acceptable to Lender to complete any required Remedial Work. If required by Lender, Borrower shall promptly establish with Lender a reserve fund in the amount of such estimate. If in Lender's opinion the amount reserved at any time during the Remedial Work is insufficient to cover the work remaining to complete the Remediation or achieve compliance, Borrower shall increase the amount reserved in compliance with Lender's written request. All amounts so held in reserve, until disbursed, are hereby pledged to Lender as security for payment of Borrower's obligations under this Instrument. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.

(k) Borrower shall comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Borrower shall (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (ii) cooperate with any inquiry by any Governmental Authority; and (iii) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(l) BORROWER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND BENEFICIARY PARTIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, EMPLOYEES, AGENTS, ATTORNEYS, TRUSTEES, HEIRS AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST ALL LOSSES, PROCEEDINGS, CLAIMS, DAMAGES, PENALTIES AND COSTS (WHETHER INITIATED OR SOUGHT BY GOVERNMENTAL AUTHORITIES OR PRIVATE PARTIES), INCLUDING, WITHOUT LIMITATION, FEES AND OUT-OF-POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, ENGINEERING FEES, ENVIRONMENTAL CONSULTANT FEES, INVESTIGATORY FEES, AND REMEDIATION COSTS (INCLUDING, WITHOUT LIMITATION, ANY

FINANCIAL ASSURANCES REQUIRED TO BE POSTED FOR COMPLETION OF REMEDIAL WORK AND COSTS ASSOCIATED WITH ADMINISTRATIVE OVERSIGHT), AND ANY OTHER LIABILITIES OF WHATEVER KIND AND WHATEVER NATURE, WHETHER INCURRED IN CONNECTION WITH ANY JUDICIAL OR ADMINISTRATIVE PROCESS OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY FROM ANY OF THE FOLLOWING:

- (i) ANY BREACH OF ANY REPRESENTATION OR WARRANTY OF BORROWER IN THIS SECTION 18;
- (ii) ANY FAILURE BY BORROWER TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS SECTION 18;
- (iii) THE EXISTENCE OR ALLEGED EXISTENCE OF ANY PROHIBITED ACTIVITY OR CONDITION;
- (iv) THE PRESENCE OR ALLEGED PRESENCE OF HAZARDOUS MATERIALS ON OR UNDER THE MORTGAGED PROPERTY (WHETHER AS A RESULT OF ACTIVITIES ON THE MORTGAGED PROPERTY OR ON SURROUNDING PROPERTIES) OR IN ANY OF THE IMPROVEMENTS OR ON OR UNDER ANY PROPERTY OF BORROWER THAT IS ADJACENT TO THE MORTGAGED PROPERTY;
- (v) THE ACTUAL OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW;
- (vi) ANY LOSS OR DAMAGE RESULTING FROM A LOSS OF PRIORITY OF THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT DUE TO AN IMPOSITION OF AN ENVIRONMENTAL LIEN AGAINST THE MORTGAGED PROPERTY; AND
- (vii) ANY PERSONAL INJURY CLAIM, PROCEEDING OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING AS A RESULT OF THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS ON OR FROM THE MORTGAGED PROPERTY.

(m) COUNSEL SELECTED BY BORROWER TO DEFEND INDEMNITEES SHALL BE SUBJECT TO THE APPROVAL OF THOSE INDEMNITEES. IN ANY CIRCUMSTANCES IN WHICH THE INDEMNITY UNDER THIS SECTION 18 APPLIES, ANY BENEFICIARY PARTY MAY EMPLOY ITS OWN LEGAL COUNSEL AND CONSULTANTS TO PROSECUTE, DEFEND OR NEGOTIATE ANY CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING AT BORROWER'S EXPENSE, AND SUCH BENEFICIARY PARTY, WITH THE PRIOR WRITTEN CONSENT OF BORROWER (WHICH SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED) MAY SETTLE

OR COMPROMISE ANY ACTION OR LEGAL OR ADMINISTRATIVE PROCEEDING. BORROWER SHALL REIMBURSE SUCH BENEFICIARY PARTY UPON DEMAND FOR ALL COSTS AND EXPENSES INCURRED BY SUCH BENEFICIARY PARTY, INCLUDING, WITHOUT LIMITATION, ALL COSTS OF SETTLEMENTS ENTERED INTO IN GOOD FAITH, AND THE FEES AND OUT OF POCKET EXPENSES OF SUCH ATTORNEYS AND CONSULTANTS.

(n) BORROWER SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THOSE INDEMNITEES WHO ARE NAMED AS PARTIES TO A CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING (A "CLAIM"), SETTLE OR COMPROMISE THE CLAIM IF THE SETTLEMENT (1) RESULTS IN THE ENTRY OF ANY JUDGMENT THAT DOES NOT INCLUDE AS AN UNCONDITIONAL TERM THE DELIVERY BY THE CLAIMANT OR PLAINTIFF TO BENEFICIARY PARTIES OF A WRITTEN RELEASE OF THOSE INDEMNITEES, SATISFACTORY IN FORM AND SUBSTANCE TO LENDER; OR (2) MAY MATERIALLY AND ADVERSELY AFFECT BENEFICIARY PARTIES, AS DETERMINED BY LENDER IN ITS DISCRETION.

(o) BORROWER'S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL NOT BE LIMITED OR IMPAIRED BY ANY OF THE FOLLOWING, OR BY ANY FAILURE OF BORROWER OR ANY GUARANTOR TO RECEIVE NOTICE OF OR CONSIDERATION FOR ANY OF THE FOLLOWING:

- (i) ANY AMENDMENT OR MODIFICATION OF ANY LOAN DOCUMENT;
- (ii) ANY EXTENSIONS OF TIME FOR PERFORMANCE REQUIRED BY ANY LOAN DOCUMENT;
- (iii) ANY PROVISION IN ANY LOAN DOCUMENT LIMITING BENEFICIARY PARTIES' RECOURSE TO PROPERTY SECURING THE INDEBTEDNESS, OR LIMITING THE PERSONAL LIABILITY OF BORROWER OR ANY OTHER PARTY FOR PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS;
- (iv) THE ACCURACY OR INACCURACY OF ANY REPRESENTATIONS AND WARRANTIES MADE BY BORROWER UNDER THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT;
- (v) THE RELEASE OF BORROWER OR ANY OTHER PERSON, BY BENEFICIARY PARTIES OR BY OPERATION OF LAW, FROM PERFORMANCE OF ANY OBLIGATION UNDER ANY LOAN DOCUMENT;
- (vi) THE RELEASE OR SUBSTITUTION IN WHOLE OR IN PART OF ANY SECURITY FOR THE INDEBTEDNESS; AND

(vii) FAILURE BY BENEFICIARY PARTIES TO PROPERLY PERFECT ANY LIEN OR SECURITY INTEREST GIVEN AS SECURITY FOR THE INDEBTEDNESS.

(p) BORROWER SHALL, AT ITS OWN COST AND EXPENSE, DO ALL OF THE FOLLOWING:

(i) PAY OR SATISFY ANY JUDGMENT OR DECREE THAT MAY BE ENTERED AGAINST ANY INDEMNITEE OR INDEMNITEES IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING INCIDENT TO ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18;

(ii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES PAID OR INCURRED IN CONNECTION WITH ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18; AND

(iii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES, INCLUDING, WITHOUT LIMITATION, FEES AND OUT OF POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, PAID OR INCURRED IN CONNECTION WITH THE ENFORCEMENT BY INDEMNITEES OF THEIR RIGHTS UNDER THIS SECTION 18, OR IN MONITORING AND PARTICIPATING IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING.

(q) THE PROVISIONS OF THIS SECTION 18 SHALL BE IN ADDITION TO ANY AND ALL OTHER OBLIGATIONS AND LIABILITIES THAT BORROWER MAY HAVE UNDER APPLICABLE LAW OR UNDER ANY OTHER LOAN DOCUMENT, AND EACH INDEMNITEE SHALL BE ENTITLED TO INDEMNIFICATION UNDER THIS SECTION 18 WITHOUT REGARD TO WHETHER ANY OTHER BENEFICIARY PARTY OR THAT INDEMNITEE HAS EXERCISED ANY RIGHTS AGAINST THE MORTGAGED PROPERTY OR ANY OTHER SECURITY, PURSUED ANY RIGHTS AGAINST ANY GUARANTOR, OR PURSUED ANY OTHER RIGHTS AVAILABLE UNDER THE LOAN DOCUMENTS OR APPLICABLE LAW. IF BORROWER CONSISTS OF MORE THAN ONE PERSON OR ENTITY, THE OBLIGATION OF THOSE PERSONS OR ENTITIES TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18 SHALL BE JOINT AND SEVERAL. THE OBLIGATION OF BORROWER TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18 SHALL SURVIVE ANY REPAYMENT OR DISCHARGE OF THE INDEBTEDNESS, ANY FORECLOSURE PROCEEDING, ANY FORECLOSURE SALE, ANY DELIVERY OF ANY DEED IN LIEU OF FORECLOSURE, AND ANY RELEASE OF RECORD OF THE LIEN OF THIS INSTRUMENT.

19. **PROPERTY AND LIABILITY INSURANCE.**

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, business income coverage and extra expense insurance, coverage against acts of terrorism, mold and earthquake coverage. Borrower acknowledges and agrees that Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any portion of the Improvements is at any time located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area now or hereafter having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood in an amount equal to the maximum amount available under the National Flood Insurance Program or any successor thereto.

(b) All premiums on insurance policies required under Section 19(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require consistent with Lender's then current practices and standards, and shall be issued by insurance companies satisfactory to Lender.

(d) During any period of construction and/or rehabilitation, and at all times prior to occupancy of the Project by any tenants following the completion of the construction and/or rehabilitation of the Project in accordance with the Loan Agreement, the following provisions shall apply, in addition to the other provisions of this Section 19 and without limiting the generality of the other provisions of this Section 19:

(i) Borrower shall provide (or cause to be provided), maintain and keep in force, the following insurance coverage:

(A) Builder's "all risk" insurance or the equivalent coverage, including theft, to insure all buildings, machinery, equipment, materials, supplies, temporary structures and all

other property of any nature on-site, off-site and while in transit which is to be used in fabrication, erection, installation and construction and/or rehabilitation of the Project, and to remain in effect until the entire Project has been completed and accepted by Borrower and is first occupied by any tenants (provided that in any event, such coverage shall remain in effect until such time as Borrower has provided Lender with evidence of property insurance covering the Improvements and meeting the requirements of this Section 19). Such insurance shall be provided on a replacement cost value basis and shall include foundations, other underground property, tenant improvements and personal property. If tenant improvements and personal property are not included in the above coverage, they may be insured separately by Borrower provided coverage is acceptable to Lender. Builders "all risk" insurance shall (i) be on a nonreporting, completed value form, (ii) cover soft costs, debris removal expense (including removal of pollutants), resulting loss and damage to property due to faulty or defective workmanship or materials and error in design or specification, loss while the property is in the care, custody and control of others to whom the property may be entrusted, (iii) provide that Borrower can complete and occupy the Mortgaged Property without further written consent from the insurer, and (iv) cover loss of income resulting from delay in occupancy and use of the Mortgaged Property due to loss. During the initial construction and/or rehabilitation of the Project and until such time as the Project is first occupied by any tenants, the Borrower shall not be required to maintain property insurance as required by this Section 19 for so long as Builder's "all risk" insurance or equivalent coverage is maintained in accordance with this paragraph.

- (B) If any portion of the Mortgaged Property is or becomes located in an area identified by the United States Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, as amended, Borrower shall also keep the improvements and the equipment located thereon insured against loss by flood in an amount at least equal to the principal amount of the Loan or the maximum limits of coverage available with respect to the Mortgaged Property, whichever is less. All such insurance shall also cover continuing expenses not directly involved in the direct cost of construction,

rehabilitation or renovation, including interest on money borrowed to finance construction, rehabilitation or renovation, continuing interest on the Loan, advertising, promotion, real estate taxes and other assessments, the cost of renegotiating leases, and other expenses incurred as the result of property loss or destruction by the insured peril. Such coverage shall not contain any monthly limitation.

- (ii) If Lender fails to receive proof and evidence of the insurance required hereunder, Lender shall have the right, but not the obligation, to obtain or cause to be obtained current coverage and to make a Disbursement, as defined by the Loan Agreement (or, in its sole discretion, advance funds) to pay the premiums for it. If Lender makes an advance for such purpose, Borrower shall repay such advance immediately on demand and such advance shall be considered to be a demand loan to Borrower bearing interest at the Default Rate (as defined by the Note) and secured by the Mortgaged Property.

(e) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require, consistent with Lender's then current practices and standards.

(f) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(g) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (i) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "Restoration"), or (ii) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall apply the proceeds in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily and mixed-use properties.

(h) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (i) no Event of

Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Lender determines, in its discretion, that there will be sufficient funds to complete the Restoration (and complete construction of the Project in accordance with the Loan Agreement and the Plans and Specifications, as defined therein, if such construction has not been completed at such time); (iii) Lender determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (iv) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty; and (v) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained pursuant to this Instrument.

(i) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(j) Unless Lender otherwise agrees in writing, any application of any insurance proceeds to the Indebtedness shall not extend or postpone the due date of any monthly installments referred to in the Note, Section 7 of this Instrument or any Collateral Agreement, or change the amount of such installments, except as provided in the Note.

(k) Borrower agrees to execute such further evidence of assignment of any insurance proceeds as Lender may require.

(l) Borrower further agrees that to the extent that Borrower obtains any form of property damage insurance for the Mortgaged Property or any portion thereof that insures perils not required to be insured against by Lender, such policy of property damage insurance shall include a standard mortgagee clause and shall name Lender as loss payee and, within ten (10) days following Borrower's purchase of such additional insurance, Borrower shall cause to be delivered to Lender a duplicate original policy of insurance with respect to such policy. Any insurance proceeds payable to Borrower under such policy shall be additional security for the Indebtedness and Lender shall have the same rights to such policy and proceeds as it has with respect to insurance policies required by Lender pursuant to this Section 19 (except that Lender shall not require that the premium for such additional insurance be included among the Imposition Deposits).

(m) If Lender fails to receive proof and evidence of the insurance required hereunder, Lender shall have the right, but not the obligation, to obtain or cause to be obtained current coverage and to pay the premiums for it. If Lender makes a payment for such purpose, Borrower shall repay same immediately on demand and such payment

shall be considered to be a demand loan to Borrower bearing interest at the Default Rate (as defined by the Note) and secured by the Mortgaged Property.

**20. CONDEMNATION.**

(a) Borrower shall promptly notify Lender in writing of any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a "Condemnation"), and shall deliver to the Lender copies of any and all papers served in connection with such Condemnation. Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts (including, without limitation, fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise), at Lender's option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness in accordance with the provisions of the Note as to application of payments to the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of payments due under the Note, Section 7 of this Instrument or any Collateral Agreement or any other Loan Document, or change the amount of such payments, except as otherwise provided in the Note. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

**21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.**

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

- (i) other than the lien of this Instrument and the Permitted Encumbrances, a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;
- (ii) a Transfer of any interest in Borrower;

- (iii) a Transfer of any interest in any entity which owns, directly or indirectly through one or more intermediate entities, any interest in Borrower;
- (iv) a Transfer of all or any part of a Guarantor's ownership interests in Borrower, or in any other entity which owns, directly or indirectly through one or more intermediate entities, an ownership interest in Borrower;
- (v) if Guarantor is an entity, (A) a Transfer of any interest in Guarantor, or (B) a Transfer of any interest in any entity which owns, directly or indirectly through one or more intermediate entities, any interest in Guarantor;
- (vi) if Borrower or Guarantor is a trust, the termination or revocation of such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Guarantor must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);
- (vii) if Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);
- (viii) the merger, dissolution, liquidation, or consolidation of (i) Borrower, (ii) any Guarantor that is a legal entity, or (iii) any legal entity holding, directly or indirectly, any interest in Borrower or in any Guarantor that is an entity;
- (ix) a conversion of Borrower from one type of legal entity into another type of legal entity (including the conversion of a general partnership into a limited partnership and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer; if such conversion results in a change in any assets, liabilities, legal rights or obligations of Borrower (or of any Guarantor, or any general partner of Borrower, as applicable), by operation of law or otherwise;
- (x) a Transfer of the economic benefits or right to cash flows attributable to the ownership interests in Borrower and/or, if Guarantor is an entity, Guarantor, separate from the Transfer of the

underlying ownership interests, unless the Transfer of the underlying ownership interests would otherwise not be prohibited by this Instrument; and

- (xi) the filing, recording, or consent to filing or recording of any plat or map subdividing, replatting or otherwise affecting the Mortgaged Property or any other replat or subdivision of the Mortgaged Property, whether or not any such action affects the priority of the lien of this Instrument.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary (each, a "Permitted Transfer"):

- (i) a Transfer to which Lender has consented;
- (ii) except as provided in Section 21(a)(vi) and (vii), a Transfer that occurs by devise, descent, pursuant to the provisions of a trust, or by operation of law upon the death of a natural person;
- (iii) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;
- (iv) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security interests other than those created by or permitted pursuant to the Loan Documents or consented to by Lender;
- (v) the grant of an easement, servitude, or restrictive covenant if, before the grant, Lender determines that the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Mortgaged Property or Lender's interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request;
- (vi) the creation of a mechanic's, materialman's, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender's satisfaction within 45 days after Borrower has actual or constructive notice of the existence of such lien;

- (vii) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument; and
- (viii) the termination of the Agency Leases pursuant to their respective terms.

(c) Lender shall consent to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

- (i) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);
- (ii) the absence of any Event of Default;
- (iii) the transferee meets all of the eligibility, credit, management, and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgage finance structures on similar multifamily and mixed-use properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;
- (iv) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar multifamily and mixed-use properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;
- (v) if transferor or any other person has obligations under any Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Loan Document, and may require that the transferee comply with any provisions of this Instrument or any other Loan Document which previously may have been waived by Lender;
- (vi) if a guaranty has been executed and delivered in connection with the Note, this Instrument or any of the other Loan Documents, Borrower causes one or more individuals or entities acceptable to

Lender to execute and deliver to Lender a substitute guaranty in a form acceptable to Lender;

- (vii) Lender's receipt of all of the following:
  - (A) a non refundable review fee in the amount of \$3,000 and a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer; and
  - (B) Borrower's reimbursement of all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, to the extent such expenses exceed \$3,000; and
- (viii) Borrower has agreed to Lender's conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Loan Documents to (i) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (ii) restore to original provisions of the standard Lender's form multifamily loan documents, to the extent such provisions were previously modified.

(d) Lender shall be provided with written notice of all Transfers under this Section 21, whether or not such Transfers are permitted under Section 21(b) or approved by Lender under Section 21(c), no later than 10 days prior to the date of the Transfer.

22. **EVENTS OF DEFAULT.** The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) (i) any failure by Borrower to pay or deposit any payment of principal, interest, principal reserve fund deposit, any payment with a specified due date, or any other scheduled payment or deposit required by the Note, this Instrument or any other Loan Document when such payment or deposit is due or (ii) any failure by Borrower to pay or deposit any unscheduled payment or deposit, or other payment or deposit without a specified due date, required by the Note, this Instrument or any other Loan Document, within five (5) days after written notice from Lender;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19;

(c) any failure by Borrower to comply with the provisions of Section 32;

(d) fraud or material misrepresentation or material omission by Borrower or Guarantor, any of their respective officers, directors, trustees, general partners, managing members, managers, agents or representatives in connection with (i) the application for

the Loan, (ii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Collateral Agreement;

(e) any of Borrower's representations and warranties in this Instrument is false or misleading in any material respect;

(f) any Event of Default under Section 21;

(g) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property;

(h) any failure by Borrower to perform or comply with any of its obligations under this Instrument (other than those specified in this Section 22), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Lender to Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document;

(i) any failure by Borrower or any Guarantor to perform any of its obligations as and when required under any Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Loan Document;

(j) any exercise by the holder of any debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable;

(k) the occurrence of a Bankruptcy Event;

(l) any Event of Default (as defined in any of the Loan Documents), which continues beyond the expiration of any applicable cure period;

(m) any breach of, or event of default under, any other document or agreement relating to the Loan to which Borrower is a party, which continues beyond the expiration of any applicable cure period thereunder;

(n) the occurrence of any one or more of the following: (i) a breach or default under the Permanent Loan Commitment (as defined by the Loan Agreement), or (ii) prior

to the closing of the Permanent Loan (as defined by the Loan Agreement) and repayment in full of the Indebtedness, the Permanent Loan Commitment is terminated, expires or otherwise fails to remain in full force and effect, or (iii) the Borrower fails to satisfy any of the conditions under the Permanent Loan Commitment for the closing of the Permanent Loan;

(o) any amendment, modification, waiver or termination of any of the provisions of Borrower's Organizational Documents without the prior written consent of Lender, other than (i) modifications necessary to reflect the occurrence of a Permitted Transfer or (ii) modifications that do not: (A) impose any additional or greater obligations on Borrower or any of the partners, managers or members of Borrower, (B) reduce or relieve Borrower or any of the partners, managers or members of Borrower of any of their obligations, (C) modify the timing, amounts, number, conditions or other terms of the installments or other payment obligations of the partners or members of Borrower or (D) impair the collateral for the Loan; provided, however, that Borrower shall promptly provide to Lender a copy of any modifications to Borrower's Organizational Documents that do not require Lender's consent;

(p) (i) any breach of any Material Property Agreement by Borrower or its officers, directors, employees, agents or tenants that continues beyond any applicable notice and cure period; (ii) any failure by Borrower or its officers, directors, employees or agents or any other party to deliver concurrently (in case of notices given) or promptly (in case of notices received) copies of any and all notices received or given thereby to Lender with respect to any Material Property Agreement; or (iii) any breach of the representations, warranties, or covenants set forth in the Borrower's Certificate and Agreement;

(q) if Borrower or any Guarantor is a trust, the termination or revocation of any such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower or Guarantor must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged); or

(r) if any Guarantor is a natural person, the death of such individual; unless the Lender is notified and such individual is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged).

23. **REMEDIES CUMULATIVE.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. **FORBEARANCE.**

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Instrument, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

**25. WAIVER OF STATUTE OF LIMITATIONS.** BORROWER HEREBY WAIVES THE RIGHT TO ASSERT ANY STATUTE OF LIMITATIONS AS A BAR TO THE ENFORCEMENT OF THE LIEN OF THIS INSTRUMENT OR TO ANY ACTION BROUGHT TO ENFORCE ANY LOAN DOCUMENT.

**26. WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

**27. FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require

from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents. In furtherance thereof, on the request of Lender, Borrower shall re-execute or ratify any of the Loan Documents or execute any other documents or take such other actions as may be necessary to effect the assignment, pledge or other transfer of the Loan to any party that may purchase, insure, credit enhance or otherwise finance all or any part of the Loan, including, without limitation, any Credit Enhancer (including Freddie Mac or Fannie Mae), the U.S. Department of Housing and Urban Development, or any insurance company, conduit lender or any other lender or investor.

28. **ESTOPPEL CERTIFICATE.** Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts requested by Lender.

29. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Instrument, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the Property Jurisdiction.

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Instrument, or any other Loan Document may be litigated in the Property Jurisdiction - the state and federal courts and authorities with jurisdiction over the Mortgaged Property in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 29 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

30. **NOTICE.**

(a) All notices, demands and other communications ("notice") under or concerning this Instrument shall be in writing, addressed as set forth below, and shall include a reference to "CPC Loan # 70664." Each notice shall be deemed given on the earliest to occur of (i) the date when the notice is received by the addressee; (ii) the first Business Day after the notice is delivered to a recognized overnight courier service, with

arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

If to the Borrower: 444 EAST GENESEE STREET LLC  
344 S. Warren Street  
Syracuse, New York 13202  
Attention: Graziano Zazzara, Jr.

and with a copy to: Michael Stanczyk, Esq.  
Lynn D'Elia Temes & Stanczyk LLC  
100 Madison Street  
Tower 1 – Suite 1905  
Syracuse, New York 13202

If to Lender: CPC Funding SPE 1 LLC  
c/o The Community Preservation Corporation  
220 East 42nd Street, 16th Floor  
New York, New York 10017  
Attention: Director of Portfolio Services  
Loan No.: 70664  
Facsimile: (212) 683-0737

With a copy to: CPC Funding SPE 1 LLC  
c/o The Community Preservation Corporation  
220 East 42nd Street, 16th Floor  
New York, New York 10017  
Attention: General Counsel  
Loan No.: 70664  
Facsimile: (212) 683-2909

If to the Agency: City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chairman  
Facsimile:

With a copy to: Bousquet Holstein PLLC  
One Lincoln Center, Suite 1000  
110 West Fayette Street, Suite 100  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

(b) Any party to this Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in

accordance with this Section 30. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 30, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 30 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document that does not specify how notices are to be given shall be given in accordance with this Section 30.

31. **CHANGE IN SERVICER.** If there is a change of the Servicer, Borrower will be given notice of the change.

32. **SINGLE ASSET BORROWER.** Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

33. **SUCCESSORS AND ASSIGNS BOUND.** This Instrument shall bind, and the rights granted by this Instrument shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower.

34. **JOINT AND SEVERAL LIABILITY.** If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

35. **RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.**

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person (other than a holder of the Note and Servicer) shall be a third party beneficiary of this Instrument or any other Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a "Servicing Arrangement") between Lender and any Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

36. **SEVERABILITY; AMENDMENTS.** The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the

party against whom enforcement is sought; provided, however, that in the event of a Transfer, any or some or all of the Modifications to this Instrument set forth in Exhibit B (if any) may be modified or rendered void by Lender at Lender's option by notice to Borrower or such transferee.

37. **CONSTRUCTION.** The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an "Exhibit" or a "Section" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term "including" means "including, but not limited to."

38. **SERVICER.**

(a) Borrower further acknowledges that Lender may from time to time and in accordance with the terms of the Loan Agreement, appoint a Servicer or a replacement servicer to collect payments, escrows and deposits, to give and receive notices under the Note, this Instrument, or the other Loan Documents, and to otherwise service the Loan. Borrower hereby acknowledges and agrees that, unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by Servicer with the same force and effect, including, without limitation, the collection of payments, the giving of notice, the holding of escrows, inspection of the Mortgaged Property, inspections of books and records, the request for documents or information, and the granting of consents and approvals. Borrower further agrees that, unless Lender instructs Borrower to the contrary in writing, (i) any notices, books or records, or other documents or information to be delivered under this Instrument, the Note, or any other Loan Document shall also be simultaneously delivered to the Servicer at the address provided for notices to Servicer pursuant to Section 30 hereof, (ii) any payments to be made under the Note or for escrows under Section 7 of this Instrument or under any of the other Loan Documents shall be made to Servicer. In the event Borrower receives conflicting notices regarding the identity of the Servicer or any other subject, any such notice from Lender shall govern.

(b) Borrower further acknowledges and agrees that, for the purpose of determining whether a security interest is created or perfected under the Uniform Commercial Code of the Property Jurisdiction, any escrows or other funds held by Servicer pursuant to the Loan Documents shall be deemed to be held by Lender.

39. **DISCLOSURE OF INFORMATION.** Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Without limiting the generality of the foregoing, without notice to

or the consent of Borrower, Lender may disclose to any title insurance company which insures any interest of Lender under this Instrument (whether as primary insurer, coinsurer or reinsurer) any information, data or material in its possession relating to Borrower, the Loan, the Improvements or the Mortgaged Property. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

40. **NO CHANGE IN FACTS OR CIRCUMSTANCES.** Borrower warrants that all information in Borrower's application for the Loan and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with Borrower's application for the Loan are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

41. **SUBROGATION.** If, and to the extent that, the proceeds of the Loan are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a "Prior Lien"), such loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

42. **FINANCING STATEMENT.** As provided in Section 2, this Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and for the purposes of such financing statement: (a) the Debtor shall be Borrower and the Secured Party shall be Lender; (b) the addresses of Borrower as Debtor and of Lender as Secured Party are as specified above in the first paragraph of this Instrument; (c) the name of the record owner is Borrower; (d) the types or items of collateral consist of any part of the Mortgaged Property which is or may become a Fixture; and (e) the organizational identification number of Borrower (if any) as Debtor is set forth on Exhibit C.

43. **ACCELERATION; REMEDIES.** If an Event of Default has occurred and is continuing, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may foreclose this Instrument by judicial or nonjudicial proceedings (including a nonjudicial foreclosure by power of sale in accordance with the provisions of any applicable law), shall be entitled to the appointment of a receiver, without notice, and may invoke any other remedies permitted by New York law or provided in this Instrument or in any other Loan Document. Lender may, at Lender's option, also foreclose this Instrument for any portion of the Indebtedness which is then due and payable, subject to the continuing lien of this Instrument for the balance of the Indebtedness. Lender shall be entitled to collect all costs and expenses allowed by New York law, including attorneys' fees, costs of documentary evidence, abstracts, title reports, statutory costs and any additional allowance made pursuant to Section 8303 of the Civil Practice Law and Rules. The rights and remedies of Lender specified in this Instrument shall be in addition to Lender's rights and remedies under New York law, specifically including Section 254 of the Real Property Law. In the event of any conflict between the provision of this Instrument and the provisions of Section 254 of the Real Property Law, the provisions of this Instrument shall control.

44. **SATISFACTION OF DEBT.** Upon the payment in full of the Indebtedness and termination of the Loan Agreement, Lender shall promptly discharge this Instrument.

45. **LIEN LAW.** Borrower will receive advances under this Instrument subject to the trust fund provisions of Section 13 of the Lien Law.

46. **MAXIMUM PRINCIPAL AMOUNT.** Notwithstanding any provision set forth in this Instrument to the contrary, the maximum amount of principal indebtedness secured by this Instrument at execution, or which under any contingency may become secured by this Instrument at any time hereafter, is US \$1,866,464.00, plus all interest payable under the Note and all amounts expended by Lender after an Event of Default (a) for the payment of taxes, charges or assessments which may be imposed by legal requirements upon the Mortgaged Property; (b) to maintain the insurance required under this Instrument; (c) for any expenses incurred in maintaining the Mortgaged Property and upholding the lien of this Instrument, including the expense of any litigation to prosecute or defend the rights and lien created by this Instrument; (d) protective advances; and (e) for any amount, cost or charge to which Lender becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority, together with interest on all of the foregoing amounts at the Default Rate (as defined in the Note).

47. **SECTION 291-f OF THE REAL PROPERTY LAW.** In addition to any other right or remedy contained in this Instrument or in any other Loan Document, Lender shall have all the rights against lessees of all or any part of the Mortgaged Property as are set forth in Section 291-f of the Real Property Law of New York.

48. **TRANSFER TAX PROVISIONS.** Borrower covenants and agrees that:

(a) in the event of a sale of the Mortgaged Property or other Transfer, Borrower will duly complete, execute and deliver to Lender, contemporaneously with the submission to the applicable taxing authority or recording officer, all forms and supporting documentation required by such taxing authority or recording officer to estimate and fix any and all applicable state and local real estate transfer taxes (collectively "Transfer Taxes") assessable by reason of such sale or other Transfer or recording of the deed evidencing such sale or other Transfer; and

(b) Borrower shall pay all Transfer Taxes that may hereafter become due and payable with respect to any Transfer, and if Borrower fails to pay or fails to cause to be paid any such Transfer Taxes, Lender may pay such Transfer Taxes and the amount of such payment shall be added to the Indebtedness and, unless incurred in connection with a foreclosure of this Instrument, be secured by this Instrument.

(c) The provisions of this Section shall survive any Transfer and the delivery of the deed in connection with any Transfer.

49. This Instrument does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six (6) residential dwelling units, each having their own separate cooking facilities.

50. **ATTACHED EXHIBITS.** The following Exhibits are attached to this Instrument and are incorporated by reference herein as if more fully set forth in the text hereof:

- Exhibit A Description of the Land.
- Exhibit B Modifications to Instrument.
- Exhibit C Financing Statement Information.
- Exhibit D HFA Participation Rider.

The terms of this Instrument are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Instrument, the terms of said Exhibits shall be controlling in all respects.

51. **WAIVER OF TRIAL BY JURY.**

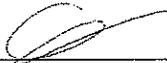
**TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

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

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Instrument or caused this Instrument to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

**444 EAST GENESEE STREET LLC,**  
a Delaware limited liability company

By:   
Name: Graziano Zazzara, Jr.  
Title: Manager

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

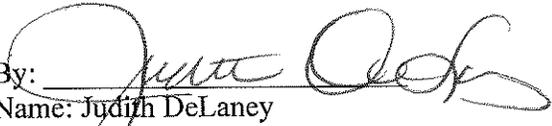
On May 26, 2021, before me, the undersigned, personally appeared Graziano Zazzara, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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

**MICHAEL STANCZYK**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02ST6220670  
Qualified in Onondaga County  
Commission Expires April 19, 20 22

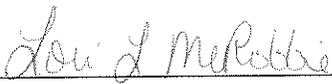
AGENCY:

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY,  
a public benefit corporation

By:   
Name: Judith DeLaney  
Title: Executive Director

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

On May 27, 2021, before me, the undersigned, personally appeared Judith DeLaney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) 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, 2022

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

### LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

Being the same premises conveyed by the City of Syracuse to Route 20/20, LLC by Warranty Deed dated June 7, 2006 and recorded in the Onondaga County Clerk's Office on March 5, 2007 in Book 4984 of Deeds at page 637.

BEING MORE MODERNLY DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

BEGINNING at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

thence S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

thence N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

thence N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

thence S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the POINT OF BEGINNING.

## EXHIBIT B

### MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. Section 22 of the Instrument is amended by adding the following at the end of such Section:

“(s) if an “Event of Default”, as therein defined, shall occur under the Agency Leases or PILOT Agreement, or any of the same are terminated, amended, or modified without the written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.”

2. The following new Sections are added to the Instrument after the last numbered Section:

#### **52. TAX EXEMPTION OR ABATEMENT.**

(a) Borrower represents, warrants and covenants to Lender that the Mortgaged Property is expected to receive an abatement of real property taxes pursuant to New York State General Municipal Law Section 874 and New York State Real Property Tax Law Section 412-a (the “Tax Abatement”) upon terms and conditions contained in the PILOT Agreement.

(b) Borrower must file or cause to be filed on a timely basis all documentation necessary to maintain the Tax Abatement.

(c) Borrower must comply or cause compliance fully with the PILOT Agreement in order to obtain and maintain the Tax Abatement.

(d) Borrower shall promptly provide Lender with a copy of any notice Borrower may receive alleging that Borrower is in breach of the requirements of the PILOT Agreement or that the Mortgaged Property is not being maintained as required by the PILOT Agreement or the Agency Leases.

(e) In any application for a Transfer of the Mortgaged Property, any interest in the Mortgaged Property or any interest in Borrower, Borrower shall notify Lender if the completion of such Transfer without the consent of the Agency would result in the termination of the Tax Abatement and the PILOT Agreement.

(f) Borrower shall avail itself of all rights and opportunities to renew or extend the Tax Abatement.

(g) Borrower shall not voluntarily take or cause to be taken any action that would threaten the Tax Abatement or cause the Tax Abatement to terminate without the prior written consent of Lender.

(h) Borrower represents and warrants that:

(1) Borrower has not received any notice indicating that the Tax Abatement will be terminated or will not be obtained.

(2) Borrower has adhered to any income, rent or other restrictions imposed by the Tax Abatement.

(i) Each of the following shall constitute an Event of Default:

(1) Any breach of any of the representations and warranties in Subsection (h).

(2) Any transfer of the Mortgaged Property, any interest in the Mortgaged Property, or any interest in Borrower that would cause the Tax Abatement to terminate.

**53. DISPLAY OF LENDER'S SIGN.** The Borrower grants permission for the Lender and any of its participants (including public participants) or their respective agents to enter upon the Mortgaged Property and to erect or cause to be erected, a sign to be permanently affixed (by holes drilled into the facade of any of the Improvements to accommodate metal studs attached to the sign or otherwise) to the exterior facade of any of the Improvements in a location satisfactory to the Lender during the term of this Instrument indicating that the property is a CPC - Financed Building. The Borrower shall fully cooperate towards the erection of such sign at the Mortgaged Property.

**54. DISPLAY OF SONYMA SIGN.** In the event that SONYMA is the Mortgage Insurer at any time, and if SONYMA so requests, the Borrower shall permit a sign to be securely affixed to and maintained on the exterior wall of any of the Improvements in a location and manner satisfactory to SONYMA, which sign shall indicate that the financing of the construction, rehabilitation or acquisition of the property was made possible through the efforts of SONYMA. SONYMA will provide the sign, available to the Borrower at the office of the New York State Office of General Services ("OGS") nearest to the Mortgaged Property. The Borrower shall be responsible, at its own cost, for transporting the sign from such OGS office to the Mortgaged Property, for affixing the sign, maintaining it in good condition, and for providing insurance coverage with respect to the sign.

**55. MORTGAGE INSURANCE.** The Lender shall apply for mortgage insurance for this Instrument at the Borrower's expense with respect to initial application fees and other requisite fees. Until the date of repayment of the Permanent Loan (as defined in the Loan Agreement), the Borrower shall be obligated to pay the premium on such insurance. If any Mortgage Insurer shall at any time commit to insure this Instrument, the Borrower shall take all actions which shall be required by such Mortgage Insurer in order to finalize such insurance for this Instrument and keep such insurance in full force and effect.

**56. PERMANENT LOAN CONDITIONS.** If the conditions of the Permanent Loan (as defined in the Loan Agreement) are satisfied on or prior to the Maturity Date, the Lender shall assign this Instrument to HFA in accordance with that certain Master Construction Loan Participation Agreement between Lender and HFA dated as of August 12, 2019.

**57. CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY SPECIAL OBLIGATIONS.**

(a) This Instrument is executed by the Agency solely for the purpose of subjecting its interest in the Mortgaged Property, and in the event of a default, the holder of this Instrument shall look, only with respect to the Agency, solely to the Mortgaged Property described in this Instrument in satisfaction of the indebtedness evidenced under the Note and will not seek or obtain any deficiency or personal judgment against the Agency or any members or officers thereof except such judgment or decree as may be necessary to foreclose its interest in the Mortgaged Property as pledged hereunder and all other property mortgaged, pledged, conveyed or assigned to secure payment under the Note.

(b) **Borrower's Obligations to Comply with the Company Lease, the Agency Lease and the PILOT Agreement.** Borrower shall: (i) pay all other sums of money due and payable at any time and from time to time under the Agency Leases and the PILOT Agreement when such sums become due and payable, but in any event, before the expiration of any grace period provided in the Agency Leases and/or the PILOT Agreement for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Agency Leases and/or the PILOT Agreement to be performed, observed or complied with by Borrower as a lessor under the Company Lease, as a lessee under the Agency Lease and as a party to the PILOT Agreement. If the Company Lease, the Agency Lease and/or the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Borrower shall make the payment on or before the date on which the payment becomes due and payable. Borrower shall deliver evidence of the payment to Lender within ten (10) days after receipt of a written request from Lender for evidence of the payment.

(c) **Subordination Provisions.** Notwithstanding anything herein to the contrary, Lender by accepting this Instrument, acknowledges and agrees that the rights of Lender hereunder shall be subordinate to the rights of the Agency to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by the Borrower to the Agency shall have the same force, priority and effect as a real property tax lien under New York State law against the Mortgaged Property.

**(d) Agency Executing at the Direction of Borrower.** The Borrower directs the Agency to execute and deliver this Instrument to the Lender, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Instrument, including but not limited to attorney's fees and costs.

**(e) Hold Harmless Provisions.** The Borrower hereby acknowledges that the terms of the Agency Lease, as amended and restated from time to time, is in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 thereof and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

**(f) Miscellaneous Provision.** The Borrower and the Lender hereto, by accepting this Instrument, acknowledge that the Agency is executing this Instrument solely to subject its interest in the Mortgaged Property, if any, to this Instrument. Notwithstanding anything herein to the contrary, the Lender acknowledges and agrees that their sole recourse against the Agency for any default hereunder shall be with respect to the Agency's interest in the Mortgaged Property.

All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

BORROWER'S INITIALS:   GZ  

AGENCY'S INITIALS: \_\_\_\_\_

All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

BORROWER'S INITIALS: \_\_\_\_\_

AGENCY'S INITIALS: \_\_\_\_\_

A handwritten signature or set of initials in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

**EXHIBIT C**

**FINANCING STATEMENT INFORMATION**

1. Name and Address of Debtor: 444 EAST GENESEE STREET LLC  
344 S. Warren Street  
Syracuse, New York 13202  
  
Name and Address of Agency: City of Syracuse Industrial  
Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202
2. Debtor's State of Formation: Delaware  
  
Type of Entity: Limited liability company  
  
Agency State of Formation: New York
3. Name and Address of Secured Party: CPC Funding SPE 1 LLC  
c/o The Community Preservation  
Corporation  
220 East 42<sup>nd</sup> Street, 16<sup>th</sup> Floor  
New York, New York 10017
4. The Collateral is: Fixtures (as that term is described in the  
Uniform Commercial Code of New York)  
attached to the Land described in Exhibit A  
attached to this Instrument.

## EXHIBIT D

RIDER TO SECOND MULTIFAMILY CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING, DATED JUNE 3, 2021, BY 444 EAST GENESEE STREET LLC, AS BORROWER, AND CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY TO CPC FUNDING SPE 1 LLC, AS LENDER

1. The following definition shall be added to Section 1 of this Instrument:

“HFA Regulatory Agreement” shall mean that certain Regulatory Agreement between the Borrower and HFA and dated as of the date hereof.

2. The definition of “Rental Achievement Requirement” set forth in Section 1 of this Instrument is hereby amended as follows:

(i) by adding to the end of the first sentence thereof the following: “and one hundred fifteen percent (115%) of the Loan, and the loans secured by the First Construction Loan Mortgage and the First Project Loan Mortgage combined”; and

(ii) by adding to the last line thereof immediately following the words “of the Lender” the following: “and HFA”.

3. The following new clause (h) is hereby added to Section 3 of this Instrument:

(h) Notwithstanding any provision to the contrary contained herein, the Borrower shall not make application to HCR (or its successor agencies) for any rent increase to which it might be entitled under the Tenant Protection Regulations of the Emergency Tenant Protection Act of 1974, for rehabilitation work performed on the Mortgaged Property when such work was performed pursuant to or in connection with the Loan.

4. The following new clause (m) is hereby added to Section 4 of this Instrument:

(m) All new Leases executed during or after the construction and/or rehabilitation of the Project in accordance with the Loan Agreement must be satisfactory in form and substance to HFA and its attorneys and subordinate to the lien of Lender’s permanent loan mortgage. The Borrower shall provide HFA with the form of such lease and with access to copies of all such new Leases.

5. The following new clause (ix) shall be added to Section 21(c) of this Instrument:

(ix) such transfer is permitted pursuant to the terms of the HFA Regulatory Agreement.

6. The following new clause (t) is hereby added to Section 22 of this Instrument:

(t) if an "Event of Default", as therein defined, shall occur under the First Construction Loan Note and/or the First Construction Loan Mortgage, or under the First Project Loan Note and/or the First Project Loan Mortgage, each executed on the date hereof by the Borrower and/or City of Syracuse Industrial Development Agency in favor of the Lender.

7. The following new Sections are hereby added to this Instrument:

58. **Compliance With Regulatory Agreement.** The Borrower shall comply fully with all of the terms and conditions of the HFA Regulatory Agreement entered into as a condition of the closing of the Loan. The Borrower's obligations under such HFA Regulatory Agreement shall continue for the periods specified therein. The HFA Regulatory Agreement is incorporated into and made a part of this Instrument and failure to comply with the terms of the HFA Regulatory Agreement and/or a default under the HFA Regulatory Agreement shall constitute an Event of Default under this Instrument and Lender may exercise all of its rights under this Instrument.

59. **Lien Priority.** Until the assignment of this Instrument to HFA, the lien of this Instrument shall be superior to the lien of the First Project Loan Mortgage, and equal and coordinate with the lien of the First Construction Loan Mortgage on the Mortgaged Property, except as may be otherwise provided in that certain Construction Loan Participation Certificate between Lender and HFA dated as of the date of this Instrument. After the assignment of the this Instrument to HFA, the lien of this Instrument shall be subordinate to the lien of the First Construction Loan Mortgage and the First Project Loan Mortgage, as same may be consolidated, modified and extended.

60. **Curing of Defaults.** If default shall be made in the payment of any interest or principal installment or other amount when due under any or all of the First Construction Loan Mortgage and/or the First Project Loan Mortgage, the Lender shall have the right (but not the obligation) to pay same and the Borrower on demand will repay the amount so paid with interest at the Involuntary Rate, and such amount, if not paid with such interest thereon, shall be added to the Indebtedness and shall be a lien on the Mortgaged Property and be collected as part of the debt secured by this Instrument.

61. **Compliance with Agreements.** The Borrower shall comply fully with all of the terms and conditions of that certain (i) Equal Employment Opportunity Agreement and (ii) Minority And Women-Owned Business Utilization And Service-Disabled Veteran-Owned Business Agreement, each entered into among HFA, the Borrower, and the construction contractor with respect to the Project, and each dated as of the date hereof. Additionally, Borrower shall ensure that the General Contractor complies with such agreements.

62. **Fair Market Housing.** Borrower shall submit to HFA for its records a marketing and tenant selection plan that is in compliance with HFA's affirmative fair housing marketing guidelines as more fully provided in the HFA Regulatory Agreement.

63. **HFA Guidelines.** Borrower shall ensure that the Project will comply with (a) applicable green building guidelines as may be established by HFA and (b) all applicable requirements of the Americans with Disabilities Act of 1990 or Section 504 of the Rehabilitation Act of 1973.



**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

---

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**CPC Funding SPE 1 LLC  
 c/o The Community Preservation Corporation  
 220 East 42<sup>nd</sup> Street – 16<sup>th</sup> Floor  
 New York, New York 10017  
 Attention: General Counsel**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME <b>444 East Genesee Street LLC</b>						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
MAILING ADDRESS <b>344 S. Warren Street</b>			CITY <b>Syracuse</b>	STATE <b>NY</b>	POSTAL CODE <b>13202</b>	COUNTRY <b>USA</b>
1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>Limited Liab. Comp.</b>	1f. JURISDICTION OF ORGANIZATION <b>New York</b>	1g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE		

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME <b>City of Syracuse Industrial Development Agency</b>						
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS <b>201 East Washington Street</b>			CITY <b>Syracuse</b>	STATE <b>NY</b>	POSTAL CODE <b>13202</b>	COUNTRY <b>USA</b>
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE		

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>CPC Funding SPE 1 LLC</b>						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS <b>220 East 42<sup>nd</sup> Street – 16<sup>th</sup> Floor</b>			CITY <b>New York</b>	STATE <b>NY</b>	POSTAL CODE <b>10017</b>	COUNTRY <b>USA</b>

4. This FINANCING STATEMENT covers the following collateral:

**SEE "SCHEDULE A" LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.  
 SEE "EXHIBIT A" COLLATERAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**

5. ALTERNATIVE DESIGNATION (if applicable):  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2
--	--

8. OPTIONAL FILER REFERENCE DATA **Filing office: Onondaga County (Construction Loan Mortgage) CPC Loan #70664**

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT			
9a. ORGANIZATION'S NAME 444 East Genesee Street LLC			
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one name (11a or 11b) - do not abbreviate or combine names				
11a. ORGANIZATION'S NAME City of Syracuse Industrial Development Agency				
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY
11d. TAX ID #, SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME – insert only one name (12a or 12b)				
12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

**444 East Genesee Street  
Syracuse, Onondaga  
State of New York.**

**Tax Map No. 102.-08-04.0**

**See "Schedule A" Legal Description attached hereto  
and made a part hereof.**

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.

Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction — effective 30 years  
 Filed in connection with a Public-Finance Transaction — effective 30 years

SCHEDULE A  
LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

Being the same premises conveyed by the City of Syracuse to Route 20/20, LLC by Warranty Deed dated June 7, 2006 and recorded in the Onondaga County Clerk's Office on March 5, 2007 in Book 4984 of Deeds at page 637.

BEING MORE MODERNLY DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

BEGINNING at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

thence S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

thence N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

thence N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

thence S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the POINT OF BEGINNING.

## EXHIBIT A

### DESCRIPTION OF COLLATERAL

**DEBTOR:** 444 EAST GENESEE STREET LLC

**SECURED PARTY:** CPC FUNDING SPE 1 LLC

All of Debtor's present and future right, title and interest in and to all of the following (collectively, the "Mortgaged Property"):

- (i) the real property described in Exhibit A (the "Land");
- (ii) all buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions (the "Improvements");
- (iii) all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment (the "Fixtures");
- (iv) all accounts (including deposit accounts) of Borrower related to the Mortgaged Property; Imposition Deposits; equipment, goods, supplies and inventory owned by Borrower that are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements (other than Fixtures), including furniture, furnishings, machinery, building materials, tools, books, records (whether in written or electronic form), computer equipment (hardware and software); other tangible personal property owned by Borrower which are used now or in the future

in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or in the Improvements (other than Fixtures), including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; all other personal property of any kind or character whatsoever (as defined and subject to the provisions of the Uniform Commercial Code), other than Fixtures, which are now or hereafter owned by Debtor or which are located in or about the Land and the Improvements, together with building or construction materials (including modular units) intended for construction, reconstruction, alteration or repair of or installation on the Mortgaged Property, whether located on the Land or off-site, and whether in the possession of Debtor, a warehouseman, bailee or any other person, and together with all accessories, replacements and substitutions thereto or therefor; any operating agreements relating to the Land or the Improvements; any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements; documents, instruments, chattel paper, claims, deposits, deposit accounts, payment intangibles, other intangible property, general intangibles, and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a governmental authority; and any rights of Borrower in or under letters of credit (the "Personalty");

- (v) all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code) in any way related to the Mortgaged Property and/or the Improvements and in which Debtor has any interest;
- (vi) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (vii) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Debtor obtained the insurance pursuant to Secured Party requirements;
- (viii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the

Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

- (ix) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (x) all Rents and Leases;
- (xi) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, whether the foregoing are now due, past due, or to become due, all undisbursed proceeds of the loan secured by this Instrument, deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (xii) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
- (xiii) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits;
- (xiv) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;
- (xv) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether now existing or hereafter created; and
- (xvi) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds, and all other cash and non-cash proceeds and products of any of the foregoing.

Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Mortgage (as defined in that certain Construction and Project Loan Agreement between Debtor, and Secured Party).

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

---

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**CPC Funding SPE 1 LLC**  
**c/o The Community Preservation Corporation**  
**220 East 42<sup>nd</sup> Street – 16<sup>th</sup> Floor**  
**New York, New York 10017**  
**Attention: General Counsel**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) - do not abbreviate or combine names

OR

1a. ORGANIZATION'S NAME  
**444 East Genesee Street LLC**

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**344 S. Warren Street Syracuse NY 13202 USA**

1d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any  
**Limited Liab. Comp. New York**  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

OR

2a. ORGANIZATION'S NAME

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any  
 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

OR

3a. ORGANIZATION'S NAME  
**CPC Funding SPE 1 LLC**

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**220 East 42<sup>nd</sup> Street – 16<sup>th</sup> Floor New York NY 10017 USA**

4. This FINANCING STATEMENT covers the following collateral:

**SEE "SCHEDULE A" LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**  
**SEE "EXHIBIT A" COLLATERAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**

5. ALTERNATIVE DESIGNATION [if applicable]:  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6. \* This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA **Filing office: NYSDOS (Construction Loan Mortgage) CPC Loan # 70664**

# UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT			
9a. ORGANIZATION'S NAME <b>444 East Genesee Street LLC</b>			
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

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OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
11d. TAX ID #: SSN OR EIN		ADD'L. INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION
			11g. ORGANIZATIONAL ID #, if any	NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME – insert only one name (12a or 12b)				
12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

13. This FINANCING STATEMENT covers  timber to be cut or  as-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

**444 East Genesee Street  
City of Syracuse, Onondaga County  
State of New York**

**Tax Map No. 102.08-04.0**

**See "Schedule A" Legal Description attached hereto  
and made a part hereof.**

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.

Debtor is a TRANSMITTING UTILITY  
 Filed in connection with a Manufactured-Home Transaction — effective 30 years  
 Filed in connection with a Public-Finance Transaction — effective 30 years

SCHEDULE A  
LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

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BEGINNING at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

thence S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

thence N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

thence N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

thence S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the POINT OF BEGINNING.

## EXHIBIT A

### DESCRIPTION OF COLLATERAL

**DEBTOR:** 444 EAST GENESEE STREET LLC

**SECURED PARTY:** CPC FUNDING SPE 1 LLC

All of Debtor's present and future right, title and interest in and to all of the following (collectively, the "Mortgaged Property"):

- (i) the real property described in Exhibit A (the "Land");
- (ii) all buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions (the "Improvements");
- (iii) all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment (the "Fixtures");
- (iv) all accounts (including deposit accounts) of Borrower related to the Mortgaged Property; Imposition Deposits; equipment, goods, supplies and inventory owned by Borrower that are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements (other than Fixtures), including furniture, furnishings, machinery, building materials, tools, books, records (whether in written or electronic form), computer equipment (hardware and software); other tangible personal property owned by Borrower which are used now or in the future

in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or in the Improvements (other than Fixtures), including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; all other personal property of any kind or character whatsoever (as defined and subject to the provisions of the Uniform Commercial Code), other than Fixtures, which are now or hereafter owned by Debtor or which are located in or about the Land and the Improvements, together with building or construction materials (including modular units) intended for construction, reconstruction, alteration or repair of or installation on the Mortgaged Property, whether located on the Land or off-site, and whether in the possession of Debtor, a warehouseman, bailee or any other person, and together with all accessories, replacements and substitutions thereto or therefor; any operating agreements relating to the Land or the Improvements; any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements; documents, instruments, chattel paper, claims, deposits, deposit accounts, payment intangibles, other intangible property, general intangibles, and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a governmental authority; and any rights of Borrower in or under letters of credit (the "Personalty");

- (v) all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code) in any way related to the Mortgaged Property and/or the Improvements and in which Debtor has any interest;
- (vi) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (vii) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Debtor obtained the insurance pursuant to Secured Party requirements;
- (viii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the

Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

- (ix) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (x) all Rents and Leases;
- (xi) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, whether the foregoing are now due, past due, or to become due, all undisbursed proceeds of the loan secured by this Instrument, deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (xii) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);
- (xiii) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits;
- (xiv) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;
- (xv) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether now existing or hereafter created; and
- (xvi) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds, and all other cash and non-cash proceeds and products of any of the foregoing.

Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Mortgage (as defined in that certain Construction and Project Loan Agreement between Debtor, and Secured Party).



Lisa Dell, County Clerk  
401 Montgomery Street  
Room 200  
Syracuse, NY 13202  
(315) 435-2229

## Onondaga County Clerk Recording Cover Sheet

Received From :  
CHICAGO TITLE - EMILY

Return To :  
NEW YORK STATE HOUSING FINANCE AGENCY  
641 LEXINGTON AVENUE  
NEW YORK, NY 10022

Method Returned : MAIL

**First PARTY 1**

444 EAST GENESEE STREET LLC

**First PARTY 2**

NEW YORK STATE HOUSING FINANCE AGENCY

Index Type : Land Records

Instr Number : 2021-00025807

Book : Page :

Type of Instrument : Regulatory Agreement

Type of Transaction : Recording - M A

Recording Fee: \$0.00

Recording Pages : 36

**Recorded Information**

State of New York

County of Onondaga

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

On (Recorded Date) : 06/08/2021

At (Recorded Time) : 1:38:19 PM



Doc ID - 042814480036

*Lisa Dell*  
Lisa Dell, County Clerk



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

Entered By: RSWEENIE Printed On : 06/08/2021 At : 1:52:15PM

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**REGULATORY AGREEMENT**

for the

**444 EAST GENESEE STREET APARTMENTS PROJECT**

by and among

**NEW YORK STATE HOUSING FINANCE AGENCY,**

**444 EAST GENESEE STREET LLC,**

and

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

---

**Small Buildings Participation Loan Program**

**Regulatory Agreement for HFA Subsidy Loan**

**(Buildings with over 10 Units)**

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**Record and Return to:**

Joan S. Bocina, Esq.  
New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022

Premises: 444 East Genesee Street  
Syracuse, New York  
County: Onondaga  
Tax Parcel: Section 102,  
Block 08, Lot 04, Sublot 0  
(102.-08-04.0)

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**APPENDICES AND EXHIBITS**

- Schedule 1 - Legal Description of the Premises
- Schedule 2 - Regulated Residential Units – Income/Occupancy Requirements
- Exhibit A - Project Services and Amenities

This **Regulatory Agreement** (“Agreement”), entered into as of June 3, 2021 by and among **444 EAST GENESEE STREET LLC** (“Owner”), a Delaware limited liability company, having its principal address at 344 S. Warren Street, Suite 202, Syracuse, New York 13202, **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, (“IDA”) a New York public benefit corporation having an address at 201 East Washington Street, 6th Floor, Syracuse, New York 13202, and the **NEW YORK STATE HOUSING FINANCE AGENCY** (“Agency”), a corporate governmental agency established pursuant to Article III of the New York State Private Finance Housing Law (“PHFL”), constituting a public benefit corporation, having its principal place of business at 641 Lexington Avenue, New York, New York 10022.

**WITNESSETH:**

**WHEREAS**, the Owner is the holder of the fee interest in certain real property located in the City of Syracuse, Onondaga County, more fully described in Schedule 1 attached hereto (“Premises”), upon which is to be undertaken a gut renovation of a vacant office building located at 444 East Genesee Street, Syracuse, New York 13202 into twenty four (24) one-bedroom residential rental units, and approximately 1,813 square feet of ground floor commercial space, and 8 covered parking spaces on the ground floor, all to be known as the 444 East Genesee Street Apartments Project (the “Project”); and

**WHEREAS**, the Owner has leased the Premises to the IDA pursuant to the terms of a certain Company Lease Agreement dated as of June 1, 2021 (the “Company Lease”) between the Owner and the IDA, and the IDA has subleased the Premises back to the Owner pursuant to the terms of a certain Agency Lease Agreement dated as of June 1, 2021 between the IDA and the Owner (the “IDA Lease”, and collectively with the Company Lease, the “IDA Lease Agreements”).

**WHEREAS**, all of the Project’s revenue-generating residential units (the “Regulated Residential Units”) will be set aside for households with certain incomes as more fully set forth and defined in Schedule 2 attached hereto; and

**WHEREAS**, in order to finance a portion of the construction of the Project, the Owner has obtained from CPC Funding SPE 1 LLC, or a subsidiary or affiliate thereof (together with its successors and/or assigns, the “Senior Lender”) a construction loan in the principal amount of

\$3,976,464.00 (the "Construction Loan"), which loan will be evidenced by two or more notes, each of which shall be secured by a mortgage, an assignment of leases and rents and certain other documents with respect thereto, all dated as of the date hereof; and

**WHEREAS**, pursuant to a Joint Commitment Letter dated April 1, 2021 among the Owner, Senior Lender and the Agency (the "Joint Commitment"), the Agency has agreed to provide funds to Senior Lender to fund a portion of the Construction Loan (the "HFA Participation"), and has further committed to fund a subordinate permanent loan upon completion of construction of the Project (the "HFA Permanent Loan" collectively with the HFA Participation, the "HFA Funding"); and

**WHEREAS**, the Agency has found and determined that the Project is to be occupied by persons or families of low or moderate income pursuant to the restrictions set forth in this Agreement; and

**WHEREAS**, the Agency requires, as a condition of the HFA Funding, that the Owner agrees to the restrictions running with the land and binding on all of its respective successors, assigns, heirs, grantees or lessees for the term of this Agreement as set forth herein and that the Owner consents to be regulated by the Agency, as set forth herein, to meet the requirements of §44.29-a of the PHFL and to ensure that other public benefit requirements are met;

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

1.0 **DEFINITIONS**. The following words and phrases as used in this Agreement shall have the following meanings:

**"Agency"** shall mean the New York State Housing Finance Agency.

**"Agreement"** shall mean this Regulatory Agreement.

**"Area Median Income"** or **"AMI"** shall mean the area median gross income for the county or metropolitan statistical area in which the Project is located, adjusted for family size, as determined from time to time by the Secretary of the United States Department of Housing and Urban Development ("HUD").

**"Event of Default"** shall have the meaning assigned in Section 2.1.

**"Federal Section 8"** shall mean Section 8 of the United States Housing Act of 1937.

**“First Mortgage”** shall mean (i) prior to the funding of the HFA Permanent Loan, the mortgage securing the Construction Loan, and (ii) subsequent to the funding of the HFA Permanent Loan, the permanent first mortgage with respect to Project.

**“Governmental Entity”** shall have the meaning assigned in Section 5.6(b).

**“Guidelines”** shall mean the Agency’s Fair Housing and Tenant Selection Guidelines, as the same may be amended from time to time.

**“HFA Funding”** shall have the meaning assigned in the recitals to this Agreement.

**“HFA Mortgage”** shall mean (i) prior to the Conversion Date (as defined in the Joint Commitment), the mortgage representing the portion of the Construction Loan funded by the HFA Participation, and (ii) after the Conversion Date, the mortgage securing the HFA Permanent Loan.

**“HFA Participation”** and **“HFA Permanent Loan”** shall have the meanings assigned in the recitals to this Agreement, all as more fully described in the Joint Commitment.

**“IDA”** shall have the meaning assigned in the recitals to this Agreement, and its successors and assigns.

**“Joint Commitment”** shall have the meaning assigned in the recitals to this Agreement.

**“Owner”** shall have the meaning assigned in the recitals to this Agreement, and its successors and assigns.

**“PHFL”** shall have the meaning assigned in the recitals to this Agreement.

**“Premises”** shall have the meaning assigned in the recitals to this Agreement.

**“Prohibited Person”** shall have the meaning assigned in Section 5.6(a).

**“Project”** shall have the meaning assigned in the recitals to this Agreement.

**“Regulated Residential Units”** shall have the meaning assigned in the recitals to this Agreement, and as more fully described in Schedule 2.

**“Regulatory Period”** shall have the meaning assigned in Section 3.1(a).

**“Replacement Reserve Account”** shall have the meaning assigned in Section 5.3(a).

**“Replacements”** shall have the meaning assigned in Section 5.3(b).

**“Transfer Fee”** shall have the meaning assigned in Section 5.5(d).

## 2.0 ENFORCEMENT

2.1 Incorporation in Mortgage and Termination of Agreement. (a) This Agreement and the restrictions hereunder are hereby incorporated by reference into the HFA Mortgage so that an Event of Default (as defined herein) hereunder, after expiration of any applicable notice and cure periods, shall constitute an "Event of Default" under the HFA Mortgage.

For purposes of this Agreement, an Event of Default shall be deemed to have occurred if the Owner shall fail to observe any requirement or perform any obligation imposed on the Owner by this Agreement, and the Owner fails to cure such default within thirty (30) days after the Owner receives written notice of such default from Agency, unless such default shall not be a willful default and can be cured but cannot by its nature be cured within such thirty (30) day period, in which case an Event of Default shall not be deemed to have occurred so long as the Owner commences such cure as soon as reasonably possible and proceeds with due diligence to cure such default.

In the event of foreclosure or deed-in-lieu of foreclosure of the First Mortgage, this Agreement and the restrictions hereunder shall automatically terminate. However, if, during the otherwise remaining term of this Agreement (as determined by Section 3.1), the obligor on the First Mortgage or an affiliated entity (which shall include a subsidiary of any Owner, or an entity in which a principal of any Owner holds a majority or controlling interest) thereafter obtains an ownership interest in the Project, then this Agreement shall be revived in full force and effect, and the restrictions hereunder shall be enforceable by the Agency in accordance with the terms hereof.

2.2 Recording and Lien Provisions. The benefits and burdens of this Agreement shall run with the land and bind the interest of the Owner in the Project, and the Premises. The Owner, at its cost and expense, shall cause this Agreement to be duly recorded, filed, re-recorded, and refiled in such places as to the Premises, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the ability of the Agency to enforce this Agreement.

2.3 Remedies. The injury to the Agency arising from noncompliance with any of the terms of this Agreement would be great, and the effect of misrepresentations of fact and any violations by the Owner of warranties and covenants under this Agreement would be irreparable,

and the amount of consequential damage would be difficult to ascertain and may not be compensable by money alone. Therefore, upon the occurrence of an Event of Default, the misrepresentation of material fact, or violation of any warranty or covenant under this Agreement by the Owner, after expiration of any applicable notice and cure periods, the Agency, at its option, may apply to any state or federal court, for specific performance of this Agreement, for an injunction against any Event of Default, noncompliance, or misrepresentation under this Agreement, or for such other relief as may be appropriate in addition to such rights and remedies as may be available pursuant to the HFA Mortgage pursuant to the terms thereof.

For purposes of this Agreement, the date of any Event of Default, misrepresentation or violation of warranty shall be the date such event was first discovered by the Owner, either by notice or otherwise, or would have been first discovered by the Owner by the exercise of reasonable diligence.

2.4 Indemnification. (a) The Owner shall indemnify and hold the Agency harmless from and against any and all claims, demands, liability, loss, cost or expense (including but not limited to documented attorney fees and other costs of litigation) which may be incurred by the Agency arising out of or in any way related to any of the Owner's breach of any of its obligations under this Agreement or any action taken by the Agency to enforce or exercise its rights under this Agreement as a result of such breach, other than willful misconduct, fraud, or gross negligence on the part of the Agency. The obligations under this Section shall survive the termination or expiration of this Agreement as necessary to effectuate its provisions.

(b) Any subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner (including the Owner) under this Agreement, including but not limited to any payment of any indemnification obligation.

### 3.0 **TERM.**

3.1 Term of Agreement. (a) The term of this Agreement shall commence on the execution and delivery hereof and shall extend through a period ("Regulatory Period") ending on the later of (i) the date on which the HFA Permanent Loan has been satisfied, or (ii) thirty (30) years from the date on which the Project has been issued a temporary certificate of occupancy and at least 50% of the Regulated Residential Units are occupied.

(b) Section 4.3(d) shall survive the termination of this Agreement.

#### 4.0 INCOME OCCUPANCY REQUIREMENTS; RENTAL RESTRICTIONS

4.1 Rental Restrictions. Once available for occupancy each unit (other than any unit approved by the Agency for occupancy by a superintendent) must be rented or available for rental on a continuous basis to members of the general public and occupied by individuals or families as their residence. No portion of the Project and none of the units in the Project will, at any time during the term of this Agreement, be used on a transient basis, for example, as a trailer park or trailer court or a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium or rest home. Use on a transient basis shall mean the rental of units for an initial lease term of less than 12 months.

4.2 Regulated Occupancy Requirements. (a) Continuously during the term of this Agreement, all of the Regulated Residential Units shall be occupied by or, once having been so occupied, held available for occupancy by, households with incomes at or below the income limit applicable thereto as set forth in Schedule 2. All Regulated Residential Units shall only be re-rented upon vacancy to a new tenant which meets the applicable income restriction. Occupancy of a unit shall refer to the date that the tenant has possession of the unit and the right to occupy such unit pursuant to a fully executed lease. In accordance with procedures established by the Agency, the Owner shall take reasonable steps to verify the income status of all families or individuals who occupy the Regulated Residential Units in compliance with the provisions of this Agreement.

(b) A Regulated Residential Unit shall continue to be treated as such notwithstanding any increase in the income of the occupant of such Regulated Residential Unit, provided, however, if the average AMI of all occupied Regulated Residential Units exceeds 80% of AMI, then any subsequently vacated units must be re-rented to tenants with the lower applicable AMI until the average AMI for the Project is no greater than 80% of AMI.

4.3 Regulated Residential Unit Rents, Fees and Charges. (a) The annual maximum gross rents for the Regulated Residential Units shall not exceed 30% of 120% of AMI, provided that (i) the average of all rents shall not exceed 30% of 80% of AMI, (ii) the rent applicable to each Regulated Residential Unit shall not exceed 30% of the AMI attributable to the tenant at initial occupancy, where such AMI shall be determined to be the tenant income rounded up to the next

higher increment of 10%. As an illustration, rent for a unit occupied by a tenant having an income of 37% AMI shall not exceed 30% of 40% AMI, rent for a unit occupied by a tenant having an income of 91% AMI shall not exceed 30% of 100% AMI, etc.

Determinations of AMI hereunder shall include adjustments based on the number of presumed individuals occupying the unit, as follows: for studio or efficiency apartments having no separate bedroom, one individual; and for units having one or more separate bedrooms, 1.5 individuals for each separate bedroom. "Rent" for purposes of this Agreement does not include (i) any payment under Federal Section 8 or any comparable rental assistance program, or (ii) any fee for supportive services and/or rental assistance provided on behalf of supportive housing tenants paid to the Owner, and does include: (i) any utility allowance determined by the Secretary of Housing and Urban Development as may be adjusted by the Agency, or (ii) the cost of any utilities that would be covered by such utility allowance, as determined by the Agency, if the units were receiving Federal Section 8 assistance to the extent such costs are payable by the tenant.

(b) The Rents for Regulated Residential Units shall be based on the applicable AMI and may be trended upward for inflation annually pursuant to the calculations of AMI published by HUD, but in no case shall the rents for such units be adjusted downward. Further, the maximum rents will be reduced by a utility allowance, if applicable, which may be revised annually. Accordingly, each January the Owner shall submit to the Agency documentation satisfactory to the Agency of any utility estimates, usage, cost projections and proposed utility allowance with respect to units in the building for the upcoming year. Based thereon, the Agency shall approve the proposed utility allowance or determine the appropriate utility allowance applicable to the units in the building for such period. The Owner's failure to provide such information on a timely, annual basis, to the satisfaction of the Agency, may result in the Agency delaying or denying a change in the applicable rents

(c) The Owner shall not impose fees and charges upon the tenants of the Regulated Residential Units without the prior written consent of the Agency, except for the following: (1) a late payment charge not to exceed \$25.00, to be assessed no earlier than the tenth day that the rent of such tenant is due; and (2) a bounced check fee not to exceed the actual fee charged by the bank.

(d) With respect to any tenant who is not receiving a Federal Section 8 subsidy, the Owner's right to increase rent for such tenant over the amounts provided in Section 4.3(b) hereof

upon the expiration of this Agreement shall be conditioned upon the Owner furnishing such tenant with a notice at least six months prior to such increase in a form acceptable to the Agency, provided that if such notice is not given, such tenant shall be entitled to lease renewals at the rents provided for in Section 4.3(b) until such notice has been given and six months has elapsed.

4.4 Lease Provisions for Regulated Residential Units. (a) Tenant leases for Regulated Residential Units shall be for terms of at least one year. The lease shall state that: (i) the lease shall be terminated and the tenant may be evicted for failure to qualify pursuant to the income standards for that unit if a tenant has falsely certified household income or household composition; (ii) false certification constitutes material noncompliance under the lease; (iii) tenants shall be obligated to provide income certification, and any additional recertifications of income as the Agency and/or the Owner shall require; (iv) subletting and the tenant's assignment of the lease shall be prohibited; and (v) the Agency and its representatives or agents shall have the right to inspect such unit for the purpose of monitoring compliance with the Owner's obligations hereunder.

(b) The form of lease to be utilized by the Owner in renting the Regulated Residential Units shall be subject to the Agency's prior written approval which shall not be unreasonably withheld. Failure to utilize an approved form of lease for such units shall subject the Owner to a penalty equal to one month's rent for each affected unit.

4.5 Fair Housing Marketing Guidelines. The Owner shall, no less than 180 days prior to the first occupancy of the Regulated Residential Units, submit to the Agency for its approval a marketing and tenant selection plan that is in compliance with the Agency's affirmative fair housing marketing guidelines. Such marketing plan shall specifically describe the method of marketing to and selection of tenants for the Regulated Residential Units. No marketing or selection of tenants for any of the Regulated Residential Units shall be commenced prior to the approval of the Agency of the marketing and tenant selection plan. The Owner will notify the Agency in writing of the date on which it intends to commence marketing and shall have such pre-occupancy meetings with the Agency as the Agency shall require. In addition, prior to the initial marketing of any units in the Project, the Owner shall submit to the Agency for its records a copy of any proposed advertisement or other form of marketing of such units.

## 5.0 OPERATING RULES

5.1 Project Restrictions. The Project shall be a multi-family residential rental project and will be used for such purposes during the term of this Agreement. The Owner warrants that the Project will be completed with due diligence substantially in accordance with building plans and specifications for the Project and change orders approved by the Senior Lender. Pursuant to the plans and specifications and any change orders, all of the units in the Project have been or will be similarly constructed or rehabilitated, as applicable. The Owner (or a party related to the Owner) shall not occupy a unit in a building or structure unless such building or structure contains more than four units. All of the residential units in the Project will contain within the unit complete living, sleeping, eating, cooking and sanitation facilities, all of which are separate and distinct from other units. In addition, the Project shall contain such other services and amenities as described in Exhibit A, attached hereto. All facilities used in connection with the Project are: (i) located on the Premises, (ii) solely for the benefit of tenants of the Project, and (iii) of a character and size commensurate with the needs of such tenants. Owner shall use its best efforts to ensure that handicapped or disabled individuals in the Project are afforded equal access to such facilities.

5.2 Regulated Residential Unit Requirements. The Regulated Residential Units shall be allocated and occupied as more specifically set forth in Schedule 2.

5.3 Replacement Reserve Account. (a) The Owner shall establish a replacement reserve account that shall be held and controlled by the Agency, to be known as the "Replacement Reserve Account." Commencing on the first day of the month following the month in which the Project has been issued a temporary certificate of occupancy and at least 50% of the Regulated Residential Units are occupied, the Owner shall deposit in the Replacement Reserve Account the amount of \$250.00 per unit per year (i.e. \$500.00 per month). Said amounts may be reduced (but not below zero) by the amounts required to be deposited by the Owner into any replacement reserve account required to be maintained by any agreement with any holder of a First Mortgage, including the Senior Lender and any successor or assign thereof. All interest earned on funds in the Replacement Reserve Account shall remain on deposit in the Replacement Reserve Account. The Agency shall not be responsible for any losses resulting from the investment of the Replacement Reserve Account or obtaining any specific level or percentage of earnings on such investment.

(b) The amount of monthly payments to the Replacement Reserve Account shall remain constant, until and unless revised in the reasonable discretion of the Agency based on (i) the results of the physical needs assessment report as described in subsection (c) below, (ii) the Project's history of repairs, (iii) the existing physical condition of the Project, or (iv) other factors deemed reasonably relevant by the Agency. Upon Owner's written request, in accordance with the Agency's requirements, the Agency shall disburse to the Owner within a reasonable period of time, in a manner reasonably determined by the Agency, such amounts from the Replacement Reserve Account as may be necessary to reimburse or pay the Owner for the actual cost of repairing and/or replacing building systems, equipment and other items of a capital nature, as reasonably approved by the Agency, including, without limitation, the repair or refurbishing of common areas, required for the proper operation and marketing of the Project, or to remedy a situation deemed to be of an emergency nature ("Replacements"). No such disbursements shall be made, however, prior to the fifth (5<sup>th</sup>) anniversary of the date that deposits begin to be made by the Owner into the Replacement Reserve Account. The Agency may require Owner to reimburse into the Replacement Reserve Account the amount of any such disbursement, over a reasonable period of time to be determined by the Agency.

In no event shall the Agency approve or make any payment of funds from the Replacement Reserve Account unless such work and or materials have been performed or installed, as applicable. The interest earned in the Replacement Reserve Account will remain in the Replacement Reserve Account, and will not be used to offset any required payments by the Owner into the Replacement Reserve Account.

In no event shall the Agency be obligated to approve the disbursement of funds from the Replacement Reserve Account if an Event of Default has occurred and is continuing under this Agreement or the HFA Mortgage, or if an act, event or condition shall have occurred and then be existing as of that date, which solely with notice or lapse of time, would constitute an Event of Default under this Agreement or the HFA Mortgage.

(c) On or about the tenth anniversary of the date of this Agreement and on each tenth anniversary thereafter during the Regulatory Period, the Owner shall engage a licensed independent engineer or architect, acceptable to the Agency, to perform a physical needs assessment of the Project. The physical needs assessment shall be performed at the expense of the

Owner, which expense shall be reimbursable from the Replacement Reserve Account. At the discretion of the Agency, after review of the physical needs assessment report, the Owner's required monthly payment to the Replacement Reserve Account may be adjusted within 90 days following the Agency's receipt of the physical needs assessment report so that the amount in the Replacement Reserve Account will, in the Agency's reasonable determination, be sufficient to pay for required Replacements as identified in said assessment. The Agency agrees that it shall exercise reasonable judgment as a prudent lender in determining such increases for required Replacements.

(d) After payment in full of all sums secured by the HFA Mortgage and the expiration of the Regulatory Period, the Agency shall disburse to the Owner all amounts remaining in the Replacement Reserve Account.

5.4 Project Management. (a) The Owner shall not employ or otherwise use or retain a management entity for the Project other than The Icon Companies of Syracuse LLC without the Agency's prior approval of such management entity and the terms of its retention including compensation, which approval shall not be unreasonably withheld. Any renewal or termination of the management entity's employment shall be subject to the Agency's approval, which approval shall not be unreasonably withheld or delayed. If the Owner shall also retain a leasing/rental agent, other than the managing agent, such leasing/rental agent shall be subject to the Agency's approval, and may not be replaced without the Agency's prior approval, which approval shall not be unreasonably withheld or delayed. If the Owner retains a managing agent without having first received approval of the Agency, the Owner will be subject to a monetary penalty equal to the lesser of (i) the amount of the monthly management fee paid to the unapproved agent, or (ii) \$20,000, which amount shall be assessed initially and for each month such agent is in place without Agency approval.

(b) The Agency reserves the right to review the performance of the managing agent. The Agency shall notify the Owner for any reason it is not satisfied with the management of the Project, including but not limited to the failure to maintain the property or books and records of the Project. Upon receipt of such notice, the Owner shall cure, or cause the managing agent to cure, such condition within 30 days, subject to a reasonable extension of time if Owner is diligently seeking to cure such condition and such condition is curable in the Agency's reasonable judgment. If such condition is not cured within the required cure period or is not curable, Owner shall replace

the managing agent with a new managing agent approved by the Agency, which new managing agent shall be subject to the same terms and conditions hereof. If the Owner has not submitted a managing agent acceptable to the Agency within 30 day after written notice provided by the Agency or if there has been non-compliance hereunder which remains uncured for more than the required cure period, the Agency may select and appoint, in its reasonable discretion, a replacement managing agent. The Owner shall be obligated to pay a management fee to the Agency-appointed entity in the amount equal to the fee paid to the preceding managing agent including incentive payments, if any.

(c) Notwithstanding the provisions of Section 5.4(b) above, in the event there is a need to replace the management entity due to premature termination or otherwise, which requires immediate temporary replacement of the management entity before approval can be obtained from the Agency, Owner may employ a replacement management entity, provided the agreement for such employment is terminable upon receipt by Owner of written notice that said management entity is not acceptable to the Agency.

(d) Owner shall not engage a leasing agent without the prior written consent of the Agency, which shall not be unreasonably withheld. The Agency reserves the right to review the performance of the leasing agent and may require the removal and replacement of such agent in a manner similar to the provisions set forth in subsections (b) and (c), above.

5.5 Change of Principals and Transfer Restrictions. (a) As used in this Section 5.5, the term “transfer” shall include any sale, transfer, assignment or other conveyance, provided, however, that the meaning of the term “transfer” shall not include a mortgaging of the Premises.

(b) In addition to the restrictions on conveyance of the Project and the Premises as set forth in the HFA Mortgage and subject to Section 5.5(c), the Owner shall not transfer its interest in the Premises, the Project, or any part of either, without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed. Any transfer or attempted transfer of the Project or any part thereof made without such consent of the Agency shall be null and void *ab initio*.

(c) No consent of the Agency shall be required for the transfer of any direct or indirect ownership interest in the Owner, provided that after giving effect to such transfer either the Owner

or the managing member or general partner thereof, as applicable, shall maintain a controlling interest in the Project and shall retain the day to day management and control thereof.

(d) In connection with its consent to any transfer, as required by this Section 5.5, the Agency will charge the Owner a fee of one-half of one percent (0.5%) of the then outstanding principal amount of the HFA Funding ("Transfer Fee"). In the event a transfer which requires Agency consent has occurred without the prior consent of the Agency, then in addition to the Transfer Fee, the Owner will be subject to a penalty of the greater of (i) an additional one half of one percent (0.5%) of the then outstanding principal balance of the HFA Funding, or (ii) \$5,000. The Agency shall not charge the Owner the Transfer Fee in connection with any transfers that do not require the Agency's consent under this Section 5.5, however, the Agency reserves the right to charge Owner for any reasonable related out-of-pocket expenses and such other fees as the Agency, in its reasonable discretion, may deem appropriate for such transfers.

(e) The Owner shall, within five days after request of the Agency, furnish to the Agency the names of the officers, directors, members, partners and shareholders of the Owner, together with such additional information as the Agency shall request with respect to such persons. The Owner shall, within 30 days, notify the Agency in writing, regardless of whether or not the consent of the Agency is required, of any transfer of any direct interest in the Owner or the Managing Member.

(f) Notwithstanding any of the foregoing provisions, in no event shall any conveyance of the Project or the addition or substitution of any constituent of the Owner, or of any other person or entity directly or indirectly holding an ownership interest in the Owner, be permitted if such conveyance or addition or substitution shall cause the Owner to become a Prohibited Person.

(h) The terms and conditions of this Agreement shall remain outstanding and enforceable against any new owner of the Project.

5.6 Prohibited Persons. A "Prohibited Person" shall mean:

(a) any individual who has ever been convicted of a felony or any other crime involving moral turpitude, or is an Organized Crime Figure, as defined in Section 5.6(e) hereof, or is reputed to have substantial business or other affiliations with an Organized Crime Figure;

(b) any individual or entity against whom any action or proceeding is pending to enforce rights of any municipal, city, state or federal government, or any agency, department, public authority, public benefit corporation or local development corporation thereof (“Governmental Entity”) arising out of a contractual obligation to any such Governmental Entity;

(c) any individual or entity with respect to whom any notice of monetary default which remains uncured has been given by any Governmental Entity;

(d) any individual who is an officer, director, or otherwise exercises managerial discretion or has an ownership interest in excess of 25% in:

(i) the owner of any one or more dwelling(s) subject to New York State Multiple Residence Law, which dwelling, while under the ownership of the owner in which the individual is an officer, director, or otherwise exercises managerial discretion, has been declared a nuisance by the responsible department, and such nuisance has not been removed by the owner in the time specified in the notice or order declaring the dwelling a nuisance (as such terms are defined and used in New York State Multiple Residence Law);

(ii) the owner of any one or more dwelling(s) subject to New York State Multiple Residence Law, with respect to which dwelling or combination of dwellings, on three distinct occasions, a tenant or tenants have withheld rent pursuant to a rent impairing violation having been noted in the official records of the responsible department, which violation the owner in which the individual is or was an officer, director, or otherwise exercises managerial discretion has failed to remove prior to that amount of time after which such failure permits a resident of such dwelling to legally withhold rent from the owner, and either no action to recover rent or possession has been brought by the owner, or the resident has prevailed in such action (as such terms are defined and used in New York State Multiple Residence Law);

(iii) the owner of any one or more dwelling(s) subject to New York State Multiple Dwelling Law, which dwelling, while under the ownership of the owner in which the individual is an officer, director, or otherwise exercises managerial discretion, has been declared a nuisance by the responsible department, and such nuisance has not been removed by the owner in the time specified in the notice or order declaring the dwelling a nuisance or fines and/or penalties have not been paid with respect thereto (as such terms are defined and used in New York State Multiple Dwelling Law); or

(iv) the owner of any one or more dwelling(s) subject to New York State Multiple Dwelling Law, with respect to which dwelling or combination of dwellings, on three distinct occasions, a tenant or tenants have withheld rent pursuant to a rent impairing violation having been noted in the official records of the responsible department, which violation the owner in which the individual is or was an officer, director, or otherwise exercises managerial discretion has failed to remove prior to that amount of time after which such failure permits a resident of such dwelling to legally withhold rent from the owner, and either no action to recover rent or possession has been brought by the owner, or the resident has prevailed in such action (as such terms are defined and used in New York State Multiple Dwelling Law).

(v) any entity which has ever been, or whose principals have ever been, suspended, debarred, disqualified, found non-responsible, had its and/or their prequalification revoked or otherwise has been declared ineligible to do business with any Governmental Entity or which could be deemed non-responsible under New York law.

(e) An individual shall be deemed to be an "Organized Crime Figure" if he or she is alleged as such in writing by a private investigation agency and such allegation has been confirmed by any state or Federal prosecutorial, investigative or regulatory agency or authority.

5.7 General Covenants; Use of Mortgage Proceeds; Other Restrictions. The Owner covenants that it will comply with any use or occupancy requirement of any Governmental Entity providing any subsidy, tax abatement or regulatory approval for the Project, to the extent such requirements do not irreconcilably conflict with the requirements of this Agreement or any rule, regulation or policy of any state or federal entity.

## 6.0 REPORTING

6.1 Information and Project Reports. (a) The Owner shall submit to the Agency annually, or more frequently if required in writing by the Agency, reports detailing such facts as the Agency determines are sufficient to establish compliance with the restrictions contained hereunder, including monthly occupancy reports and annual certifications regarding tenant income qualifications, all of which shall be in a form reasonably acceptable to the Agency. The Owner covenants and agrees to notify the Agency promptly if the Owner discovers non-compliance with any restriction or covenant hereunder. The Agency agrees to notify the Owner if the Agency

discovers non-compliance with any restriction or covenant hereunder, but the Agency's failure to do so shall not affect the Owner's obligations hereunder.

(b) The Owner shall retain the records required hereunder for at least six years after the due date (with extensions) for filing the Owner's tax return for the respective year.

(c) The Owner shall promptly furnish a copy of each lease entered into for each Regulated Residential Unit with a copy of each annual tenant income certification, which shall be in a form satisfactory to the Agency.

(d) The Owner shall notify the Agency of the date of the following within ten days of the date thereof: (i) the issuance of any certificate of occupancy including any temporary certificate of occupancy; (ii) the rental of 50% of the units in the Project; and (iii) the rental of 90% of the units in the Project.

6.2 Monitoring and Recordkeeping Requirements. (a) Owner shall keep records, and shall provide such records to the Agency, for the Project showing for each year in the Regulatory Period:

- 1) The total number of residential units in the Project, tenant income in each Regulated Residential Unit as a percentage of AMI, and the percentage of Regulated Residential Units complying with the rent restrictions and income occupancy requirements of this Agreement;
- 2) The rent charged for each Regulated Residential Unit (including any utility allowance);
- 3) Documentation to support the income certification made by each tenant of a Regulated Residential Unit (e.g., tenant federal income tax return, Form W-2, verification of income from third parties such as employers of state agencies paying unemployment compensation);
- 4) Copies of any reports required to be submitted to any other party with respect to the Federal Section 8 program, including but not limited to reports submitted to HUD, within five (5) days of the submission of such reports; and
- 5) Such other information as the Agency may reasonably request from time to time.

(b) Within 90 days of the end of each calendar year, the Owner shall submit to the Agency either: (i) three copies of the Project's annual audited financial statements including a balance sheet, a statement of operations, income, and expenses, a statement of cash flows, and all related notes; all of which shall be prepared in accordance with generally accepted accounting principles ("GAAP"), presented in a two-year comparative format, and which shall be accompanied by an opinion of an independent certified public accountant acceptable to the Agency stating that the financial statements were audited in accordance with GAAP; or (ii) three copies of a compilation report, which must include a balance sheet, a statement of operations, income, and expenses, a statement of cash flows, and all related notes, and be certified by the Owner. Notwithstanding the foregoing, the Agency reserves the right to require the Owner to submit audited financial statements in accordance with the requirements set forth in Section (i) above in its sole and absolute discretion.

(c) Owner shall certify to the Agency, within 60 days of the end of each year during the Regulatory Period, under penalties of perjury, that, for the preceding 12 month period:

1) all units in the Project are for use by the general public, except for any superintendent's units, and are used on a non-transient basis;

2) each building in the Project is and was suitable for occupancy, taking into account local health, safety and building codes applicable to the Project; or, if there have been any violations of such health, safety or building code, a copy of any notice or summons related thereto has been forwarded to the Agency with a description of the violation and a remedial action plan of the Owner. The Owner shall further indicate whether the violation has been corrected as of the time of certification or Owner's estimate of the time frame necessary for correction. The Owner shall forward a copy of the violation to the Agency and retain the original violation report for review by the Agency during the inspection of the Projects. Such reports must be retained until the completion of the Agency's inspection of the Projects following the correction of the violation;

3) No Regulated Residential Unit has been rented to tenants having incomes in excess of 120% of AMI, and the average of all household incomes does not exceed 80% of AMI.

4) the Project has been and is in compliance with the Agency's Guidelines; the Owner's marketing and tenant selection plan applicable to the Projects, as filed with the Agency for its records, complies with the applicable rules as defined in the Agency's Guidelines; and there has been no finding of discrimination under any of such applicable rules, nor any complaint, investigation, administrative inquiry, or other action under such applicable rules, or, if there has been any such finding, complaint, investigation, administrative inquiry, or other action, a listing and an explanation thereof;

5) there were no findings of discrimination under the Fair Housing Act or, if there have been such findings, an explanation thereof;

6) the Owner has complied with all requirements of this Regulatory Agreement, as the same may be amended or supplemented, and with any additional reporting requirements which the Agency may have imposed in order to monitor compliance herewith; and

7) such other matters as the Agency may reasonably request from time to time.

(d) The Agency shall have the right to perform audits of the Project through the end of the Regulatory Period; for this purpose, an audit includes an inspection of the Project as well as a review of the records required pursuant to this Agreement.

6.3 Late Filing Penalties. All reports, certifications or information required under this Article 6 shall be submitted to the Agency by the 30th day of the month following the month to which they relate. With respect to any delinquent report, the Owner will be subject to a late filing fee equal to the lesser of (i) five percent (5%) of the then current monthly debt service obligation with respect to the HFA Funding, or (ii) \$5,000.

## 7.0 GENERAL PROVISIONS

7.1 Interpretation and Section Headings. In this Agreement: (a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms as used in this Agreement refer to this Agreement.

(b) Unless the context otherwise requires, words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words defined in the singular have the same meaning when used in the plural and vice versa.

(c) Words importing persons include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities including public bodies, as well as natural persons.

(d) Any headings preceding the texts of any section, paragraph or subparagraph of this Agreement and table of contents appended to the copies hereof shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) All certifications, documents and instructions, including those regarding approvals, consents and acceptances, required to be given or made by any person or party hereunder shall be made in writing.

7.2 Parties Bound. This Agreement shall be binding upon the Owner, the IDA and the Agency and any of their respective successors and assigns. Prior to any sale, transfer or other disposition of the Project by the Owner, the Owner and the IDA shall require the subsequent purchaser or transferee to assume in writing the Owner’s and the IDA’s obligations and duties under this Agreement and shall provide the Agency with a copy of such assumption. Such obligations and duties shall extend to the provisions that all partners and/or members or principals of the new owner shall also be bound hereby. Any sale, transfer or other disposition of the Project by the Owner without such written assumption is null and void and not effective to result in the sale, transfer or other disposition of the Project or to relieve the Owner and the IDA of obligations under this Agreement. The Owner and the IDA acknowledge that to the extent controlled by the Owner, the IDA or any of the purchasers, transferees, partners and/or members or principals of the new owner, it is intended that each person who is “related” to any party bound by this Agreement shall also be bound by this Agreement.

7.3 Compliance with Equal Opportunity Laws and Regulations. The Owner shall comply with all applicable state and federal laws and regulations regarding affirmative action, equal opportunity in employment and fair housing laws.

7.4 Governing Law. This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with and governed by the laws of the State of New York. In

the event of conflict between the provisions of this Agreement and federal laws, regulations and requirements, the latter shall prevail.

7.5 Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or by Federal Express, United Parcel Service or equivalent package delivery service, or mailed by certified or registered mail, return receipt requested, to the parties hereto at the following addresses, or to such other place as the Agency or the Owner from time to time designate in writing:

If to the Agency:

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
Attention: Senior Vice President, Multi-Family Finance, and Development  
Attention: Senior Vice President and Counsel

If to the Owner:

444 East Genesee Street LLC  
344 S. Warren Street, Suite 202  
Syracuse, New York 13202  
Attention: Graziano Zazzara, Jr., Manager

With a copy to:

Lynn D'Elia Temes & Stanczyk LLC  
100 Madison Street  
Tower 1 – Suite 1905  
Syracuse, New York 13202  
Attention: Michael T. Stanczyk, Esq.

If to the IDA:

City of Syracuse Industrial Development Agency  
201 East Washington Street, 6th Floor  
Syracuse, New York 13202  
Attention: Chair

With a copy to:

Bousquet Holstein PLLC  
110 West Fayette Street  
One Lincoln Center, Suite 1000  
Syracuse, New York 13202-1190  
Attention: Susan R. Katzoff, Esq.

If to the Senior Lender:

The Community Preservation Corporation  
220 East 42<sup>nd</sup> Street, 16<sup>th</sup> Fl.  
New York, NY 10017

Attention: Director of Portfolio Services, and  
Attention: General Counsel

7.6 Waiver. No omission by the Agency or act of the Agency other than a writing signed by it waiving a breach by the Owner shall constitute a waiver thereof. No such waiver of any breach shall be deemed a waiver of any other or subsequent breach or affect or alter this Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

7.7 Severability. All rights, powers and remedies provided herein may be exercised only to the extent that exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded, registered, or filed under applicable law. If any provision shall be held to be invalid, illegal or unenforceable, only such provision or part thereof shall be affected by such holding and the validity of other provisions of this Agreement and of the balance of any provision held to be invalid, illegal or unenforceable in part only, shall in no way be affected thereby, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision or part thereof had not been contained therein.

7.8 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be a duplicate original. All such counterparts shall constitute but one and the same instrument.

7.9 Agency Sign. Subject to compliance with local laws and codes, during construction or rehabilitation of the Project (as applicable) and for a period of up to six (6) months thereafter, Owner shall at its own expense provide, erect, maintain, and insure a sign in a design format and of a size, materials and appearance required by the Agency, in a location at the Project site acceptable to the Agency, and stating that the Project has been financed by the Agency. If the Owner uses a sign provided by the Agency, Owner shall reimburse the Agency for the cost of the sign, including the cost of transporting the sign to the site of the Project.

7.10 Modification and Waiver. This Agreement and the provisions herein may not be waived, amended, modified or rescinded unless such waiver, amendment, modification or rescission is in writing, and signed by the Owner and the Agency.

7.11 Monitoring Fee. Commencing on the first date on which the HFA Funding has been converted to the HFA Permanent Loan, the Owner shall pay to the Agency a monitoring fee in the amount of 1% of the potential total gross rent revenue due from the Regulated Residential Units (whether or not collected) which fee shall be payable in equal monthly installments.

7.12 Approval of Commercial Leases Affecting the Mortgaged Property. The Owner shall submit to the Agency for its prior written approval, which shall not be unreasonably withheld, the identity of any prospective commercial tenant and the proposed usage of the space, if

applicable. If there is no response by the Agency within ten (10) business days after receipt of the Owner's request for the Agency's approval of the identity of any prospective commercial tenant and the proposed usage of the space, such request shall be deemed approved.

7.13. Limitation on IDA Liability. With respect to the IDA, it is agreed that the IDA and its officers, members, employees, attorneys, servants, agents (other than the Owner) and directors shall have no personal liability under this Agreement, nor in their capacity as officers, members, employees, attorneys, servants, agents and directors. The IDA has executed this Agreement to subject its interest in the Premises and the Project to the lien of this Agreement; however, the Agency shall have no recourse to the IDA but shall have recourse only against the Project and the Owner. No provision, covenant or agreement contained in this Regulatory Agreement or any obligations herein imposed upon the IDA or the breach thereof shall constitute or give rise to or impose upon the IDA a pecuniary liability or a charge upon its general credit. In making the agreements, provisions and covenants set forth in this Agreement, the IDA has not obligated itself except with respect to the Premises. All covenants, stipulations, promises, agreements and obligations of the IDA contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the IDA and not of any member, director, officer, employee, attorney, servant or agent (other than the Owner) of the IDA in his or its individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or any of the obligations or for any claim based thereon or hereunder against any member, director, officer, employee, attorney, servant or agent (other than the Owner) of the IDA or any natural person executing this Agreement. No covenant herein contained shall be deemed to constitute a debt of the State of New York or the City of Syracuse and neither the State of New York nor the City of Syracuse shall be liable on any covenant herein contained, nor shall the obligations secured by this Agreement be payable out of any funds of the IDA other than those expressly pledged therefor.

7.14. Owner's Representations and Covenants. The IDA is not obligated and shall not be liable to any extent for the representations and covenants of the Owner made in or contained in this Agreement. The Owner acknowledges that the terms of the IDA Lease Agreements, by and among SIDA and the Owner, dated as of June 1, 2021, as amended and restated from time to time, are in full force and effect, including but not limited to the "Hold Harmless Provisions".

7.15 Amendments. This Agreement cannot be changed, amended, modified, or revised in any manner whatsoever, except by an instrument in writing duly executed by all of the parties to the Agreement. Nothing in the Agreement shall be deemed to amend any of the terms of the IDA Lease Agreements or any other document, instrument or agreement between, among others, the Owner and the IDA.

7.16 IDA is Acting at the Owner's Direction. The Owner directs the IDA to execute and deliver this Agreement to the Agency and further agrees to indemnify, defend (with counsel selected by the IDA) and hold harmless the IDA (and its members, officers, directors, agents, attorneys, servants and employees) from all loss, cost or damage (including legal fees and expenses) in connection with the execution, delivery, recording, performing and enforcement of this Agreement.

SIGNATURE PAGE FOLLOWS

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

**AGENCY:**

**NEW YORK STATE HOUSING FINANCE  
AGENCY**

By: 

Name: Dina Levy

Title: Vice President for Single Family and  
Community Development

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

On the 21<sup>st</sup> day of May in the year 2021, before me, the undersigned, a notary public in and for said state, personally appeared DINA LEVY, 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 capacities, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Commission expires:

**Robert Ambaras**  
**Notary Public, State of New York**  
**No. 31-4970489**  
**Qualified in New York County**  
**Commission Expires August 13, 2022**

**SIGNATURE/ACKNOWLEDGEMENT PAGE  
REGULATORY AGREEMENT**

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

**OWNER:**

**444 EAST GENESEE STREET LLC,**  
a Delaware limited liability company

By:   
Name: Graziano Zazzara, Jr.  
Title: Manager

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

On the 26 day of May in the year 2021, before me, the undersigned, a notary public in and for said state, personally appeared GRAZIANO ZAZZARA, JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Commission expires:

**MICHAEL STANCZYK**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02ST6220670  
Qualified in Onondaga County  
Commission Expires April 19, 2022

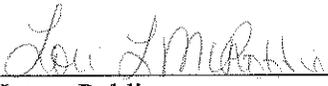
IDA:

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY, a New York public  
benefit corporation

By:   
Name: Judith DeLaney  
Title: Executive Director

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

On the 27<sup>th</sup> day of May in the year 2021, before me, the undersigned, a notary public in and for said state, personally appeared JUDITH DELANEY, 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 capacities, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
Commission expires:

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 2022

SIGNATURE/ACKNOWLEDGEMENT PAGE  
REGULATORY AGREEMENT

**SCHEDULE 1**  
**LEGAL DESCRIPTION OF PREMISES**  
**(see attached)**

### LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

Being the same premises conveyed by the City of Syracuse to Route 20/20, LLC by Warranty Deed dated June 7, 2006 and recorded in the Onondaga County Clerk's Office on March 5, 2007 in Book 4984 of Deeds at page 637.

BEING MORE MODERNLY DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

BEGINNING at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County Clerk's Office in Liber of Deeds #5380, Page #175;

thence S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

thence N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

thence N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

thence S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the POINT OF BEGINNING.

**SCHEDULE 2**

**REGULATED RESIDENTIAL UNITS**

**I. INCOME REQUIREMENTS**

All of the Project's revenue units (the "Regulated Residential Units") will be set aside for households with incomes at or below 120% of Area Median Income, provided that at no time may the average AMI of all of such units exceed 80%

**II. OCCUPANCY REQUIREMENTS**

<b>Number of Bedrooms</b>	<b>Number of Persons</b>	<b>Number of Regulated Residential Units</b>
<b>Studio</b>	<b>1</b>	<b>N/A</b>
<b>One Bedroom</b>	<b>1-2</b>	<b>24</b>
<b>Two Bedroom</b>	<b>2-4</b>	<b>N/A</b>
<b>Three Bedroom</b>	<b>3-6</b>	<b>N/A</b>

To ensure that Regulated Residential Units are occupied by households of an appropriate number of individuals, the above standard for occupancy upon initial rental or re-rental of all units shall apply, subject to such smaller number as may be required by local zoning or building department authorities or other governmental regulatory restrictions.

**EXHIBIT A**  
**PROJECT SERVICES AND AMENITIES**

**Project:** The 444 East Genesee Street Apartments Project

1. The project includes commercial space, either financed by the Agency or included in the total development cost of the project:             Yes         No
2. There will be 0 unit reserved for resident managers, superintendents and/or employees:

Unit # (If Known)	Unit Type	Residential or Commercial Use	Revenue- or Non-Revenue- Generating
N/A	N/A	N/A	N/A

3. The following services and amenities are offered by the project for a fee which is NOT included in the monthly base rent for all tenants (both affordable and market rate):

- Parking spaces:
  - All spaces
  - Indoor parking or garages only
  - Storage space
  - Recreational facilities
  - Individual utilities
  - Electric

- Heat
- Gas
- A/C
- Water
- Cable service
- Laundry facilities:
  - Washer/Dryer hook-up
  - Washer/Dryer in unit
  - Laundry room
- Structural or architectural features:
  - Bay windows
  - Balconies
  - Fireplaces
  - Other: \_\_\_\_\_
  - Other: \_\_\_\_\_:
- Den in apartment
- Vaulted ceilings

Other services and/or amenities for which a fee will be charged:

N/A

4. If applicable, the service package for senior/congregate/assisted projects includes:

---

N/A

---

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Certification: 444 EAST GENESEE STREET LLC, Owner, hereby certifies that the information contained herein is accurate and correct.

Date: June 3, 2021

**OWNER:**

**444 EAST GENESEE STREET LLC,**  
A Delaware limited liability company

By:   
Name: Graziano Zazzara, Jr.  
Title: Manager



As of June 3, 2021

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022

Re: New York State Housing Finance Agency Small Buildings Loan Program ("SBLP") – HFA Subsidy Loan in the amount of \$1,866,464.00 to 444 East Genesee Street LLC (the "Borrower") and the City of Syracuse Industrial Development Agency (the "IDA") for Property located at 444 East Genesee Street, City of Syracuse, Onondaga County, State of New York (the "Project").

Ladies and Gentlemen:

This will confirm that with respect to the SBLP form of permanent loan note and mortgage for the above-referenced HFA Subsidy Loan, the HFA Amended and Restated Subsidy Note and Mortgage for the Project circulated to the undersigned in connection herewith, are approved as to form and substance. The foregoing approvals are conditioned upon either no changes or all changes being approved by the Borrower and the IDA at the time of the conversion of the HFA Subsidy Loan to permanent financing.

Yours very truly,

**BORROWER:**  
444 EAST GENESEE STREET LLC,  
a Delaware limited liability Company

By:   
Name: Graziano Zazzara, Jr.  
Title: Manager

**IDA:**  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY, a New York public benefit corporation

By: \_\_\_\_\_  
Name: Judith DeLaney  
Title: Executive Director

As of June 3, 2021

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022

Re: New York State Housing Finance Agency Small Buildings Loan Program ("SBLP") – HFA Subsidy Loan in the amount of \$1,866,464.00 to 444 East Genesee Street LLC (the "Borrower") and the City of Syracuse Industrial Development Agency (the "IDA") for Property located at 444 East Genesee Street, City of Syracuse, Onondaga County, State of New York (the "Project").

Ladies and Gentlemen:

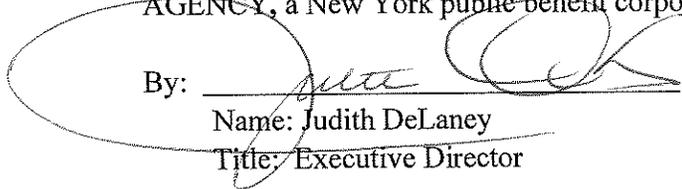
This will confirm that with respect to the SBLP form of permanent loan note and mortgage for the above-referenced HFA Subsidy Loan, the HFA Amended and Restated Subsidy Note and Mortgage for the Project circulated to the undersigned in connection herewith, are approved as to form and substance. The foregoing approvals are conditioned upon either no changes or all changes being approved by the Borrower and the IDA at the time of the conversion of the HFA Subsidy Loan to permanent financing.

Yours very truly,

**BORROWER:**  
444 EAST GENESEE STREET LLC,  
a Delaware limited liability Company

By: \_\_\_\_\_  
Name: Graziano Zazzara, Jr.  
Title: Manager

**IDA:**  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY, a New York public benefit corporation

By:  \_\_\_\_\_  
Name: Judith DeLaney  
Title: Executive Director







**GENERAL CERTIFICATE OF THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

This certificate is made in connection with the execution by the City of Syracuse Industrial Development Agency (the "**Agency**") of the Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement 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 444 East Genesee Street LLC (the "**Company**") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**") and together with the Land and the Facility, the "**Project Facility**"; (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of June 1, 2021 (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 Executive Director 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:

Kathleen Murphy, Chair  
Steven Thompson, Vice Chair  
Rickey T. Brown, Secretary  
Kenneth Kinsey, Treasurer  
Dirk Sonneborn, 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, reconstruction, renovation, equipping and completion 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 March 23, 2021 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. That a resolution classifying a certain project as a Type I Action and declaring the intent of the City of Syracuse Industrial Development Agency to be lead agency for purposes of a coordinated review pursuant to the State Environmental Quality Review Act (the “**SEQRA Lead Agency Resolution**”) was adopted by the Agency on March 23, 2020 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Lead Agency Resolution is attached hereto at **Exhibit “E.”** By letters dated April 1, 2021 notice was given to each "involved agency" and "interested agency" (as defined by SEQRA) identified by the Company of the Agency's declaration to act as lead agency.

9. Attached hereto as **Exhibit “F”** 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 April 27, 2021, 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 April 12, 2021.

10. That a resolution determining that the undertaking of a certain project at the request of 444 East Genesee Street LLC will not have a significant effect on the environment (the “**SEQRA Resolution**”) was adopted by the Agency on April 27, 2021 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Resolution is attached hereto at **Exhibit “G.”**

11. That a resolution approving the undertaking of the acquisition, reconstruction, renovation, equipping and completion of a commercial project, appointing the Company as agent of the Agency for the purpose of the acquisition, reconstruction, renovation, equipping and completion 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 April 27, 2021 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 “H.”**

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 was adopted by the Agency on April 27, 2021 (the "*PILOT Resolution*"). A copy of the PILOT Resolution is attached hereto to **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 April 27, 2021 (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. That a resolution authorizing a waiver of the Agency's Local Access Policy was adopted by the Agency on April 27, 2021 (the "*Waiver Resolution*") and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Waiver Resolution is attached hereto at **Exhibit "K"**.

15. 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.

16. 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.

17. 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.

18. 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.

19. June 3, 2021 has been duly designated as the date for the Closing.

20. 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.

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

(a) to assist the Company's acquisition, construction, renovation, equipping and completion of the Project Facility;

(b) to grant the Financial Assistance to the Company;

(c) to designate the Company as the Agency's agent for the acquisition, construction, renovation, equipping and completion of the Project Facility and to authorize the Company to appoint additional agents;

(d) that the Project will advance the job opportunities, health, general prosperity and economic welfare of the people of the City, to improve their standard of living and promote employment opportunities by the creation of both full and part-time jobs; and

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

22. That I did officially cause all certificates necessary for the granting of the Financial Assistance 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 Executive Director of the Agency.

23. 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 Honora Spillane, Executive Director of the Agency:

(a) a Project Agreement between the Agency and the Company;

(b) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

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

(d) the Mortgage(s) pursuant to which the Mortgagee has been granted a security interest in the Project Facility; and

(e) a PILOT Agreement by and between the Agency and the Company.

24. 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;

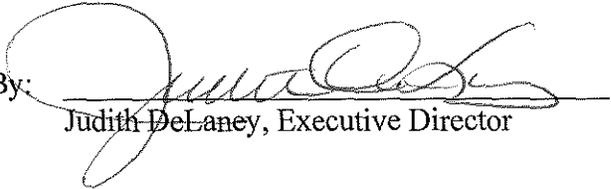
(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

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 Company.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS, as of the 1<sup>st</sup> day of June, 2021.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

**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. 11<sup>th</sup>

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

*Ed R. Peterson*

Secretary of State

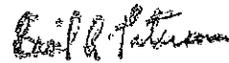
The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract, the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979

  
Lee Alexander  
Mayor

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

  
Secretary of State

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
February 25, 2020.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State



# OFFICE OF THE MAYOR

MAYOR BEN WALSH

FILED  
STATE RECORDS

FEB 04 2019

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, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Ms. Kathleen Murphy - Member/Chair

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

Ms. Kathleen Murphy - Member/Treasurer

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 17, 2020.

Office of the Mayor  
233 E. Washington St.  
201 City Hall  
Syracuse, N.Y. 13202

Office 315 448 8005  
Fax 315 448 8067

[www.syr.gov.net](http://www.syr.gov.net)

Ben Walsh

Mayor

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
April 10, 2018.



A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State



OFFICE OF THE MAYOR

Ben Walsh, Mayor

FILED  
STATE RECORDS

JAN 29 2018

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, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Mr. Steven P. Thompson - Member/Vice Chair

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

Mr. Steven P. Thompson - 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 16, 2018.

  
Ben Walsh  
Mayor, City of Syracuse

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on April 10, 2018.



A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State



FILED  
STATE RECORDS

OFFICE OF THE MAYOR

JAN 29 2018

Ben Walsh, Mayor

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, Ben Walsh, 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:

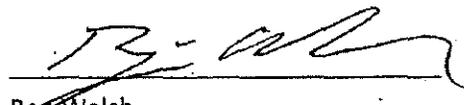
Mr. Rickey Brown - Member/Secretary

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

Ms. 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 January 16, 2018.

  
Ben Walsh  
Mayor, City of Syracuse

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
February 25, 2020.

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State



# OFFICE OF THE MAYOR

MAYOR BEN WALSH

FILED  
STATE RECORDS

FEB 04 2019

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, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Mr. Kenneth J. Kinsey

- Member/Treasurer

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

Mr. Kenneth J. Kinsey

- Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 17, 2020.

Office of the Mayor  
233 E. Washington St.  
201 City Hall  
Syracuse, N.Y. 13202

Office 315 448 8005  
Fax 315 448 8067

[www.syrgov.net](http://www.syrgov.net)

Ben Walsh

Mayor

GROWTH. DIVERSITY. OPPORTUNITY FOR ALL.

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
February 25, 2020.



*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State



# OFFICE OF THE MAYOR

MAYOR BEN WALSH

FILED  
STATE RECORDS

FEB 04 2019

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, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Mr. Dirk Sonneborn - Member

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

Mr. Michael Frame - Member/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 January 17, 2020.

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201 City Hall  
Syracuse, N.Y. 13202

Office 315 448 8005  
Fax 315 448 8067

[www.syr.gov.net](http://www.syr.gov.net)

Ben Walsh  
Mayor

**EXHIBIT "C"**

**AGENCY'S BY-LAWS**

**BY-LAWS OF  
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
(as amended August 18, 2009)**

**Article I**

**THE AGENCY**

Section 1. Name

The name of the agency shall be "City of Syracuse Industrial Development Agency", and it shall be referred to in these by-laws as the Agency.

Section 2. Seal

The seal of the Agency shall be in such form as may be determined by the members of the Agency.

Section 3. Office

The principal office of the Agency shall be located in the City of Syracuse, New York, County of Onondaga, and State of New York. The Agency may have such other offices at such other places as the members of the Agency may, from time to time, designate by resolution.

**Article II**

**MEMBERS**

Section 1. Members

(a) There shall be five members of the Agency. All references in these by-laws to members shall be references to Members of the Agency. The persons designated in the certificates of appointment filed in the office of the Secretary of State as members of the Agency and their successors in office and such other persons as may, from time to time, be appointed as

Members of the Agency by the Mayor of the City of Syracuse, or by special act of the Legislature, shall constitute all the members.

(b) Members shall hold office at the pleasure of the Mayor and shall continue to hold office until his or her successor is appointed and has qualified. The Mayor may remove any Member at his discretion, with or without cause.

(c) Upon the resignation or removal of a Member, a successor shall be selected by the Mayor.

(d) Members may resign at any time by giving written notice to the Mayor and to the Chairman of the Agency. Unless otherwise specified in the notice the resignation shall take effect upon receipt of the notice by the Chairman or the Mayor. Acceptance of the resignation shall not be necessary to make it effective.

## Section 2. Meeting of the Members

(a) The Annual Meeting of the members shall be held on such date or dates as shall be fixed, from time to time, by the Members of the Agency. The first Annual Meeting of Members shall be held on a date within twelve (12) months after the filing of the Certificate of the Agency with the Secretary of State as required by General Municipal Law §856 (1) (a). Each successive Annual Meeting of Members shall be held on a date not more than twelve (12) months following the preceding Annual Meeting of Members.

(b) Regular meetings of the Agency may be held at such time and place as, from time to time, may be determined by the Members.

(c) Upon the written request of the Mayor, the Chairman or two (2) Members of the Agency, the Chairman of the Agency shall call a special meeting of the Members. Special meetings may be held on such date or dates as may be fixed in the call for such special meetings.

The call for a special meeting may be personally delivered to each Member of the Agency or may be mailed to the business or home address of such Member. A waiver of notice may be signed by any Member failing to receive a proper notice.

Section 3. Procedure at Meetings of Members

(a) The Chairman shall preside over the meetings of the Agency. In the absence of the Chairman, the Vice-Chairman shall preside. In the absence of both the Chairman and Vice-Chairman, any Member directed by the Chairman may preside.

(b) At all meetings of Members, a majority of the Members of the Agency shall constitute a quorum for the purpose of transacting business. If less than a quorum is present for any meeting, the Members then present may adjourn the meeting to such other time or until a quorum is present. Except to the extent provided for by law, all actions shall be by a majority of the votes cast, provided that the majority of the votes cast shall be at least equal to a quorum.

(c) When determined by the Agency that a matter pending before it is confidential in nature, it may, upon motion, establish an executive session and exclude any non-member from such session.

(d) Order of business

At all meetings of the Agency, the following shall be the order of business:

- (1) Roll Call;
- (2) Proof of Notice of Meeting;
- (3) Reading and approval of the minutes of the previous meeting;
- (4) bills and communications;
- (5) Report of the Treasurer;
- (6) Reports of Committees;

- (7) Unfinished business;
- (8) New business;
- (9) Adjournment.

The order of business may be altered or suspended at any meeting by the Members of the Agency.

(e) All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

### Article III

#### OFFICERS AND PERSONNEL

##### Section 1. Officers

The officers of the Agency shall be Chairman or Co-Chairman, Vice-Chairman, Secretary and Treasurer and such other offices as may be prescribed, from time to time, by the Agency. The Chairman or Co-Chairman and other officers shall be appointed by the Mayor of the City of Syracuse and may be removed with or without cause at his discretion. Each officer shall be a Member of the Agency during his or her term of office.

##### Section 2. Chairman or Co-Chairmen

The Chairman shall be chief executive officer of the Agency, and shall serve as an ex officio member of all duly constituted committees, shall supervise the general management and the affairs of the Agency, and shall carry out the orders and resolutions of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall execute (manually and by facsimile signature) all agreements, contracts, deeds, bonds, notes or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency. The Mayor may from time to time appoint two Co-Chairmen in place of the Chairman. During their term of office the Co-

Chairmen shall share equally the duties, rights, powers and responsibilities of the Chairman. The action of either Co-Chairman or execution (manually or by facsimile signature) by either Co-Chairman of any agreement, contract, deed, bond, note or other evidence of indebtedness or any other instrument of the Agency on behalf of the Agency shall have the same force and effect as such action or execution by the Chairman.

Section 3. Vice-Chairman

The Vice-Chairman shall have all the powers and functions of the Chairman or Co-Chairmen in the absence or disability of the Chairman or Co-Chairmen, as the case may be. The Vice-Chairman shall perform such other duties as the Members of the Agency shall prescribe or as delegated by the Chairman or Co-Chairmen.

Section 4. Secretary

The Secretary shall keep the minutes of the Agency, shall have the custody of the seal of the Agency and shall affix and attest the same to documents when duly authorized by the Agency, shall attest to the giving or serving of all notices of the Agency, shall have charge of such books and papers as the Members of the Agency may order, shall attest to such correspondence as may be assigned, and shall perform all the duties incidental to his office.

Section 5. Treasurer

The Treasurer shall have the care and custody of all the funds and securities of the Agency, shall deposit such funds in the name of the Agency, in such bank or trust company as the members of the Agency may elect, shall sign such instrument as may require the Treasurer's signature, but only with the approval of the Chairman or Co-Chairman, as the case may be, shall at all reasonable times exhibit the books and accounts of the Agency to the Mayor or any Member of

the Agency, and at the end of each fiscal year shall present an annual report setting forth in full the financial condition of the Agency.

Section 6. Additional Personnel

The Agency, with the consent of the Mayor, may appoint an Administrative or Executive Director to supervise the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Agency may, from time to time, employ such other personnel as it deems necessary to execute its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act (General Municipal Law, Article 18-A), as amended, and all other laws of the State of New York applicable thereto.

Section 7. Compensation of Chairman, Co-Chairmen, Members, Officers, and Other Personnel

The Chairman, Co-Chairmen, Members and Officers shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The compensation of other personnel, including the Administrative Director, shall be determined by the Members of the Agency.

Article IV

AMENDMENTS

Section 1. Amendments to By-Laws

These by-laws may be amended or revised, from time to time, by a two-third (2/3) vote of the Agency, but no such amendment or revision shall be adopted unless written notice of the proposed action shall have been given by mail to each Member and the Mayor at least ten (10) days prior to the date of the meeting at which it is proposed that such action be taken; provided, however,

that this provision and other provisions relating to the appointment, renewal and terms of office of Members and officers may be amended only with the prior written approval of the Mayor.

## Article V

### MISCELLANEOUS

#### Section 1. Sureties and Bonds

In case the Agency shall so require, any officer, employee or agent of the Agency shall execute to the Agency a bond in such sum and with such surety or sureties as the Agency may direct, conditioned upon the faithful performance of his or her duties to the Agency and including responsibility for negligence and for the accounting for all property, funds or securities of the Agency which may come into the hands of the officer, employee or agent.

#### Section 2. Indemnification

(a) Upon compliance by a Member or Officer of the Agency (including a former Member or Officer, the estate of a Member or Officer or a judicially appointed personal representative thereof) (referred to in this Section 2 collectively as "Member") with the provisions of subdivision (i) of this Section 2, the Agency shall provide for the defense of the Member in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Member was acting within the scope of the public employment or duties of such Member. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Agency.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the Member shall be entitled to be represented by private counsel of the Member's choice in any civil action or proceeding whenever the chief legal officer of the Agency or other counsel designated by the

Agency determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the Member is entitled to be represented by counsel of the Member's choice, provided, however, that the chief legal officer or other counsel designated by the Agency may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Members be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of a majority of the Members of the Agency eligible to vote thereon.

(c) Any dispute with respect to representation of multiple Members by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the Member delivers process and a written request for a defense to the Agency under subdivision (i) of this Section 2, the Agency shall take the necessary steps on behalf of the Member to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The Agency shall indemnify and save harmless its Members in the amount of any judgment obtained against such Members in a State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the Member was acting within the scope of the Member's public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by a majority of the Members of the Agency eligible to vote thereon.

(f) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this Section 2 shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Member seeking indemnification.

(g) Nothing in this subdivision shall authorize the Agency to indemnify or save harmless any Member with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Agency shall indemnify and save harmless its Members in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that the Member, acting within the scope of the Member's public employment or duties, has, without willfulness or intent on the Member's part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State or of the United States.

(h) Upon entry of a final judgment against the Member, or upon the settlement of the claim, the Member shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Chairman and the chief administrative officer of the Agency; and if not inconsistent with the provisions of this Section 2, the amount of such judgment or settlement shall be paid by the Agency.

(i) The duty to defend or indemnify and save harmless prescribed by this Section 2 shall be conditioned upon: (i) delivery by the Member to the Chairman of the Agency and the chief legal officer of the Agency or to its chief administrative officer of a written request to provide for such Member's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Member is served with such document, and (ii) the full cooperation of the Member in the defense of such action or

proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

(j) The benefits of this Section shall inure only to Members as defined in subdivision (a) of this Section 2 and shall not enlarge or diminish the rights of any other party.

(k) This Section 2 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section 10 of the Court of Claims Act, Section 880 of the General Municipal Law, or any other provision of law.

(l) The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State, or authorized by law to transact business in the State, against any liability imposed by the provisions of this Section 2, or to act as a self-insurer with respect thereto. The provisions of this Section 2 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) All payments made under the terms of this Section 2, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

(n) Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any Member of the Agency by, in accordance with, or by reason of, any other provision of State or Federal statutory or common law. The benefits under this Section 2 shall supplement, and be available in addition to, defense or indemnification protection conferred by any law or enactment. This Section 2 is intended to confer upon Members of the Agency all of the benefits of Section 18 of the Public Officers Law

and to impose upon the Agency liability for costs incurred under the provisions hereof and thereof.

Section 3. Fiscal Year

The fiscal year of the Agency shall be fixed by the Members, subject to the applicable law.

Section 4. Powers of the Agency

The Agency shall have all the powers of an Industrial Development Agency authorized by Article 18-A of the General Municipal Law and shall have the power to do all things necessary or convenient to carry out its purposes and exercise the powers authorized herein.

**EXHIBIT "D"**

**PUBLIC HEARING RESOLUTION**

## RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "*Agency*") held a meeting on the 23<sup>rd</sup> day of March, 2021, at 8:30 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=m799d93c7ef564c17763bbbf97450ab7a>; (or by accessing the link on the Agency's website) and using meeting number 129 771 3188 and password i449Z393Ed8; or via telephone at (408) 418-9388 with access code: 129 771 3188, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Kenneth Kinsey, Rickey T. Brown and Dirk Sonneborn

**EXCUSED:** Steven Thompson

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Lori McRobbie; **Others Present:** Michael Lisson, James Knittel, Jennifer Tift, Timothy Lynn, Esq., Melissa Zell, Lauryn LaBorde, Anna Daughton, Gail Cawley, Graziano Zazzara, Jr., David Pida, Rick Moriarty

The following resolution was offered by Kenneth Kinsey and seconded by Rickey Brown:

**RESOLUTION DETERMINING THAT THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION 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 on or about March 3, 2021 (the “*Application*”), 444 East Genesee Street LLC, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion 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;

(B) The Financial Assistance contemplated with respect to the Project consists of assistance in the form of exemptions from real property taxes, State and local sales and use taxation and mortgage recording tax; and

(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>
Kathleen Murphy	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	
Dirk Sonneborn	X	

The foregoing Resolution was thereupon declared duly adopted.

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

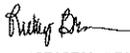
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "*Agency*") held on March 23, 2021, with the original thereof on 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), as temporarily amended by Executive Order 202.1 issued on March 12, 2020, as amended from time to time ("*EO 202.1*"), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (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 on 3/26/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:  


65E35E032BE24D9  
Rickey T. Brown, Secretary

(SEAL)

**EXHIBIT "E"**

**LEAD AGENCY RESOLUTION**

## LEAD AGENCY RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "Agency") held a meeting on the 23rd day of March, 2021, at 8:30 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=m799d93c7ef564c17763bbbf97450ab7a>; (or by accessing the link on the Agency's website) and using meeting number 129 771 3188 and password i449Z393Ed8; or via telephone at (408) 418-9388 with access code: 129 771 3188, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Kenneth Kinsey, Rickey T. Brown and Dirk Sonneborn

**EXCUSED:** Steven Thompson

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Lori McRobbie; **Others Present:** Michael Lisson, James Knittel, Jennifer Tift, Timothy Lynn, Esq., Melissa Zell, Lauryn LaBorde, Anna Daughton, Gail Cawley, Graziano Zazzara, Jr., David Pida, Rick Moriarty

The following resolution was offered by Kenneth Kinsey and seconded by Dirk Sonneborn:

**RESOLUTION CLASSIFYING A CERTAIN PROJECT AS  
A TYPE I ACTION AND DECLARING THE INTENT OF  
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY TO BE 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, construction, renovation, reconstruction and equipping of one or more “projects” (as defined in the Act); and

**WHEREAS**, by application dated on or about March 3, 2021 (the “*Application*”), 444 East Genesee Street LLC, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion 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**, to aid the Agency in determining whether undertaking the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the “*EAF*”) with respect to the Project, a copy of

which is attached here as **Exhibit A**, with a copy of the EAF on file at the office of the Agency; and

**WHEREAS**, the Agency has examined the EAF in order to classify the Project; and

**WHEREAS**, the Agency has not approved the Project or the grant of Financial Assistance to the Project; and

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

(1) Based upon an internal review of the EAF prepared by the Company, the criteria contained in 6 NYCRR §617.4(b) and 617.6, and based further upon the Agency's knowledge of the area surrounding the Project Facility, all the representations made by the Company in connection with the Project, and such further investigation of the Project and its environmental impacts as the Agency has deemed appropriate, the Agency makes the following findings and determinations with respect to the Project pursuant to SEQRA:

(A) The Project consists of the components described above in the third **WHEREAS** clause of this resolution; and

(B) The Project constitutes a "Type I Action" (as said quoted term is defined in SEQRA); and

(C) As a consequence of the foregoing, the Agency hereby declares its intent to act as Lead Agency (as said term is defined in SEQRA) with respect to a coordinated review of the Project pursuant to SEQRA; and

(D) The Agency's counsel shall arrange for distribution of its notice of intent to be "Lead Agency" and is hereby authorized to take such actions as are necessary and appropriate to assist the Agency in fulfilling the requirements under SEQRA for the Project and to work with the Company in connection therewith.

(2) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(3) This Resolution shall take effect immediately. The Secretary and/or Executive Director 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.

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>
Kathleen Murphy	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	
Dirk Sonneborn	X	

The foregoing Resolution was thereupon declared duly adopted.

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

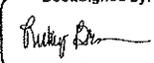
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "*Agency*") held on March 23, 2021, with the original thereof on 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), as temporarily amended by Executive Order 202.1 issued on March 12, 2020, as amended from time to time ("*EO 202.1*"), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (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 on 3/26/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:  
  
65E35E032BE24D9

Rickey T. Brown, Secretary

(S E A L)

**EXHIBIT A**

**ENVIRONMENTAL ASSESSMENT FORM**

**Full Environmental Assessment Form**  
**Part 1 - Project and Setting**

### Instructions for Completing Part 1

**Part 1 is to be completed by the applicant or project sponsor.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

#### A. Project and Applicant/Sponsor Information.

Name of Action or Project: 444 East Genesee Street LLC - "Corbett Corner". Approval of SIDA benefits for Rehabilitation of 444 E. Genesee Street Syracuse NY 13202		
Project Location (describe, and attach a general location map): 444 E. Genesee Street Syracuse NY 13202, City Tax Map # 102.-08-04.0		
Brief Description of Proposed Action (include purpose or need): The Applicant is requesting assistance from SIDA with respect to a total rehabilitation of the Building including installation of a new glass and metal panel façade and adaptive re-use of the interior. The renovation of approximately 25,424 square feet of the building for a mixed-use facility will include: - Approximately 7,400 square feet each on the 2nd, 3rd, and 4th floors to consist of 8 affordable one bedroom per floor for a total of 24 units. - Approximately 3,224 square feet on the first floor of which 1,813 square feet will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room. The first floor will also provide 8 on-site parking space. This project, when completed, would remove a longstanding blight from the skyline of Downtown Syracuse, put an otherwise unused property back into productive use, will create construction jobs, and add to the City's economic base.		
Name of Applicant/Sponsor: 444 East Genesee Street, LLC	Telephone: 315-299-6292	E-Mail: GZAZZARA@THEICONCOMPANIES.COM
Address: 444 East Genesee Street LLC		
City/PO: Syracuse	State: NY	Zip Code: 13202
Project Contact (if not same as sponsor; give name and title/role): Graziano Zazzara Jr.	Telephone: 315-299-6292	E-Mail: GZAZZARA@THEICONCOMPANIES.COM
Address: 344 South Warren Street, Suite 202		
City/PO: Syracuse	State: NY	Zip Code: 13202
Property Owner (if not same as sponsor):	Telephone:	E-Mail:
Address:		
City/PO:	State:	Zip Code:

**B. Government Approvals**

<b>B. Government Approvals, Funding, or Sponsorship.</b> ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)		
<b>Government Entity</b>	<b>If Yes: Identify Agency and Approval(s) Required</b>	<b>Application Date (Actual or projected)</b>
a. City Council, Town Board, or Village Board of Trustees <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b. City, Town or Village Planning Board or Commission <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Syracuse Planning Commission has granted site plan approval.	
c. City, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	City of Syracuse building permit (issued 3/12/2021)	
e. County agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Board approval by NYS HCR PLP program. (completed)	
h. Federal agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**C. Planning and Zoning**

<b>C.1. Planning and zoning actions.</b>	
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<ul style="list-style-type: none"> <li>• If Yes, complete sections C, F and G.</li> <li>• If No, proceed to question C.2 and complete all remaining sections and questions in Part 1</li> </ul>	
<b>C.2. Adopted land use plans.</b>	
a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes, identify the plan(s):	
_____	
_____	
_____	
c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes, identify the plan(s):	
_____	
_____	
_____	

**C.3. Zoning**

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance.  Yes  No  
 If Yes, what is the zoning classification(s) including any applicable overlay district?

CBD OSR

b. Is the use permitted or allowed by a special or conditional use permit?  Yes  No

c. Is a zoning change requested as part of the proposed action?  Yes  No

If Yes,

i. What is the proposed new zoning for the site? \_\_\_\_\_

**C.4. Existing community services.**

a. In what school district is the project site located? City of Syracuse

b. What police or other public protection forces serve the project site?

Syracuse Police Department

c. Which fire protection and emergency medical services serve the project site?

Syracuse Fire Department

d. What parks serve the project site?

Firefighters Memorial Park

**D. Project Details**

**D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? 24 affordable one-bedroom apartment units, 1,813 square feet of commercial space, and 8 on-site parking spaces.

b. a. Total acreage of the site of the proposed action? .18 acres

b. Total acreage to be physically disturbed? 0 acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? .18 acres

c. Is the proposed action an expansion of an existing project or use?  Yes  No

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % \_\_\_\_\_ Units: \_\_\_\_\_

d. Is the proposed action a subdivision, or does it include a subdivision?  Yes  No

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types) \_\_\_\_\_

ii. Is a cluster/conservation layout proposed?  Yes  No

iii. Number of lots proposed? \_\_\_\_\_

iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will the proposed action be constructed in multiple phases?  Yes  No

i. If No, anticipated period of construction: \_\_\_\_\_ months

ii. If Yes:

- Total number of phases anticipated \_\_\_\_\_
- Anticipated commencement date of phase 1 (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year
- Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_

f. Does the project include new residential uses? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span> If Yes, show numbers of units proposed.			
	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>
<u>Multiple Family (four or more)</u>			
Initial Phase	_____	_____	_____
At completion	_____	_____	_____
of all phases	_____	_____	1 building-24 one bedroom units
g. Does the proposed action include new non-residential construction (including expansions)? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes,			
i. Total number of structures _____			
ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length			
iii. Approximate extent of building space to be heated or cooled: _____ square feet			
h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes,			
i. Purpose of the impoundment: _____			
ii. If a water impoundment, the principal source of the water: <input type="checkbox"/> Ground water <input type="checkbox"/> Surface water streams <input type="checkbox"/> Other specify: _____			
iii. If other than water, identify the type of impounded/contained liquids and their source. _____			
iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres			
v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length			
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____			
<b>D.2. Project Operations</b>			
a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes:			
i. What is the purpose of the excavation or dredging? _____			
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?			
• Volume (specify tons or cubic yards): _____			
• Over what duration of time? _____			
iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____			
iv. Will there be onsite dewatering or processing of excavated materials? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span> If yes, describe. _____			
v. What is the total area to be dredged or excavated? _____ acres			
vi. What is the maximum area to be worked at any one time? _____ acres			
vii. What would be the maximum depth of excavation or dredging? _____ feet			
viii. Will the excavation require blasting? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>			
ix. Summarize site reclamation goals and plan: _____			
_____			
_____			
b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes:			
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____			
_____			
_____			

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

iii. Will the proposed action cause or result in disturbance to bottom sediments?  Yes  No  
 If Yes, describe: \_\_\_\_\_

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation?  Yes  No  
 If Yes:

- acres of aquatic vegetation proposed to be removed: \_\_\_\_\_
- expected acreage of aquatic vegetation remaining after project completion: \_\_\_\_\_
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): \_\_\_\_\_
- \_\_\_\_\_
- proposed method of plant removal: \_\_\_\_\_
- if chemical/herbicide treatment will be used, specify product(s): \_\_\_\_\_

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

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c. Will the proposed action use, or create a new demand for water?  Yes  No  
 If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_ 2,460 gallons/day

ii. Will the proposed action obtain water from an existing public water supply?  Yes  No  
 If Yes:

- Name of district or service area: City of Syracuse
- Does the existing public water supply have capacity to serve the proposal?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No
- Do existing lines serve the project site?  Yes  No

iii. Will line extension within an existing district be necessary to supply the project?  Yes  No  
 If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site?  Yes  No  
 If, Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: \_\_\_\_\_ gallons/minute.

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d. Will the proposed action generate liquid wastes?  Yes  No  
 If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_ 2,460 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_

Sanitary Waste Water

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iii. Will the proposed action use any existing public wastewater treatment facilities?  Yes  No  
 If Yes:

- Name of wastewater treatment plant to be used: City of Syracuse
- Name of district: \_\_\_\_\_
- Does the existing wastewater treatment plant have capacity to serve the project?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No

<ul style="list-style-type: none"> <li>• Do existing sewer lines serve the project site? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></li> <li>• Will a line extension within an existing district be necessary to serve the project? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></li> </ul> <p>If Yes:</p> <ul style="list-style-type: none"> <li>• Describe extensions or capacity expansions proposed to serve this project: _____</li> </ul>
<p>iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <ul style="list-style-type: none"> <li>• Applicant/sponsor for new district: _____</li> <li>• Date application submitted or anticipated: _____</li> <li>• What is the receiving water for the wastewater discharge? _____</li> </ul>
<p>v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):</p> <p>_____</p> <p>_____</p>
<p>vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____</p> <p>_____</p>
<p>e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. How much impervious surface will the project create in relation to total size of project parcel?</p> <p style="padding-left: 20px;">_____ Square feet or _____ acres (impervious surface)</p> <p style="padding-left: 20px;">_____ Square feet or _____ acres (parcel size)</p> <p>ii. Describe types of new point sources. _____</p>
<p>iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?</p> <p>_____</p> <p>_____</p> <ul style="list-style-type: none"> <li>• If to surface waters, identify receiving water bodies or wetlands: _____</li> </ul> <p>_____</p> <ul style="list-style-type: none"> <li>• Will stormwater runoff flow to adjacent properties? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></li> </ul>
<p>iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p>
<p>f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes, identify:</p> <p>i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)</p> <p>_____</p> <p>ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)</p> <p>_____</p> <p>iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)</p> <p>_____</p>
<p>g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>ii. In addition to emissions as calculated in the application, the project will generate:</p> <ul style="list-style-type: none"> <li>• _____ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)</li> <li>• _____ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)</li> <li>• _____ Tons/year (short tons) of Perfluorocarbons (PFCs)</li> <li>• _____ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)</li> <li>• _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)</li> <li>• _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)</li> </ul>

<p><b>h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?</b> <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p><i>i. Estimate methane generation in tons/year (metric):</i> _____</p> <p><i>ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring):</i> _____</p>			
<p><b>i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?</b> <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____</p>			
<p><b>j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?</b> <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p><i>i. When is the peak traffic expected (Check all that apply):</i> <input type="checkbox"/> Morning <input type="checkbox"/> Evening <input type="checkbox"/> Weekend  <input type="checkbox"/> Randomly between hours of _____ to _____.</p> <p><i>ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks):</i> _____</p> <p><i>iii. Parking spaces:</i> Existing _____ Proposed _____ Net increase/decrease _____</p> <p><i>iv. Does the proposed action include any shared use parking?</i> <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><i>v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:</i> _____</p> <p><i>vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site?</i> <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><i>vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles?</i> <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><i>viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes?</i> <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p>			
<p><b>k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?</b> <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p><i>i. Estimate annual electricity demand during operation of the proposed action:</i> _____</p> <p><i>ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):</i> _____</p> <p><i>iii. Will the proposed action require a new, or an upgrade, to an existing substation?</i> <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p>			
<p><b>l. Hours of operation. Answer all items which apply.</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <p><i>i. During Construction:</i></p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____ 7a - 4p</li> <li>• Saturday: _____ na</li> <li>• Sunday: _____ na</li> <li>• Holidays: _____ na</li> </ul> </td> <td style="width: 50%; vertical-align: top;"> <p><i>ii. During Operations:</i></p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____ n/a - residential use</li> <li>• Saturday: _____ n/a - residential use</li> <li>• Sunday: _____ n/a - residential use</li> <li>• Holidays: _____ n/a - residential use</li> </ul> </td> </tr> </table>		<p><i>i. During Construction:</i></p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____ 7a - 4p</li> <li>• Saturday: _____ na</li> <li>• Sunday: _____ na</li> <li>• Holidays: _____ na</li> </ul>	<p><i>ii. During Operations:</i></p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____ n/a - residential use</li> <li>• Saturday: _____ n/a - residential use</li> <li>• Sunday: _____ n/a - residential use</li> <li>• Holidays: _____ n/a - residential use</li> </ul>
<p><i>i. During Construction:</i></p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____ 7a - 4p</li> <li>• Saturday: _____ na</li> <li>• Sunday: _____ na</li> <li>• Holidays: _____ na</li> </ul>	<p><i>ii. During Operations:</i></p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____ n/a - residential use</li> <li>• Saturday: _____ n/a - residential use</li> <li>• Sunday: _____ n/a - residential use</li> <li>• Holidays: _____ n/a - residential use</li> </ul>		

<p>m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If yes:</p> <p>i. Provide details including sources, time of day and duration:</p> <p>_____</p>
<p>ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>Describe: _____</p>
<p>n. Will the proposed action have outdoor lighting? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If yes:</p> <p>i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:</p> <p><u>Minimal outdoor down lighting for primarily safety purposes</u></p>
<p>ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>Describe: _____</p>
<p>o. Does the proposed action have the potential to produce odors for more than one hour per day? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:</p> <p>_____</p>
<p>p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Product(s) to be stored _____</p> <p>ii. Volume(s) _____ per unit time _____ (e.g., month, year)</p> <p>iii. Generally, describe the proposed storage facilities: _____</p>
<p>q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Describe proposed treatment(s):</p> <p>_____</p>
<p>ii. Will the proposed action use Integrated Pest Management Practices? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p>
<p>r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Describe any solid waste(s) to be generated during construction or operation of the facility:</p> <ul style="list-style-type: none"> <li>• Construction: _____ tons per _____ (unit of time)</li> <li>• Operation : _____ tons per _____ (unit of time)</li> </ul> <p>ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:</p> <ul style="list-style-type: none"> <li>• Construction: _____</li> <li>• Operation: _____</li> </ul> <p>iii. Proposed disposal methods/facilities for solid waste generated on-site:</p> <ul style="list-style-type: none"> <li>• Construction: _____</li> <li>• Operation: _____</li> </ul>

s. Does the proposed action include construction or modification of a solid waste management facility?  Yes  No  
 If Yes:  
 i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_  
 ii. Anticipated rate of disposal/processing:  
     • \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or  
     • \_\_\_\_\_ Tons/hour, if combustion or thermal treatment  
 iii. If landfill, anticipated site life: \_\_\_\_\_ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste?  Yes  No  
 If Yes:  
 i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_  
 \_\_\_\_\_  
 ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month  
 iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_  
 \_\_\_\_\_  
 v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility?  Yes  No  
 If Yes: provide name and location of facility: \_\_\_\_\_  
 If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:  
 n/a \_\_\_\_\_

**E. Site and Setting of Proposed Action**

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.  
 i. Check all uses that occur on, adjoining and near the project site.  
 Urban     Industrial     Commercial     Residential (suburban)     Rural (non-farm)  
 Forest     Agriculture     Aquatic     Other (specify): Public City Park  
 ii. If mix of uses, generally describe:  
Commercial and multi-family

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	.18	.18	0
• Forested	0	0	0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	0	0	0
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0	0	0
• Wetlands (freshwater or tidal)	0	0	0
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: _____			

c. Is the project site presently used by members of the community for public recreation? i. If Yes: explain: _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? If Yes, i. Identify Facilities: _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
e. Does the project site contain an existing dam? If Yes: i. Dimensions of the dam and impoundment: <ul style="list-style-type: none"> <li>• Dam height: _____ feet</li> <li>• Dam length: _____ feet</li> <li>• Surface area: _____ acres</li> <li>• Volume impounded: _____ gallons OR acre-feet</li> </ul> ii. Dam's existing hazard classification: _____ iii. Provide date and summarize results of last inspection: _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? If Yes: i. Has the facility been formally closed? <ul style="list-style-type: none"> <li>• If yes, cite sources/documentation: _____</li> </ul> ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: _____ iii. Describe any development constraints due to the prior solid waste activities: _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No
g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? If Yes: i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? If Yes: i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: <input type="checkbox"/> Yes – Spills Incidents database      Provide DEC ID number(s): _____ <input type="checkbox"/> Yes – Environmental Site Remediation database      Provide DEC ID number(s): _____ <input checked="" type="checkbox"/> Neither database ii. If site has been subject of RCRA corrective activities, describe control measures: _____ Asbestos found and has been and will be abated pursuant to law	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Yes <input type="checkbox"/> No
iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? If yes, provide DEC ID number(s): _____ iv. If yes to (i), (ii) or (iii) above, describe current status of site(s): _____	<input type="checkbox"/> Yes <input type="checkbox"/> No

v. Is the project site subject to an institutional control limiting property uses?  Yes  No

- If yes, DEC site ID number: \_\_\_\_\_
- Describe the type of institutional control (e.g., deed restriction or easement): \_\_\_\_\_
- Describe any use limitations: \_\_\_\_\_
- Describe any engineering controls: \_\_\_\_\_
- Will the project affect the institutional or engineering controls in place?  Yes  No
- Explain: \_\_\_\_\_

---

**E.2. Natural Resources On or Near Project Site**

a. What is the average depth to bedrock on the project site? \_\_\_\_\_ unknown feet

b. Are there bedrock outcroppings on the project site?  Yes  No  
 If Yes, what proportion of the site is comprised of bedrock outcroppings? \_\_\_\_\_ %

c. Predominant soil type(s) present on project site: urban fill \_\_\_\_\_ 100 %  
 \_\_\_\_\_ %  
 \_\_\_\_\_ %

d. What is the average depth to the water table on the project site? Average: unknown feet

e. Drainage status of project site soils:  Well Drained: \_\_\_\_\_ % of site  
 Moderately Well Drained: \_\_\_\_\_ % of site  
 Poorly Drained \_\_\_\_\_ % of site

f. Approximate proportion of proposed action site with slopes:  0-10%: \_\_\_\_\_ 100 % of site  
 10-15%: \_\_\_\_\_ % of site  
 15% or greater: \_\_\_\_\_ % of site

g. Are there any unique geologic features on the project site?  Yes  No  
 If Yes, describe: \_\_\_\_\_

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h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?  Yes  No

ii. Do any wetlands or other waterbodies adjoin the project site?  Yes  No  
 If Yes to either i or ii, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?  Yes  No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Lakes or Ponds: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Wetlands: Name \_\_\_\_\_ Approximate Size \_\_\_\_\_
- Wetland No. (if regulated by DEC) \_\_\_\_\_

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?  Yes  No  
 If yes, name of impaired water body/bodies and basis for listing as impaired: \_\_\_\_\_

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i. Is the project site in a designated Floodway?  Yes  No

j. Is the project site in the 100-year Floodplain?  Yes  No

k. Is the project site in the 500-year Floodplain?  Yes  No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?  Yes  No  
 If Yes:  
 i. Name of aquifer: \_\_\_\_\_

m. Identify the predominant wildlife species that occupy or use the project site: Urban Wildlife Species _____ _____ _____	
n. Does the project site contain a designated significant natural community? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: i. Describe the habitat/community (composition, function, and basis for designation): _____ _____ ii. Source(s) of description or evaluation: _____ iii. Extent of community/habitat: • Currently: _____ acres • Following completion of project as proposed: _____ acres • Gain or loss (indicate + or -): _____ acres	
o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span> If Yes: i. Species and listing (endangered or threatened): _____ Peregrine Falcon	
p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: i. Species and listing: _____ _____	
q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If yes, give a brief description of how the proposed action may affect that use: _____ _____	
<b>E.3. Designated Public Resources On or Near Project Site</b>	
a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes, provide county plus district name/number: _____	
b. Are agricultural lands consisting of highly productive soils present? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> i. If Yes: acreage(s) on project site? _____ ii. Source(s) of soil rating(s): _____	
c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: i. Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____ _____	
d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: i. CEA name: _____ ii. Basis for designation: _____ iii. Designating agency and date: _____	

<p>e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input checked="" type="checkbox"/> Historic Building or District</p> <p>ii. Name: <u>Historic Building: Hamilton White House</u></p> <p>iii. Brief description of attributes on which listing is based: _____</p>	
<p>f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>g. Have additional archaeological or historic site(s) or resources been identified on the project site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Describe possible resource(s): _____</p> <p>ii. Basis for identification: _____</p>	
<p>h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Identify resource: _____</p> <p>ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____</p> <p>iii. Distance between project and resource: _____ miles.</p>	
<p>i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Identify the name of the river and its designation: _____</p> <p>ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	

**F. Additional Information**

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

**G. Verification**

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Graziano Zezzara Date 3/12/2021

Signature  Title Managing member - 444 East Genesee Street LLC

**PRINT FORM**

**EXHIBIT "F"**

**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

As a result of the public health emergency created by COVID-19, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as further extended by subsequent orders, suspending the Open Meetings Law, **NOTICE IS HEREBY GIVEN** that a public hearing, in accordance with the foregoing and pursuant to Section 859-a of the New York General Municipal Law, will be held **electronically** via Webex by the City of Syracuse Industrial Development Agency (the "Agency") on the 27<sup>th</sup> day of April, 2021, at 8:00 a.m., local time, in conjunction with the matter set forth below. **NO PUBLIC APPEARANCES WILL BE PERMITTED.** Members of the public may listen to the Public Hearing and provide comment by either logging into the Webex meeting at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc22ddce511bd2aff74ca4b881f41d4b8>; or by accessing the link on the Agency's website, using meeting number 129 139 9321 and password tWFSPdmx642 *or* via telephone at (408) 418-9388, access code: 129 139 9321.

Comments may also be submitted to the Agency in writing delivered to City of Syracuse Industrial Development Agency, 201 E. Washington Street, 6<sup>th</sup> Floor, Syracuse, N.Y. 13202 Attn: Judith DeLaney **TO BE RECEIVED BY NO LATER THAN APRIL 22, 2021.** The Public may also submit comments electronically to [business@syrgov.net](mailto:business@syrgov.net) to be **received on or before APRIL 22, 2021.** Any written comments so received will be read into the record of the public hearing. Minutes of the Public Hearing will be transcribed and posted on the Agency's website.

444 East Genesee Street LLC, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "Land"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "Facility"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion 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 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 cost and benefits of the Project, are available for public inspection on the Agency's Website.

Dated: April 12, 2021

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

# THE POST-STANDARD

## LEGAL AFFIDAVIT

INV#: 0009942994

# ADVANCE

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BOUSQUET HOLSTEIN PLLC  
KAREN KELLER  
110 W FAYETTE ST STE 1000  
SYRACUSE, NY 13202

Name: BOUSQUET HOLSTEIN PLLC

Sales Rep: Pamela Gallagher

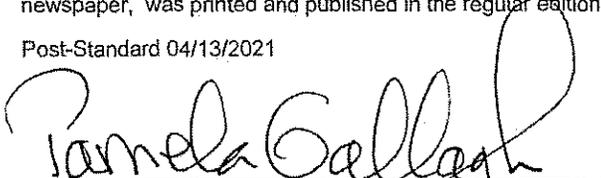
Account Number: 12145

INV#: 0009942994

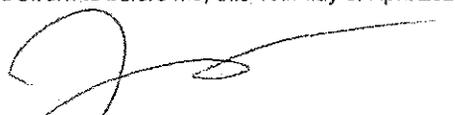
Date	Position	Description	P.O. Number	Ad Size
04/13/2021	Other Legals NY	NOTICE OF PUBLIC HEARING As a result of the public health	C2147L-00046	1 x 190.00 CL

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 04/13/2021



Pamela Gallagher  
Principal Clerk  
An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 13th day of April 2021

  
\_\_\_\_\_  
NOTARY PUBLIC

JULIA FREEMAN  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01876403113  
Qualified in Onondaga County  
My Commission Expires 3/2/24

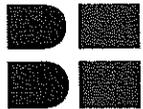
FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR Legals@Syracuse.com

Date	Position	Description	P.O. Number	Ad Size
04/13/2021	Other Legals NY	NOTICE OF PUBLIC HEARING As a result of the public health emergency	C2147L.00046	1 x 190.00 CL

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be read into the record of the public hearing. Minutes of the Public Hearing will be transcribed and posted on the Agency's website. 444 East Genesee Street LLC, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "Land"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "Facility"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax

and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion 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 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 cost and benefits of the Project, are available for public inspection on the Agency's Website. Dated: April 12, 2021  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY



# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

April 12, 2021

VIA EMAIL<sup>1</sup>  
Mayor@SyrGov.net

Honorable Benjamin Walsh  
Mayor, City of Syracuse  
City Hall  
233 East Washington Street  
Syracuse, New York 13202

VIA EMAIL<sup>1</sup>  
RyanMcMahon@ongov.net

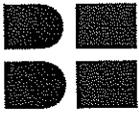
Honorable J. Ryan McMahon, II  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency (the “Agency”)  
444 East Genesee Street, LLC Project

Dear Mayor and County Executive:

Enclosed please find a Notice of Public Hearing in relation to the above-referenced project requested by 444 East Genesee Street, LLC, or an entity to be formed (collectively, the “*Company*”). The proposed project (the “*Project*”) consists of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site

<sup>1</sup> During the declared public emergency at both the State and local level caused by the COVID-19 virus, we have opted to email this notice for the safety of our staff and the general public. Once we have resumed normal working conditions, we will return to our prior method of mailing such notices.



Honorable Benjamin Walsh  
Honorable J. Ryan McMahon, II  
April 12, 2021  
Page 2

parking spaces (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion 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 **April 27, 2021 at 8:00 a.m.** in the manner outlined in the enclosed Public Hearing Notice.

Very truly yours,

/s/ Susan R. Katzoff

SRK/llm  
Enclosure

cc: Judy DeLaney, City of Syracuse Industrial Development Agency, via email  
(w/Enclosure)

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As a result of the public health emergency created by COVID-19, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as further extended by subsequent orders, suspending the Open Meetings Law, **NOTICE IS HEREBY GIVEN** that a public hearing, in accordance with the foregoing and pursuant to Section 859-a of the New York General Municipal Law, will be held **electronically** via Webex by the City of Syracuse Industrial Development Agency (the "Agency") on the 27<sup>th</sup> day of April, 2021, at 8:00 a.m., local time, in conjunction with the matter set forth below. **NO PUBLIC APPEARANCES WILL BE PERMITTED.** Members of the public may listen to the Public Hearing and provide comment by either logging into the Webex meeting at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc22ddce511bd2aff74ca4b881f41d4b8>; or by accessing the link on the Agency's website, using meeting number 129 139 9321 and password tWFSPdmx642 *or* via telephone at (408) 418-9388, access code: 129 139 9321.

Comments may also be submitted to the Agency in writing delivered to City of Syracuse Industrial Development Agency, 201 E. Washington Street, 6<sup>th</sup> Floor, Syracuse, N.Y. 13202 Attn: Judith DeLaney **TO BE RECEIVED BY NO LATER THAN APRIL 22, 2021.** The Public may also submit comments electronically to [business@syrgov.net](mailto:business@syrgov.net) to be **received on or before APRIL 22, 2021.** **Any written comments so received will be read into the record of the public hearing.** Minutes of the Public Hearing will be transcribed and posted on the Agency's website.

444 East Genesee Street LLC, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "Land"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "Facility"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion 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 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 cost and benefits of the Project, are available for public inspection on the Agency's Website.

Dated: April 12, 2021

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

**EXHIBIT "G"**

**SEQRA RESOLUTION**

## SEQRA RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "*Agency*") held a meeting on the 27<sup>th</sup> day of April, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc22ddce511bd2aff74ca4b881f41d4b8>; (or by accessing the link on the Agency's website) and using meeting number 129 139 9321 and password tWFSPdmx642; or via telephone at (408) 418-9388 with access code: 129 139 9321, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson, Kenneth Kinsey, Rickey T. Brown and Dirk Sonneborn

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): **Staff Present:** Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Lori McRobbie; **Others Present:** Jennifer Tiff, Lauryn LaBorde, Anna Daughton, Graziano Zazzara, Jr., Ryan Benz, Rick Moriarty

The following resolution was offered by Kenneth Kinsey and seconded by Steven Thompson:

**RESOLUTION DETERMINING THAT THE  
UNDERTAKING OF A CERTAIN PROJECT AT THE  
REQUEST OF 444 EAST GENESEE STREET LLC WILL  
NOT HAVE A SIGNIFICANT IMPACT ON THE  
ENVIRONMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "*Agency*") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "*Act*"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, 444 East Genesee Street LLC, or an entity to be formed (the "*Company*"), by application dated March 3, 2021 (the "*Application*"), requested the Agency undertake a

project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 State Environmental Quality Review Act and the regulations promulgated thereunder ("**SEQRA**"), the Agency is required to make a determination with respect to the environmental impact of any "action" (as defined by SEQRA) to be taken by the Agency and the approval of a project and grant of financial assistance constitute such an action; and

**WHEREAS**, to aid the Agency in determining whether undertaking the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency Part 1 of an Environmental Assessment Form (the "**EAF**") with respect to the Project, a copy of which is attached here as **Exhibit "A"** and on file at the office of the Agency; and

**WHEREAS**, the Agency examined the EAF in order to classify the Project; and

**WHEREAS**, by resolution adopted March 23, 2021, the Agency classified the Project as a Type 1 Action and declared the intent of the Agency to be "lead agency" (as defined by SEQRA) for the purposes of a conducting a coordinated review pursuant to SEQRA; and

**WHEREAS**, by letter dated April 1, 2021 notice was given to each "involved agency" and "interested agency" (as defined by SEQRA) identified by the Company of the Agency's declaration to act as lead agency; and

**WHEREAS**, the City Planning Commission of the City of Syracuse (the "**Commission**") determined that the Project constituted an Unlisted Action in connection with the Company's request for Project Site Review and to conduct a coordinated review of the action pursuant to

SEQRA and on June 29, 2020, the Commission adopted a resolution setting forth its determination that the Project will have no significant environmental impact based on the limited magnitude of the proposed project and authorizing the issuance of a negative declaration; and

**WHEREAS**, involved and interested agencies have advised the Agency that as appropriate, they adopted negative declarations with respect to the environmental impact of the Project in reliance on the Commission's resolution and are assured that the Project has not changed from the one they considered; and

**WHEREAS**, as a result of its careful review and examination of the Project, the Agency finds that, on balance, and after careful consideration of all relevant Project documentation, it has more than adequate information to evaluate as required by SEQRA all of the relevant benefits and potential impacts of the Project; and

**WHEREAS**, the Agency has prepared a negative declaration that summarizes its consideration of potential impacts in accordance with SEQRA; and

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

(1) Based upon an examination of the EAF prepared and other information furnished by the Company, the criteria contained in 6 NYCRR §617.7(c), and based further upon the Agency's knowledge of the area surrounding the Project Facility, all the representations made by the Company in connection with the Project, and such further investigation of the Project and its environmental impacts as the Agency has deemed appropriate, the Agency makes the following findings and determinations with respect to the Project pursuant to SEQRA:

(a) The Project consists of the components described above in the second **WHEREAS** clause of this Resolution and constitutes a "project" as such term is defined in the Act;

(b) The Project constitutes a Type 1 Action;

(c) The Agency declared itself lead agency with respect to a coordinated review of the Project pursuant to SEQRA;

(d) The Project will not have a significant impact on the environment, and the Agency will not require the preparation of an Environmental Impact Statement with respect to the Project; and

(e) As a consequence of the foregoing, the Agency has prepared a Parts 2 and 3 of the Full EAF with respect to the Project, a copy of which is attached hereto as **Exhibit "B"**, which shall be filed in the office of the Agency in a file that is readily accessible to the public and the Executive Director of the Agency is hereby authorized to execute and cause publication of and distribution of this negative declaration in accordance with SEQRA.

(2) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(3) 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.

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>
Kathleen Murphy	X	
Steven Thompson	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	
Dirk Sonneborn	X	

The foregoing resolution was thereupon declared duly adopted.

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

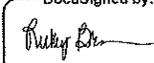
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on April 27, 2021, with the original thereof on 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), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 ("**EO 202.1**"), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (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 hereunto set my hand and affixed the seal of the Agency on 5/12/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:  
  
65E35F032BE24D9  
Rickey Brown, Secretary

(SEAL)

**EXHIBIT "A"**  
**PART 1 OF FULL EAF**

**Full Environmental Assessment Form**  
**Part 1 - Project and Setting**

**Instructions for Completing Part 1**

**Part 1 is to be completed by the applicant or project sponsor.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

**A. Project and Applicant/Sponsor Information.**

Name of Action or Project: 444 East Genesee Street LLC - "Corbett Corner". Approval of SIDA benefits for Rehabilitation of 444 E. Genesee Street Syracuse NY 13202		
Project Location (describe, and attach a general location map): 444 E. Genesee Street Syracuse NY 13202, City Tax Map # 102.-08-04.0		
Brief Description of Proposed Action (include purpose or need): The Applicant is requesting assistance from SIDA with respect to a total rehabilitation of the Building including installation of a new glass and metal panel façade and adaptive re-use of the interior. The renovation of approximately 25,424 square feet of the building for a mixed-use facility will include:  - Approximately 7,400 square feet each on the 2nd, 3rd, and 4th floors to consist of 8 affordable one bedroom per floor for a total of 24 units. - Approximately 3,224 square feet on the first floor of which 1,813 square feet will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room. The first floor will also provide 8 on-site parking space.  This project, when completed, would remove a longstanding blight from the skyline of Downtown Syracuse, put an otherwise unused property back into productive use, will create construction jobs, and add to the City's economic base.		
Name of Applicant/Sponsor: 444 East Genesee Street, LLC		Telephone: 315-299-6292 E-Mail: GZAZZARA@THEICONCOMPANIES.COM
Address: 444 East Genesee Street LLC		
City/PO: Syracuse	State: NY	Zip Code: 13202
Project Contact (if not same as sponsor; give name and title/role): Graziano Zazzara Jr.		Telephone: 315-299-6292 E-Mail: GZAZZARA@THEICONCOMPANIES.COM
Address: 344 South Warren Street, Suite 202		
City/PO: Syracuse	State: NY	Zip Code: 13202
Property Owner (if not same as sponsor):		Telephone: E-Mail:
Address:		
City/PO:	State:	Zip Code:

**B. Government Approvals**

<b>B. Government Approvals, Funding, or Sponsorship.</b> ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)		
<b>Government Entity</b>	<b>If Yes: Identify Agency and Approval(s) Required</b>	<b>Application Date (Actual or projected)</b>
a. City Council, Town Board, or Village Board of Trustees <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b. City, Town or Village Planning Board or Commission <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Syracuse Planning Commission has granted site plan approval.	
c. City, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	City of Syracuse building permit (issued 3/12/2021)	
e. County agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Board approval by NYS HCR PLP program. (completed)	
h. Federal agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**C. Planning and Zoning**

<b>C.1. Planning and zoning actions.</b>	
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<ul style="list-style-type: none"> <li>• If Yes, complete sections C, F and G.</li> <li>• If No, proceed to question C.2 and complete all remaining sections and questions in Part 1</li> </ul>	
<b>C.2. Adopted land use plans.</b>	
a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes, identify the plan(s):	
_____	
_____	
_____	
c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes, identify the plan(s):	
_____	
_____	
_____	

**C.3. Zoning**

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance.  Yes  No  
 If Yes, what is the zoning classification(s) including any applicable overlay district?  
 CBD OSR

b. Is the use permitted or allowed by a special or conditional use permit?  Yes  No

c. Is a zoning change requested as part of the proposed action?  Yes  No  
 If Yes,  
 i. What is the proposed new zoning for the site? \_\_\_\_\_

**C.4. Existing community services.**

a. In what school district is the project site located? City of Syracuse

b. What police or other public protection forces serve the project site?  
Syracuse Police Department

c. Which fire protection and emergency medical services serve the project site?  
Syracuse Fire Department

d. What parks serve the project site?  
Firefighters Memorial Park

**D. Project Details**

**D.1. Proposed and Potential Development**

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? 24 affordable one-bedroom apartment units, 1,813 square feet of commercial space, and 8 on-site parking spaces.

b. a. Total acreage of the site of the proposed action? \_\_\_\_\_ .18 acres  
 b. Total acreage to be physically disturbed? \_\_\_\_\_ 0 acres  
 c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? \_\_\_\_\_ .18 acres

c. Is the proposed action an expansion of an existing project or use?  Yes  No  
 i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % \_\_\_\_\_ Units: \_\_\_\_\_

d. Is the proposed action a subdivision, or does it include a subdivision?  Yes  No  
 If Yes,  
 i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types) \_\_\_\_\_  
 ii. Is a cluster/conservation layout proposed?  Yes  No  
 iii. Number of lots proposed? \_\_\_\_\_  
 iv. Minimum and maximum proposed lot sizes? Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

e. Will the proposed action be constructed in multiple phases?  Yes  No  
 i. If No, anticipated period of construction: \_\_\_\_\_ months  
 ii. If Yes:  
 • Total number of phases anticipated \_\_\_\_\_  
 • Anticipated commencement date of phase 1 (including demolition) \_\_\_\_\_ month \_\_\_\_\_ year  
 • Anticipated completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year  
 • Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

f. Does the project include new residential uses?  Yes  No  
 If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase	_____	_____	_____	_____
At completion	_____	_____	_____	_____
of all phases	_____	_____	_____	1 building-24 one bedroom units

g. Does the proposed action include new non-residential construction (including expansions)?  Yes  No  
 If Yes,

i. Total number of structures \_\_\_\_\_  
 ii. Dimensions (in feet) of largest proposed structure: \_\_\_\_\_ height; \_\_\_\_\_ width; and \_\_\_\_\_ length  
 iii. Approximate extent of building space to be heated or cooled: \_\_\_\_\_ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage?  Yes  No  
 If Yes,

i. Purpose of the impoundment: \_\_\_\_\_  
 ii. If a water impoundment, the principal source of the water:  Ground water  Surface water streams  Other specify: \_\_\_\_\_  
 iii. If other than water, identify the type of impounded/contained liquids and their source. \_\_\_\_\_  
 iv. Approximate size of the proposed impoundment. Volume: \_\_\_\_\_ million gallons; surface area: \_\_\_\_\_ acres  
 v. Dimensions of the proposed dam or impounding structure: \_\_\_\_\_ height; \_\_\_\_\_ length  
 vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): \_\_\_\_\_

**D.2. Project Operations**

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both?  Yes  No  
 (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)  
 If Yes:

i. What is the purpose of the excavation or dredging? \_\_\_\_\_  
 ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?  
 • Volume (specify tons or cubic yards): \_\_\_\_\_  
 • Over what duration of time? \_\_\_\_\_  
 iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. \_\_\_\_\_  
 \_\_\_\_\_  
 iv. Will there be onsite dewatering or processing of excavated materials?  Yes  No  
 If yes, describe. \_\_\_\_\_  
 \_\_\_\_\_  
 v. What is the total area to be dredged or excavated? \_\_\_\_\_ acres  
 vi. What is the maximum area to be worked at any one time? \_\_\_\_\_ acres  
 vii. What would be the maximum depth of excavation or dredging? \_\_\_\_\_ feet  
 viii. Will the excavation require blasting?  Yes  No  
 ix. Summarize site reclamation goals and plan: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area?  Yes  No  
 If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

\_\_\_\_\_

\_\_\_\_\_

iii. Will the proposed action cause or result in disturbance to bottom sediments?  Yes  No  
 If Yes, describe: \_\_\_\_\_

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation?  Yes  No  
 If Yes:

- acres of aquatic vegetation proposed to be removed: \_\_\_\_\_
- expected acreage of aquatic vegetation remaining after project completion: \_\_\_\_\_
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): \_\_\_\_\_
- proposed method of plant removal: \_\_\_\_\_
- if chemical/herbicide treatment will be used, specify product(s): \_\_\_\_\_

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

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c. Will the proposed action use, or create a new demand for water?  Yes  No  
 If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_ 2,460 gallons/day

ii. Will the proposed action obtain water from an existing public water supply?  Yes  No  
 If Yes:

- Name of district or service area: City of Syracuse
- Does the existing public water supply have capacity to serve the proposal?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No
- Do existing lines serve the project site?  Yes  No

iii. Will line extension within an existing district be necessary to supply the project?  Yes  No  
 If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site?  Yes  No  
 If, Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: \_\_\_\_\_ gallons/minute.

---

d. Will the proposed action generate liquid wastes?  Yes  No  
 If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_ 2,460 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_

Sanitary Waste Water

---

iii. Will the proposed action use any existing public wastewater treatment facilities?  Yes  No  
 If Yes:

- Name of wastewater treatment plant to be used: City of Syracuse
- Name of district: \_\_\_\_\_
- Does the existing wastewater treatment plant have capacity to serve the project?  Yes  No
- Is the project site in the existing district?  Yes  No
- Is expansion of the district needed?  Yes  No

<ul style="list-style-type: none"> <li>• Do existing sewer lines serve the project site? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></li> <li>• Will a line extension within an existing district be necessary to serve the project? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></li> </ul> <p>If Yes:</p> <ul style="list-style-type: none"> <li>• Describe extensions or capacity expansions proposed to serve this project: _____</li> </ul>
<p>iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <ul style="list-style-type: none"> <li>• Applicant/sponsor for new district: _____</li> <li>• Date application submitted or anticipated: _____</li> <li>• What is the receiving water for the wastewater discharge? _____</li> </ul> <p>v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):</p> <p>_____</p> <p>_____</p> <p>vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____</p> <p>_____</p>
<p>e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. How much impervious surface will the project create in relation to total size of project parcel?</p> <p style="padding-left: 40px;">_____ Square feet or _____ acres (impervious surface)</p> <p style="padding-left: 40px;">_____ Square feet or _____ acres (parcel size)</p> <p>ii. Describe types of new point sources. _____</p> <p>iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?</p> <p>_____</p> <ul style="list-style-type: none"> <li>• If to surface waters, identify receiving water bodies or wetlands: _____</li> </ul> <ul style="list-style-type: none"> <li>• Will stormwater runoff flow to adjacent properties? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></li> </ul>
<p>iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes, identify:</p> <p>i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)</p> <p>_____</p> <p>ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)</p> <p>_____</p> <p>iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)</p> <p>_____</p>
<p>g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>ii. In addition to emissions as calculated in the application, the project will generate:</p> <ul style="list-style-type: none"> <li>• _____ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)</li> <li>• _____ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)</li> <li>• _____ Tons/year (short tons) of Perfluorocarbons (PFCs)</li> <li>• _____ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)</li> <li>• _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)</li> <li>• _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)</li> </ul>

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?  Yes  No

If Yes:

i. Estimate methane generation in tons/year (metric): \_\_\_\_\_

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): \_\_\_\_\_

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i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations?  Yes  No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): \_\_\_\_\_

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j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?  Yes  No

If Yes:

i. When is the peak traffic expected (Check all that apply):  Morning  Evening  Weekend  
 Randomly between hours of \_\_\_\_\_ to \_\_\_\_\_.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): \_\_\_\_\_

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iii. Parking spaces: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Net increase/decrease \_\_\_\_\_

iv. Does the proposed action include any shared use parking?  Yes  No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: \_\_\_\_\_

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vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site?  Yes  No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles?  Yes  No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes?  Yes  No

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k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?  Yes  No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: \_\_\_\_\_

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): \_\_\_\_\_

iii. Will the proposed action require a new, or an upgrade, to an existing substation?  Yes  No

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l. Hours of operation. Answer all items which apply.

i. During Construction:		ii. During Operations:	
• Monday - Friday:	7a - 4p	• Monday - Friday:	n/a - residential use
• Saturday:	na	• Saturday:	n/a - residential use
• Sunday:	na	• Sunday:	n/a - residential use
• Holidays:	na	• Holidays:	n/a - residential use

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both?  Yes  No  
 If yes:  
 i. Provide details including sources, time of day and duration:  
 \_\_\_\_\_  
 \_\_\_\_\_

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen?  Yes  No  
 Describe: \_\_\_\_\_  
 \_\_\_\_\_

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n. Will the proposed action have outdoor lighting?  Yes  No  
 If yes:  
 i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:  
 Minimal outdoor down lighting for primarily safety purposes  
 \_\_\_\_\_  
 \_\_\_\_\_

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen?  Yes  No  
 Describe: \_\_\_\_\_  
 \_\_\_\_\_

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o. Does the proposed action have the potential to produce odors for more than one hour per day?  Yes  No  
 If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:  
 \_\_\_\_\_  
 \_\_\_\_\_

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p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage?  Yes  No  
 If Yes:  
 i. Product(s) to be stored \_\_\_\_\_  
 ii. Volume(s) \_\_\_\_\_ per unit time \_\_\_\_\_ (e.g., month, year)  
 iii. Generally, describe the proposed storage facilities: \_\_\_\_\_  
 \_\_\_\_\_

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q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation?  Yes  No  
 If Yes:  
 i. Describe proposed treatment(s):  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ii. Will the proposed action use Integrated Pest Management Practices?  Yes  No

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r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)?  Yes  No  
 If Yes:  
 i. Describe any solid waste(s) to be generated during construction or operation of the facility:  
 • Construction: \_\_\_\_\_ tons per \_\_\_\_\_ (unit of time)  
 • Operation : \_\_\_\_\_ tons per \_\_\_\_\_ (unit of time)  
 ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:  
 • Construction: \_\_\_\_\_  
 \_\_\_\_\_  
 • Operation: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Proposed disposal methods/facilities for solid waste generated on-site:  
 • Construction: \_\_\_\_\_  
 \_\_\_\_\_  
 • Operation: \_\_\_\_\_  
 \_\_\_\_\_

s. Does the proposed action include construction or modification of a solid waste management facility?  Yes  No  
 If Yes:  
 i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_  
 ii. Anticipated rate of disposal/processing:  
 • \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or  
 • \_\_\_\_\_ Tons/hour, if combustion or thermal treatment  
 iii. If landfill, anticipated site life: \_\_\_\_\_ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste?  Yes  No  
 If Yes:  
 i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_  
 \_\_\_\_\_  
 ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month  
 iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_  
 \_\_\_\_\_  
 v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility?  Yes  No  
 If Yes: provide name and location of facility: \_\_\_\_\_  
 \_\_\_\_\_  
 If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:  
 n/a \_\_\_\_\_  
 \_\_\_\_\_

**E. Site and Setting of Proposed Action**

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.  
 i. Check all uses that occur on, adjoining and near the project site.  
 Urban  Industrial  Commercial  Residential (suburban)  Rural (non-farm)  
 Forest  Agriculture  Aquatic  Other (specify): Public City Park  
 ii. If mix of uses, generally describe:  
Commercial and multi-family

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	.18	.18	0
• Forested	0	0	0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	0	0	0
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0	0	0
• Wetlands (freshwater or tidal)	0	0	0
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: _____			

c. Is the project site presently used by members of the community for public recreation?  Yes  No  
 i. If Yes: explain: \_\_\_\_\_

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site?  Yes  No  
 If Yes,  
 i. Identify Facilities: \_\_\_\_\_

e. Does the project site contain an existing dam?  Yes  No  
 If Yes:  
 i. Dimensions of the dam and impoundment:  
 • Dam height: \_\_\_\_\_ feet  
 • Dam length: \_\_\_\_\_ feet  
 • Surface area: \_\_\_\_\_ acres  
 • Volume impounded: \_\_\_\_\_ gallons OR acre-feet  
 ii. Dam's existing hazard classification: \_\_\_\_\_  
 iii. Provide date and summarize results of last inspection: \_\_\_\_\_

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?  Yes  No  
 If Yes:  
 i. Has the facility been formally closed?  Yes  No  
 • If yes, cite sources/documentation: \_\_\_\_\_  
 ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: \_\_\_\_\_  
 iii. Describe any development constraints due to the prior solid waste activities: \_\_\_\_\_

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste?  Yes  No  
 If Yes:  
 i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: \_\_\_\_\_

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site?  Yes  No  
 If Yes:  
 i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply:  Yes  No  
 Yes – Spills Incidents database Provide DEC ID number(s): \_\_\_\_\_  
 Yes – Environmental Site Remediation database Provide DEC ID number(s): \_\_\_\_\_  
 Neither database  
 ii. If site has been subject of RCRA corrective activities, describe control measures: \_\_\_\_\_  
Asbestos found and has been and will be abated pursuant to law  
 iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database?  Yes  No  
 If yes, provide DEC ID number(s): \_\_\_\_\_  
 iv. If yes to (i), (ii) or (iii) above, describe current status of site(s): \_\_\_\_\_

v. Is the project site subject to an institutional control limiting property uses?  Yes  No

- If yes, DEC site ID number: \_\_\_\_\_
- Describe the type of institutional control (e.g., deed restriction or easement): \_\_\_\_\_
- Describe any use limitations: \_\_\_\_\_
- Describe any engineering controls: \_\_\_\_\_
- Will the project affect the institutional or engineering controls in place?  Yes  No
- Explain: \_\_\_\_\_

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**E.2. Natural Resources On or Near Project Site**

a. What is the average depth to bedrock on the project site? \_\_\_\_\_ unknown feet

b. Are there bedrock outcroppings on the project site?  Yes  No  
 If Yes, what proportion of the site is comprised of bedrock outcroppings? \_\_\_\_\_ %

c. Predominant soil type(s) present on project site: \_\_\_\_\_ 100 %  
 \_\_\_\_\_ %  
 \_\_\_\_\_ %

d. What is the average depth to the water table on the project site? Average: \_\_\_\_\_ unknown feet

e. Drainage status of project site soils:  Well Drained: \_\_\_\_\_ % of site  
 Moderately Well Drained: \_\_\_\_\_ % of site  
 Poorly Drained \_\_\_\_\_ % of site

f. Approximate proportion of proposed action site with slopes:  0-10%: \_\_\_\_\_ 100 % of site  
 10-15%: \_\_\_\_\_ % of site  
 15% or greater: \_\_\_\_\_ % of site

g. Are there any unique geologic features on the project site?  Yes  No  
 If Yes, describe: \_\_\_\_\_

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)?  Yes  No

ii. Do any wetlands or other waterbodies adjoin the project site?  Yes  No

If Yes to either i or ii, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency?  Yes  No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Lakes or Ponds: Name \_\_\_\_\_ Classification \_\_\_\_\_
- Wetlands: Name \_\_\_\_\_ Approximate Size \_\_\_\_\_
- Wetland No. (if regulated by DEC) \_\_\_\_\_

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies?  Yes  No  
 If yes, name of impaired water body/bodies and basis for listing as impaired: \_\_\_\_\_

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i. Is the project site in a designated Floodway?  Yes  No

j. Is the project site in the 100-year Floodplain?  Yes  No

k. Is the project site in the 500-year Floodplain?  Yes  No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer?  Yes  No  
 If Yes:  
 i. Name of aquifer: \_\_\_\_\_

m. Identify the predominant wildlife species that occupy or use the project site: Urban Wildlife Species _____ _____ _____	
n. Does the project site contain a designated significant natural community? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: i. Describe the habitat/community (composition, function, and basis for designation): _____ _____ ii. Source(s) of description or evaluation: _____ iii. Extent of community/habitat: • Currently: _____ acres • Following completion of project as proposed: _____ acres • Gain or loss (indicate + or -): _____ acres	
o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span> If Yes: i. Species and listing (endangered or threatened): _____ Peregrine Falcon _____	
p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: i. Species and listing: _____ _____	
q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If yes, give a brief description of how the proposed action may affect that use: _____ _____	
<b>E.3. Designated Public Resources On or Near Project Site</b>	
a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes, provide county plus district name/number: _____	
b. Are agricultural lands consisting of highly productive soils present? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> i. If Yes: acreage(s) on project site? _____ ii. Source(s) of soil rating(s): _____	
c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: i. Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____ _____	
d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If Yes: i. CEA name: _____ ii. Basis for designation: _____ iii. Designating agency and date: _____	

<p>e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input checked="" type="checkbox"/> Historic Building or District</p> <p>ii. Name: Historic Building: Hamilton White House</p> <p>iii. Brief description of attributes on which listing is based: _____</p>	
<p>f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>g. Have additional archaeological or historic site(s) or resources been identified on the project site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Describe possible resource(s): _____</p> <p>ii. Basis for identification: _____</p>	
<p>h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Identify resource: _____</p> <p>ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____</p> <p>iii. Distance between project and resource: _____ miles.</p>	
<p>i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Identify the name of the river and its designation: _____</p> <p>ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	

**F. Additional Information**

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

**G. Verification**

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Graziano Zazzara Date 3/12/2021

Signature  Title Managing member - 444 East Genesee Street LLC

**EXHIBIT "B"**

**PARTS 2 AND 3 OF FULL EAF AND NARRATIVE**

**Full Environmental Assessment Form**  
**Part 2 - Identification of Potential Project Impacts**

Agency Use Only [If applicable]

Project :	444 East Genesee Street LLC
Date :	April 27, 2021

**Part 2 is to be completed by the lead agency.** Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action. We recognize that the lead agency's reviewer(s) will not necessarily be environmental professionals. So, the questions are designed to walk a reviewer through the assessment process by providing a series of questions that can be answered using the information found in Part 1. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part 1 that will provide the information needed to answer the Part 2 question. When Part 2 is completed, the lead agency will have identified the relevant environmental areas that may be impacted by the proposed activity.

If the lead agency is a state agency **and** the action is in any Coastal Area, complete the Coastal Assessment Form before proceeding with this assessment.

**Tips for completing Part 2:**

- Review all of the information provided in Part 1.
- Review any application, maps, supporting materials and the Full EAF Workbook.
- Answer each of the 18 questions in Part 2.
- If you answer "Yes" to a numbered question, please complete all the questions that follow in that section.
- If you answer "No" to a numbered question, move on to the next numbered question.
- Check appropriate column to indicate the anticipated size of the impact.
- Proposed projects that would exceed a numeric threshold contained in a question should result in the reviewing agency checking the box "Moderate to large impact may occur."
- The reviewer is not expected to be an expert in environmental analysis.
- If you are not sure or undecided about the size of an impact, it may help to review the sub-questions for the general question and consult the workbook.
- When answering a question consider all components of the proposed activity, that is, the "whole action".
- Consider the possibility for long-term and cumulative impacts as well as direct impacts.
- Answer the question in a reasonable manner considering the scale and context of the project.

<b>1. Impact on Land</b> Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. (See Part 1. D.1) <i>If "Yes", answer questions a - j. If "No", move on to Section 2.</i>				<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>		
a. The proposed action may involve construction on land where depth to water table is less than 3 feet.	E2d	<input type="checkbox"/>	<input type="checkbox"/>		
b. The proposed action may involve construction on slopes of 15% or greater.	E2f	<input type="checkbox"/>	<input type="checkbox"/>		
c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.	E2a	<input type="checkbox"/>	<input type="checkbox"/>		
d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.	D2a	<input type="checkbox"/>	<input type="checkbox"/>		
e. The proposed action may involve construction that continues for more than one year or in multiple phases.	D1e	<input type="checkbox"/>	<input type="checkbox"/>		
f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).	D2e, D2q	<input type="checkbox"/>	<input type="checkbox"/>		
g. The proposed action is, or may be, located within a Coastal Erosion hazard area.	B1i	<input type="checkbox"/>	<input type="checkbox"/>		
h. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>		

**2. Impact on Geological Features**

The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves). (See Part 1. E.2.g)  
 If "Yes", answer questions a - c. If "No", move on to Section 3.

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Identify the specific land form(s) attached: _____	E2g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may affect or is adjacent to a geological feature listed as a registered National Natural Landmark. Specific feature: _____	E3c	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**3. Impacts on Surface Water**

The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes). (See Part 1. D.2, E.2.h)  
 If "Yes", answer questions a - l. If "No", move on to Section 4.

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may create a new water body.	D2b, D1h	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water.	D2b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body.	D2a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments.	D2a, D2h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).	D2d	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies.	D2e	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.	E2h	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may involve the application of pesticides or herbicides in or around any water body.	D2q, E2h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities.	D1a, D2d	<input type="checkbox"/>	<input type="checkbox"/>

1. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
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**4. Impact on groundwater**  NO  YES

The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer. (See Part 1. D.2.a, D.2.c, D.2.d, D.2.p, D.2.q, D.2.t)  
If "Yes", answer questions a - h. If "No", move on to Section 5.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
b. Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer. Cite Source: _____	D2c	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may allow or result in residential uses in areas without water and sewer services.	D1a, D2c	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may include or require wastewater discharged to groundwater.	D2d, E2l	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.	D2c, E1f, E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.	D2p, E2l	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources.	E2h, D2q, E2l, D2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**5. Impact on Flooding**  NO  YES

The proposed action may result in development on lands subject to flooding. (See Part 1. E.2)  
If "Yes", answer questions a - g. If "No", move on to Section 6.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in development in a designated floodway.	E2i	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in development within a 100 year floodplain.	E2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in development within a 500 year floodplain.	E2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in, or require, modification of existing drainage patterns.	D2b, D2e	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may change flood water flows that contribute to flooding.	D2b, E2i, E2j, E2k	<input type="checkbox"/>	<input type="checkbox"/>
f. If there is a dam located on the site of the proposed action, is the dam in need of repair, or upgrade?	E1e	<input type="checkbox"/>	<input type="checkbox"/>

g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
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**6. Impacts on Air**

The proposed action may include a state regulated air emission source.  
(See Part 1. D.2.f., D.2.h, D.2.g)

NO

YES

*If "Yes", answer questions a - f. If "No", move on to Section 7.*

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. If the proposed action requires federal or state air emission permits, the action may also emit one or more greenhouse gases at or above the following levels: i. More than 1000 tons/year of carbon dioxide (CO <sub>2</sub> ) ii. More than 3.5 tons/year of nitrous oxide (N <sub>2</sub> O) iii. More than 1000 tons/year of carbon equivalent of perfluorocarbons (PFCs) iv. More than .045 tons/year of sulfur hexafluoride (SF <sub>6</sub> ) v. More than 1000 tons/year of carbon dioxide equivalent of hydrochloroflourocarbons (HFCs) emissions vi. 43 tons/year or more of methane	D2g D2g D2g D2g D2g D2h	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
b. The proposed action may generate 10 tons/year or more of any one designated hazardous air pollutant, or 25 tons/year or more of any combination of such hazardous air pollutants.	D2g	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTU's per hour.	D2f, D2g	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may reach 50% of any of the thresholds in "a" through "c", above.	D2g	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour.	D2s	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**7. Impact on Plants and Animals**

The proposed action may result in a loss of flora or fauna. (See Part 1. E.2. m.-q.)  
*If "Yes", answer questions a - j. If "No", move on to Section 8.*

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government.	E2o	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may cause reduction in population, or loss of individuals, of any species of special concern or conservation need, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site.	E2p	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by New York State or the Federal government.	E2p	<input type="checkbox"/>	<input type="checkbox"/>

e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect.	E3c	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. Source: _____	E2n	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site.	E2m	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. Habitat type & information source: _____	E1b	<input type="checkbox"/>	<input type="checkbox"/>
i. Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides.	D2q	<input type="checkbox"/>	<input type="checkbox"/>
j. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>8. Impact on Agricultural Resources</b>			
The proposed action may impact agricultural resources. (See Part 1. E.3.a. and b.)		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
<i>If "Yes", answer questions a - h. If "No", move on to Section 9.</i>			
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.	E2c, E3b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc).	E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.	E3b	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	E1b, E3a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may disrupt or prevent installation of an agricultural land management system.	E1 a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.	C2c, C3, D2c, D2d	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed project is not consistent with the adopted municipal Farmland Protection Plan.	C2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>9. Impact on Aesthetic Resources</b> The land use of the proposed action are obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource. (Part 1. E.1.a, E.1.b, E.3.h.) <i>If "Yes", answer questions a - g. If "No", go to Section 10.</i>			
		<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Proposed action may be visible from any officially designated federal, state, or local scenic or aesthetic resource.	E3h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the obstruction, elimination or significant screening of one or more officially designated scenic views.	E3h, C2b	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may be visible from publicly accessible vantage points: i. Seasonally (e.g., screened by summer foliage, but visible during other seasons) ii. Year round	E3h	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
d. The situation or activity in which viewers are engaged while viewing the proposed action is: i. Routine travel by residents, including travel to and from work ii. Recreational or tourism based activities	E3h E2q, E1c	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
e. The proposed action may cause a diminishment of the public enjoyment and appreciation of the designated aesthetic resource.	E3h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. There are similar projects visible within the following distance of the proposed project: 0-1/2 mile 1/2 -3 mile 3-5 mile 5+ mile	D1a, E1a, D1f, D1g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____ _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

<b>10. Impact on Historic and Archeological Resources</b> The proposed action may occur in or adjacent to a historic or archaeological resource. (Part 1. E.3.e, f. and g.) <i>If "Yes", answer questions a - e. If "No", go to Section 11.</i>			
		<input type="checkbox"/> NO	<input checked="" type="checkbox"/> YES
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may occur wholly or partially within, or substantially contiguous to, any buildings, archaeological site or district which is listed on the National or State Register of Historical Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places.	E3e	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.	E3f	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may occur wholly or partially within, or substantially contiguous to, an archaeological site not included on the NY SHPO inventory. Source: _____	E3g	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Other impacts: _____ _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. If any of the above (a-d) are answered "Moderate to large impact may occur", continue with the following questions to help support conclusions in Part 3:			
i. The proposed action may result in the destruction or alteration of all or part of the site or property.	E3e, E3g, E3f	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii. The proposed action may result in the alteration of the property's setting or integrity.	E3e, E3f, E3g, E1a, E1b	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii. The proposed action may result in the introduction of visual elements which are out of character with the site or property, or may alter its setting.	E3e, E3f, E3g, E3h, C2, C3	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**11. Impact on Open Space and Recreation**

The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan.  NO  YES

(See Part 1. C.2.c, E.1.c., E.2.q.)  
If "Yes", answer questions a - e. If "No", go to Section 12.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in an impairment of natural functions, or "ecosystem services", provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat.	D2e, E1b E2h, E2m, E2o, E2n, E2p	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the loss of a current or future recreational resource.	C2a, E1c, C2c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may eliminate open space or recreational resource in an area with few such resources.	C2a, C2c E1c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in loss of an area now used informally by the community as an open space resource.	C2c, E1c	<input type="checkbox"/>	<input type="checkbox"/>
e. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**12. Impact on Critical Environmental Areas**

The proposed action may be located within or adjacent to a critical environmental area (CEA). (See Part 1. E.3.d)  NO  YES

If "Yes", answer questions a - c. If "No", go to Section 13.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**13. Impact on Transportation**  
 The proposed action may result in a change to existing transportation systems.  NO  YES  
 (See Part 1. D.2.j)  
 If "Yes", answer questions a - f. If "No", go to Section 14.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Projected traffic increase may exceed capacity of existing road network.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the construction of paved parking area for 500 or more vehicles.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action will degrade existing transit access.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action will degrade existing pedestrian or bicycle accommodations.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may alter the present pattern of movement of people or goods.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**14. Impact on Energy**  
 The proposed action may cause an increase in the use of any form of energy.  NO  YES  
 (See Part 1. D.2.k)  
 If "Yes", answer questions a - e. If "No", go to Section 15.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action will require a new, or an upgrade to an existing, substation.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two-family residences or to serve a commercial or industrial use.	D1f, D1q, D2k	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may utilize more than 2,500 MWhrs per year of electricity.	D2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed.	D1g	<input type="checkbox"/>	<input type="checkbox"/>
e. Other Impacts: _____ _____			

**15. Impact on Noise, Odor, and Light**  
 The proposed action may result in an increase in noise, odors, or outdoor lighting.  NO  YES  
 (See Part 1. D.2.m., n., and o.)  
 If "Yes", answer questions a - f. If "No", go to Section 16.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may produce sound above noise levels established by local regulation.	D2m	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.	D2m, E1d	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in routine odors for more than one hour per day.	D2o	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. The proposed action may result in light shining onto adjoining properties.	D2n	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.	D2n, E1a	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**16. Impact on Human Health**

The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. (See Part 1.D.2.q., E.1. d. f. g. and h.)  
If "Yes", answer questions a - m. If "No", go to Section 17.

NO

YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action is located within 1500 feet of a school, hospital, licensed day care center, group home, nursing home or retirement community.	E1d	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The site of the proposed action is currently undergoing remediation.	E1g, E1h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.	E1g, E1h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The site of the action is subject to an institutional control limiting the use of the property (e.g., easement or deed restriction).	E1g, E1h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may affect institutional control measures that were put in place to ensure that the site remains protective of the environment and human health.	E1g, E1h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. The proposed action has adequate control measures in place to ensure that future generation, treatment and/or disposal of hazardous wastes will be protective of the environment and human health.	D2t	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. The proposed action involves construction or modification of a solid waste management facility.	D2q, E1f	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may result in the unearthing of solid or hazardous waste.	D2q, E1f	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.	D2r, D2s	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste.	E1f, E1g E1h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may result in the migration of explosive gases from a landfill site to adjacent off site structures.	E1f, E1g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l. The proposed action may result in the release of contaminated leachate from the project site.	D2s, E1f, D2r	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m. Other impacts: _____ _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

**17. Consistency with Community Plans**  
 The proposed action is not consistent with adopted land use plans.  
 (See Part 1. C.1, C.2. and C.3.)  
 If "Yes", answer questions a - h. If "No", go to Section 18.

NO       YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).	C2, C3, D1a E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%.	C2	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action is inconsistent with local land use plans or zoning regulations.	C2, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action is inconsistent with any County plans, or other regional land use plans.	C2, C2	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.	C3, D1c, D1d, D1f, D1d, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.	C4, D2c, D2d D2j	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)	C2a	<input type="checkbox"/>	<input type="checkbox"/>
h. Other: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**18. Consistency with Community Character**  
 The proposed project is inconsistent with the existing community character.  
 (See Part 1. C.2, C.3, D.2, E.3)  
 If "Yes", answer questions a - g. If "No", proceed to Part 3.

NO       YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f D1g, E1a	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Proposed action is inconsistent with the character of the existing natural landscape.	C2, C3 E1a, E1b E2g, E2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Other impacts: _____ _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>

***Full Environmental Assessment Form***  
***Part 3 - Evaluation of the Magnitude and Importance of Project Impacts***  
***and***  
***Determination of Significance***

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

**Reasons Supporting This Determination:**

To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

**Determination of Significance - Type 1 and Unlisted Actions**

SEQR Status:  Type 1  Unlisted

Identify portions of EAF completed for this Project:  Part 1  Part 2  Part 3

Upon review of the information recorded on this EAF, as noted, plus this additional support information

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the \_\_\_\_\_ as lead agency that:

A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.7(d)).

C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action: 444 East Genesee Street LLC Project

Name of Lead Agency: City of Syracuse Industrial Development Agency

Name of Responsible Officer in Lead Agency: Judith DeLaney

Title of Responsible Officer: Executive Director

DocuSigned by:

Signature of Responsible Officer in Lead Agency:

*Judith DeLaney*  
C938C8B871BA42A

Date: 4/27/21

Signature of Preparer (if different from Responsible Officer)

Date:

**For Further Information:**

Contact Person: Judith DeLaney, Executive Director

Address: City of Syracuse Industrial Development Agency, 201 E. Washington Street, 6th Floor, Syracuse, NY 13202

Telephone Number: (315) 448-8127

E-mail: JDeLaney@syrgov.net

**For Type 1 Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:**

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)

Other involved agencies (if any)

Applicant (if any)

Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>

**City of Syracuse Industrial Development Agency  
444 East Genesee Street LLC Project  
FEAF Part 3 – Additional Information**

The City of Syracuse Industrial Development Agency (“SIDA”) has before it a proposed Project (the “Project”) to be owned by 444 East Genesee Street LLC that consists of: (i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project*”).

The Project involves the redevelopment of an existing automobile dealership and repair site. The Project consists of the acquisition, renovation, construction and equipping of the Facility as described above and will result in physical improvements to the interior and exterior of the existing auto dealership building to remain, construction of additional auto dealership buildings, and the installation of grading, drainage, parking and related improvements on the Project site.

*Refer to Part 2 with respect to the numbered Impacts discussed below.*

**1. Impact on land.** The proposed Project will have a small impact on land as a result of renovation of an existing building and installation of approximately 8 parking spaces. The total Project area involves the disturbance of approximately .18 acres.

No soil excavation is expected to be required for the Project. In the event contaminated soils are encountered, these soils will be handled in accordance with federal, state, and local regulations.

The duration of the Project is estimated at 9-months. Construction activities typically result in potential impacts associated with traffic, dust, stormwater, and noise. These potential impacts are minimized as a result of the following measures:

- The owner will be required to implement a maintenance and protection of traffic plan for use during construction. The plan will be reviewed and approved by the City of Syracuse.
- The owner will be required to implement best management practices for dust control.
- The proposed Project will cause a temporary increase in ambient noise levels from the operation of construction equipment. Measures to minimize noise impacts during construction will include adherence to local ordinances for working hours and inspection of equipment for proper muffling.

As a result, the impact on land associated with this Project is not considered a significant environmental impact.

**3. Impacts on surface water.** Portions of the Project site are located within the floodplain and floodway along Harbor Brook. Proposed work within the floodway has been limited and only includes cut and smoothing in general and the removal of several floodway impediments (e.g., mound of soil). Project site improvements include redevelopment of the existing impervious surfaces to include new asphalt pavement and access drives, concrete walks, concrete curbs, islands, erosion control, stormwater management (bioretention basins), tree and shrub plantings, and lawn establishment. The Company has prepared a Stormwater Pollution Prevention Plan ("SWPPP") that is expected to reduce peak stormwater flows and provide water quality mitigation that meets applicable standards.

The Project operation does not produce materials considered hazardous substances and use of such substances will occur in accordance with applicable law and regulation and are not expected to potentially contaminate local groundwater supplies. Consequently, the Project is not expected to result in an adverse change in surface water quality or quantity.

**6. Impacts on air.** Emissions from vehicles may result from vehicles parking in the parking spaces. Emissions are expected to be minimal from the limited operation time on-site. As a result, the Project is not expected to have a significant impact on air.

The USEPA, through the federal Clean Air Act (CAA), has established National Ambient Air Quality Standards (NAAQS) for six criteria pollutants: carbon monoxide (CO), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), ozone, and lead. An area that violates a national primary or secondary NAAQS for one or more of the USEPA designated criteria pollutants is referred to as non-attainment. A maintenance area is one that has previously been in violation of the NAAQS but has since implemented an avoidance plan and has had no additional violations over an extended period of time.

The Project is located in Onondaga County. According to the USEPA Green Book (current as of February 28, 2019), Onondaga County is currently in attainment for all criteria pollutants, except CO, which is listed as "maintenance". Based on a detailed review of the Green Book, Onondaga County was designated as a CO non-attainment area until 1992. Since 1993, the County has been in compliance (i.e., maintenance area) with the NAAQS for all criteria pollutants, including CO. An area that has remained in compliance with the NAAQS for an extended period of time is re-designated as "attainment".

According to both the NYSDEC and USEPA, Onondaga County is in full attainment with the CO NAAQS. Specifically, Onondaga County was designated as a maintenance area in 1993 and has not had any violations of the NAAQS since that time. NYSDEC met the requirements specified in two Maintenance Plans, each lasting a period of ten years. Therefore, the 20-year maintenance period is over and NYSDEC has met its obligations; Onondaga County is in attainment with the CO NAAQS.

Air emission sources require consistency with State and federal air quality standards. The New York air permitting program regulates sources of air pollution. The program is required under provisions set forth in the federal Clean Air Act and New York State regulation (6 NYCRR Part 201). NYSDEC Division of Air Resources administers the air program. The proposed Project does not include equipment that requires registration or permitting from New York State's air program.

**7. Impacts on plants and animals.** The proposed Project is located in an urban environment. No habitat exists on the Project site for species considered rare, threatened, or endangered by federal or state

regulations; peregrine falcon habitats exist nearby in the downtown Syracuse area. No significant impact to plants and animals will occur as a result of this Project.

**9. Impacts on Aesthetic Resources.** The Project is across the street from a City of Syracuse Park. The park is an urban park located on a square city block. The Syracuse Planning Commission conducted a coordinated review of the Project and adopted a negative declaration. No significant impacts to use and enjoyment of the park are expected.

**10. Impacts on historical and archeological resources.** Coordination with the New York State Historic Preservation Office (SHPO) is complete for the Project. The SHPO indicated by letter on November 8, 2019, that the Project will have no impact on historic resources. The existing improvements are not eligible for the New York State and National Registers of Historic Places. This letter is attached.

**15. Impacts on noise, odor, and light.**

*Noise* The proposed Project will cause a temporary increase in ambient noise levels from the operation of construction equipment. Measures to minimize noise impacts during construction will include adherence to local ordinances for working hours and inspection of equipment for proper muffling. Noise levels will generally return to pre-construction levels following completion of the Project.

*Odors* The proposed Project will not cause an increase in odors.

*Light* –Parking lot fixtures will comply with City of Syracuse regulations.

**16. Impact on Human Health –** . The Project may involve the potential for minor, temporary changes in air quality in the area immediately surrounding the site during the period of redevelopment and construction. It should be noted that asbestos containing materials ("ACM") were identified in the buildings to be renovated and demolished. An asbestos survey will be completed prior to commencement of renovation activities. Any potentially hazardous materials located on-site, such as lead-based materials or ACM, will be removed from the Facility prior to any renovation and/or demolition and disposed of in accordance with all local, state and federal laws, thereby reducing the potential for such materials to become airborne and migrate off-site.. Consistency with applicable regulations limits the potential for construction workers and the public's exposure to harmful contaminants.

The Company will use a licensed contractor to perform asbestos abatement activities in compliance with applicable laws and regulations. Further, the Company and its contractors will take all necessary measures to mitigate any short-term renovation and construction-related impacts (i.e., using proper ventilation equipment, limiting the use of dumpsters and dump trucks for construction debris, watering construction debris to reduce dust and prevent airborne migration, etc..



**Parks, Recreation,  
and Historic Preservation**

ANDREW M. CUOMO  
Governor

ERIK KULLESEID  
Commissioner

November 08, 2019

Mr. David Bottar  
Executive Director  
CNY Regional Planning  
126 N. Salina Street, Suite 200  
Syracuse, NY 13202

Re: DHCR  
Corbetts Corner: Redevelopment of a 27,000 square foot 4-story vacant commercial building  
444 East Genesee Street, Syracuse, NY 13202  
19PR05248

Dear Mr. Bottar:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). We have reviewed the project in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

Based upon this review, it is the opinion of the New York SHPO that no historic properties, including archaeological and/or historic resources, will be affected by this undertaking.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

R. Daniel Mackay  
Deputy State Historic Preservation Officer  
Division for Historic Preservation

**EXHIBIT "H"**

**INDUCEMENT RESOLUTION**

## INDUCEMENT RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "*Agency*") held a meeting on the 27<sup>th</sup> day of April, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc22ddce511bd2aff74ca4b881f41d4b8>; (or by accessing the link on the Agency's website) and using meeting number 129 139 9321 and password tWFSPdmx642; or via telephone at (408) 418-9388 with access code: 129 139 9321, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson, Kenneth Kinsey, Rickey T. Brown and Dirk Sonneborn

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): **Staff Present:** Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Lori McRobbie; **Others Present:** Jennifer Tiff, Lauryn LaBorde, Anna Daughton, Graziano Zazzara, Jr., Ryan Benz, Rick Moriarty

The following resolution was offered by Kenneth Kinsey and seconded by Rickey T. Brown:

### **RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A COMMERCIAL 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, and 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 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 on or about March 3, 2021 (the “*Application*”), 444 East Genesee Street LLC, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 March 23, 2021 describing the Project and the proposed financial assistance and authorizing a public hearing with respect thereto (“*Public Hearing Resolution*”); and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on April 27, 2021 pursuant to Section 859-a of the Act, notice of which was published on April 13, 2021, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated April 12, 2021; 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**, a resolution was adopted March 23, 2021 (the "*SEQRA Lead Agency Resolution*") classifying the Project as a Type 1 Action and declaring the intent of the Agency to be lead agency for the purposes of a coordinated review pursuant to SEQRA; and

**WHEREAS**, by resolution adopted April 27, 2021 (the "*SEQRA Resolution*"), the Agency determined that the Project will not have a significant effect on the environment; 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 (the "*City*"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and the City and improve their standard of living.

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

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

- (A) Ratifies the findings in its SEQRA Resolution;
- (B) The Project constitutes a "*project*" within the meaning of the Act;

(C) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency's agent for completion of the Project will be an inducement to the Company to acquire, construct, reconstruct, renovate, equip and complete the Project Facility in the City, and will serve the purposes of the Act by, among other things, advancing job opportunities, the standard of living and economic welfare of the inhabitants of the City and provide much needed affordable housing in the City;

(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 Financial Assistance approved hereby includes an exemption from real property taxes, State and local sales and use taxes and mortgage recording taxes, and the appointment of the Company as agent of the Agency as further set forth herein.

**Section 3.** As a condition of the appointment of the Company as agent of the Agency, and the conference of any approved Financial Assistance, the Company and the Agency shall first execute and deliver: (i) a project agreement in substantially the same form used by the Agency in similar transactions (the "**Project Agreement**"); (ii) 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 agreement is attached hereto as **Exhibit "A"** (the "**Agreement**"); and (iii) the Lease Documents (as defined herein). The Chair, Vice Chair or Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Project Agreement, the Agreement and the Lease Documents (as defined herein), with changes in terms and form as shall be consistent with this Resolution and as the Chair or Vice Chair shall approve. The execution thereof by the Chair, Vice Chair and/or Executive Director shall constitute conclusive evidence of such approval. Subject to the due execution and delivery by the Company of the Project Agreement, the Agreement and the Lease Documents, the satisfaction of the conditions of this Resolution, the Agreement, the Project Agreement, the Lease Documents 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 construction, reconstruction, renovation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$151,400**.

**Section 4.** Subject to the terms of this Resolution and the execution and delivery of, and the conditions set forth in, the Agreement and the Project Agreement 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; 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, and all other documents required by the Agency for similar transactions, including but not limited to, an environmental compliance and indemnification agreement, collectively, 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, 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, in form and substance acceptable to the Agency.

**Section 5.** 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.

**Section 6.** The Company may utilize, and subject to the terms of this Resolution, the Agreement and the Project Agreement, is hereby authorized to appoint, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***") to proceed with the construction, reconstruction, renovation, equipping and completion 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 Agreement. The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the "***Commissioner***") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. for purposes of exemption from New York State (the "***State***") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**Section 7.** The Chair, Vice Chair and/or the Executive Director 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 as the (Vice) Chair deems appropriate, 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, the Agreement and/or the Project Agreement.

**Section 8.** The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Company's execution and delivery of the Lease Documents and the documents set forth in Section 3 hereof.

**Section 9.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her

individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 10.** Should the Agency's participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 11.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

**Section 12.** The Secretary and/or the Executive Director of the Agency are hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 13.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<b><u>AYE</u></b>	<b><u>NAY</u></b>
Kathleen Murphy	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	
Dirk Sonneborn	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 27, 2021, 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.

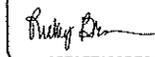
**I FURTHER CERTIFY** that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 ("*EO 202.1*"), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (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 on 5/12/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:



66E35E0329E24D0...

Rickey T. Brown, Secretary

## EXHIBIT "A"

### AGENCY/COMPANY AGREEMENT

**THIS AGREEMENT** is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at 201 East Washington Street, 6<sup>th</sup>, Syracuse, New York 13202 and **444 EAST GENESEE STREET LLC**, with a mailing address of 344 South Warren Street, Suite 202, Syracuse, New York 13202 (the "**Company**").

**Article 1. Preliminary Statement.** Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "**Act**") to designate an agent for constructing, renovating and equipping "projects" (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. The Company, by application dated on or about March 3, 2021 (the "**Application**"), 444 East Genesee Street LLC, or an entity to be formed (the "**Company**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping

and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

1.03(a). All documents necessary to effectuate the Agency's undertaking of the Project and the granting of the approved Financial Assistance between the Agency and the Company, including but not limited to, a project agreement, a company lease agreement, an agency lease agreement, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "***Lease Documents***".

1.03. The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency's agent for the construction, reconstruction, renovation, equipping and completion 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, reconstruct, renovate and equip the Project Facility in the City of Syracuse (the "***City***"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project Facility will promote, create and/or preserve private sector jobs in the State. The Company hereby further represents to the Agency that the Project Facility is not primarily used in making retail sales to customers who personally visit the Facility.

1.04. The Agency has determined that the acquisition of a controlling interest in, and the construction, reconstruction, renovation and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.05. On April 27, 2021, 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, reconstruction, renovation and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not to exceed **\$151,400**.

1.06. In the Resolution, subject to the execution of, and compliance with, this Agreement by the Company, the execution and delivery of a project 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, reconstruction, renovation and equipping the Project Facility, entering into contracts and doing all things requisite and proper for construction, reconstruction, renovation and equipping the Project Facility.

**Article 2. Undertakings on the Part of the Agency.** Based upon the statement, representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated, pursuant to the terms hereof, the Company as the Agency's agent for constructing, reconstructing, renovation 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, reconstruction, renovation and equipping of the Project Facility subject to the terms hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in the Sections 2.05, 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the construction, reconstruction, renovation and equipping of the Project Facility and the utilization of and, as necessary the appointment of, Additional Agents.

2.05. Subject to the execution of the Lease Documents and Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the construction, reconstruction, renovation and equipping of the Project Facility; and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the construction, reconstruction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**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, reconstruction, renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, construction, reconstruction, renovation and equipping of the Project Facility.

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

(d) The Company shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Company in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Company shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates, endorsements, binders 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, reconstruction, renovation and equipping of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(h) The Company shall complete a Local Access Agreement to be obtained from the City of Syracuse Industrial Development Agency and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the construction, reconstruction, renovation equipping and completion of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term "*Local*" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, construction, reconstruction, renovation and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental or machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company shall proceed with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may appoint Additional Agents as agents

of the Agency in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each 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, reconstruction, renovation and equipping of the Project ("local" being defined in Section 3.01(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the Agency and the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

(2) A completed "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each Additional Agent appointed within fifteen (15) days of the 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; and

(b) the Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents, 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; and

(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 Recapture of Benefits Policy, the Agency shall, and in some instances may, recover, recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**") including, but not limited to: (1) (a) that portion of the State and local sales and use tax exemption to which the Company 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 (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 represented to the Agency in its Application or otherwise; or (c) the full amount of such State and local sales and use tax exemption in the event the Company fails to execute and deliver the Lease Documents in accordance herewith or fails to complete the Project; 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. In addition to the foregoing, the Agency may recapture other benefits comprising the Financial Assistance in accordance with the Agency's Recapture Policy (a copy of which is on the Agency's website).

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 April 27, 2022, 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, reconstruction, renovation and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for the construction or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project Facility; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency and counsel for the Agency incurred in connection with the Project Facility and will pay the fees of counsel for the Agency for legal services relating to the Project Facility, Additional Agents or the proposed financing thereof.

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

4.06 That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflict-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Company irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court

for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

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**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the 27<sup>th</sup> day of April, 2021.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Judith DeLaney, Executive Director

**444 EAST GENESEE STREET LLC**

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

**EXHIBIT "I"**  
**PILOT RESOLUTION**

## PILOT RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "*Agency*") held a meeting on the 27<sup>th</sup> day of April, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc22ddce511bd2aff74ca4b881f41d4b8>; (or by accessing the link on the Agency's website) and using meeting number 129 139 9321 and password tWFSPdmx642; or via telephone at (408) 418-9388 with access code: 129 139 9321, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson, Kenneth Kinsey, Rickey T. Brown and Dirk Sonneborn

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): **Staff Present**: Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Lori McRobbie; **Others Present**: Jennifer Tiff, Lauryn LaBorde, Anna Daughton, Graziano Zazzara, Jr., Ryan Benz, Rick Moriarty

The following resolution was offered by Dirk Sonneborn and seconded by Kenneth Kinsey:

### **RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX ("PILOT") SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH THE PILOT SCHEDULE**

**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);

**WHEREAS**, by application dated on or about March 3, 2021 (the “*Application*”), 444 East Genesee Street LLC, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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**, on April 27, 2021 the Agency completed the SEQRA review of the Project, which constitutes a “Type I Action”, by adopting a resolution (the “*SEQRA Resolution*”) wherein it determined that the Project will not have a significant adverse effect on the environment and authorized the issuance of a negative declaration; and

**WHEREAS**, on April 27, 2021, the Agency resolved to take official action toward the acquisition, construction, reconstruction, renovation, equipping and completion of the Project (the “*Inducement Resolution*”); and

**WHEREAS**, as part of the Financial Assistance, the Company requested the Agency consider a 15-year payment in lieu of tax (the “*PILOT*”) schedule, as more fully described on Exhibit “A” attached hereto, which schedule conforms with the Agency’s Uniform Tax Exemption Policy (“*UTEF*”) established pursuant to General Municipal Law Section 874(4); and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the proposed PILOT, as part of the Financial Assistance: (i)

will induce the Company to develop the Project Facility in the City of Syracuse; (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) undertaking the Project will advance job opportunities in the State and promote the general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act.

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

(1) Based upon the representations made by the Company to the Agency, and the reasons presented by the Company in support of its request for the PILOT schedule, and subject to compliance with the terms of the Inducement Resolution, the Agency hereby approves and the (Vice) Chair and Executive Director, acting individually, are each authorized to execute and deliver a PILOT agreement (the "**PILOT Agreement**") providing for the PILOT schedule attached as **Exhibit "A"** hereto, all in such form and substance as shall be substantially the same as used by the Agency for other similar transactions and consistent with this Resolution and as approved by the Chair or Vice Chair of the Agency upon the advice of counsel to the Agency.

(2) The (Vice) Chair and/or Executive Director, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any and all such additional certificates, instruments, documents or affidavits, all in substantially the same form as used by the Agency in other similar transactions, and 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 as the (Vice) Chair shall approve, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

(3) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(4) Bousquet Holstein PLLC, as 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 the Financial Assistance set forth herein and consummate the PILOT agreement.

(5) The Secretary and/or the Executive Director of the Agency are hereby authorized to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(6) This Resolution shall take effect immediately, but is subject to execution by the Company of the Lease Documents, a PILOT Agreement and the Agreement and Project Agreement (as defined in the Inducement Resolution and/or herein) and compliance with all other resolutions and other related documents adopted and/or approved by the Agency in conjunction with the Project 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>
Kathleen Murphy	X	
Steven Thompson	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	
Dirk Sonneborn	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 27, 2021, 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.

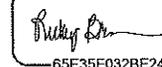
**I FURTHER CERTIFY** that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 ("*EO 202.1*"), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (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 on 5/12/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:



65E35E032BE24D9...

Rickey T. Brown, Secretary

(SEAL)

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

**Total Annual Payment**

<i>Year</i>	<i>Amount</i>
1	\$24,354.67
2	\$24,841.77
3	\$25,338.60
4	\$25,845.38
5	\$26,362.28
6	\$26,889.53
7	\$27,427.32
8	\$27,975.87
9	\$28,535.38
10	\$29,106.09
11	\$39,299.02
12	\$49,888.02
13	\$60,884.87
14	\$72,301.63
15	\$84,150.71
Total	\$573,201.15

**EXHIBIT "J"**

**FINAL APPROVING RESOLUTION**

## FINAL APPROVING RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "*Agency*") held a meeting on the 27<sup>th</sup> day of April, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc22ddce511bd2aff74ca4b881f41d4b8>; (or by accessing the link on the Agency's website) and using meeting number 129 139 9321 and password tWFSPdmx642; or via telephone at (408) 418-9388 with access code: 129 139 9321, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson, Kenneth Kinsey, Rickey T. Brown and Dirk Sonneborn

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): **Staff Present:** Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Lori McRobbie; **Others Present:** Jennifer Tiff, Lauryn LaBorde, Anna Daughton, Graziano Zazzara, Jr., Ryan Benz, Rick Moriarty

The following resolution was offered by Kenneth Kinsey and seconded by Dirk Sonneborn:

### **RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A COMMERCIAL 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**, 444 East Genesee Street LLC, or an entity to be formed (the "*Company*"),

by application dated March 3, 2021 (the “*Application*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 April 27, 2021 pursuant to Section 859-a of the Act, notice of which was published on April 13, 2021, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated April 12, 2021; and

**WHEREAS**, the Agency adopted a resolution on March 23, 2021 (the “*SEQRA Lead Agency Resolution*”) entitled:

**RESOLUTION CLASSIFYING A CERTAIN PROJECT AS  
A TYPE I ACTION AND DECLARING THE INTENT OF  
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY TO BE LEAD AGENCY FOR PURPOSES OF A  
COORDINATED REVIEW PURSUANT TO THE STATE  
ENVIRONMENTAL QUALITY REVIEW ACT**

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

**WHEREAS**, the Agency adopted a resolution on April 27, 2021 (the “*SEQRA Resolution*”) entitled:

**RESOLUTION DETERMINING THAT THE  
UNDERTAKING OF A CERTAIN PROJECT AT THE**

**REQUEST OF 444 EAST GENESEE STREET LLC WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

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

**WHEREAS**, the Agency adopted a resolution on April 27, 2021 (the “*Inducement Resolution*”) entitled:

**RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A COMMERCIAL 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 April 27, 2021 (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 THEREWITH**

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

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

**Section 1.** Based upon the representations made by the Company to the Agency and after consideration of the comments received at the public hearing, if any, the Agency hereby ratifies all of its prior resolutions adopted in conjunction with the Project, including but not limited to the SEQRA Lead Agency Resolution, the SEQRA Resolution, Inducement Resolution, the PILOT Resolution and all other action with respect to the Project and Financial Assistance taken by the Agency, and makes the following findings and determinations:

(a) The acquisition of a controlling interest in the Project Facility by the Agency, the granting of the approved Financial Assistance in accordance with the Inducement Resolution 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 the approved Financial Assistance in accordance with the Inducement Resolution to the Company will enable and induce the Company to acquire, construct, reconstruct, renovate, equip and complete the Project Facility and help provide much needed affordable housing in the City of Syracuse;

(d) The acquisition, construction, reconstruction, renovation, equipping and completion 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;  
and

(f) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

**Section 2.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by advancing job opportunities and promoting economic development.

**Section 3.** It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 4.** Subject to the conditions set forth in this and prior resolutions adopted by the Agency, the Project Agreement, and the Agreement (each as defined in the Inducement Resolution), the Agency will: (A) acquire a controlling interest in the Project Facility; (B) lease or sell the Land and Facility from the Company pursuant to a lease or sale 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 or sell the Project Facility to the Company pursuant to a sublease or sale agreement (the “*Agency Lease*”); (C) secure the Company’s borrowings with respect to the Project Facility by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Company’s lenders(s); (D) provide the approved Financial Assistance; and (E) execute and deliver any other documents necessary to effectuate the actions contemplated by and consistent with this Resolution upon the advice of counsel to the Agency.

**Section 5.** The (Vice) Chair and the Executive Director 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 as well as the Lease Documents (as defined in the Inducement 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.** 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 7.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare, for submission to the (Vice)Chair and/or the Executive Director, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

**Section 8.** 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 9.** The Secretary and/or Executive Director 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 10.** 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>
Kathleen Murphy	X	
Steven Thompson	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	
Dirk Sonneborn	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 27, 2021, 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.

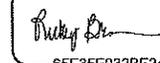
**I FURTHER CERTIFY** that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 ("**EO 202.1**"), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (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 on 5/12/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:



65E35E032BE24D9

Rickey T. Brown, Secretary

(SEAL)

**EXHIBIT "K"**  
**WAIVER RESOLUTION**

## APPROVING RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "*Agency*") held a meeting on the 27<sup>th</sup> day of April, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=mc22ddce511bd2aff74ca4b881f41d4b8>; (or by accessing the link on the Agency's website) and using meeting number 129 139 9321 and password tWFSPdmx642; or via telephone at (408) 418-9388 with access code: 129 139 9321, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson, Kenneth Kinsey, Rickey T. Brown and Dirk Sonneborn

**THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE** (in accordance with the Governor's Executive Order 202.1): **Staff Present:** Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Lori McRobbie; **Others Present:** Jennifer Tiffit, Lauryn LaBorde, Anna Daughton, Graziano Zazzara, Jr., Ryan Benz, Rick Moriarty

The following resolution was offered by Dirk Sonneborn and seconded by Steven Thompson:

### RESOLUTION AUTHORIZING A WAIVER OF THE AGENCY'S LOCAL ACCESS POLICY

**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**, 444 East Genesee Street LLC, or a company to be formed (the "*Company*"), by application dated March 3, 2021 (the "*Application*"), requested the Agency undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use

including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 and the Agency intend to close on the Project and execute the necessary lease transactional documents, including but not limited to an Agency Lease Agreement and a Local Access Agreement whereby the Company will acknowledge and agree to be bound by the Agency's Local Access Policy which provides, in part, that the Company and its additional agents utilize local labor, contractors and suppliers for the construction, reconstruction, renovation, equipping and completion of the Project Facility. For purposes of the Local Access Policy, the term "**local**" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties (the "**Approved Counties**"); and

**WHEREAS**, by correspondence dated April 14, 2021, the Company requested a waiver of the Agency's Local Access Policy (the "**Waiver**") for a subcontractor on the project providing for exterior metal paneling installation and glazing installation (collectively, the "**Work**"); and

**WHEREAS**, the Company bid the Work to several vendors however only Ajay Glass, a Canandaigua company (the "**Vendor**") submitted a bid to do both trades at a significant cost savings of approximately \$48,000; and

**WHEREAS**, in addition to the cost savings, having one vendor undertake the installation of both the glazing and the metal panel system on the exterior decreases the possibility for future water damage/leakage or heat loss by ensuring that the joints are correctly flashed, sealed and married and leaves one vendor responsible for any issues. The Company feels strongly that with the significant investment in the building's exterior, it is crucial to have the same contractor install both the glazing and metal paneling; and

**WHEREAS**, the Vendor has completed several projects in the area for the local hospitals and Syracuse University and while technically not based in Syracuse they intend to employ all local workforce. The Vendor has advised the Company that if awarded the Project, they would employ the local labor force representing the glaziers to install the entrances, storefronts, curtainwalls, glass and glazing provided there is qualified manpower available at the time of the

required installation. In addition, the Vendor advised that they would employ the local labor force representing the ironworkers to install the insulated metal wall panels providing there is qualified manpower available at the time of the required installation; and

**WHEREAS**, the Project will meet HCR's requirements of 20% MBE and 10% WBE. In addition, the Project is close to accomplishing HCR's stated goal of using 6% disabled veteran owned businesses; 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 as to 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). The Agency has classified the granting of the Waiver and the approval of the Transfers as a "Type II" action as that term is defined under SEQRA, and therefore no further review is required.

**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 hereby makes the following findings and determinations:

- (a) the action authorized pursuant to this Resolution constitutes a Type II action under SEQRA and no further review is required; and
- (b) the Agency authorizes the Waiver for the Work and the use of the Vendor as set forth herein.

(2) The Waiver provided for herein shall apply only to the specific Work set forth herein to be undertaken by the Vendor and shall not be construed to waive any other requirements relative to any other contractors, subcontractors or suppliers under the Agency's Local Access Policy for any labor, equipment or supplies.

(3) 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.

(4) The Secretary and/or the Executive Director 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.

(5) This Resolution shall take effect immediately. A copy of this Resolution, together with any 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>
Kathleen Murphy	X	
Steven Thompson	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	
Dirk Sonneborn	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 27, 2021, 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), as temporarily amended by Executive Order 202.1 issued on March 12, 2020, as amended from time to time ("**EO 202.1**"), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (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 on 5/12/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:



65E35E032BE24D9...

Rickey T. Brown, Secretary

(SEAL)



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City of Syracuse  
Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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April 27, 2021

VIA E-MAIL

444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
Syracuse, New York 13202  
Attn: Graziano Zazzara, Jr.

Re: City of Syracuse Industrial Development Agency  
444 East Genesee Street LLC Project

Dear Mr. Zazzara:

As you know, 444 East Genesee Street LLC (the "*Company*") submitted an application to the City of Syracuse Industrial Development Agency (the "*Agency*") on or about March 3, 2021 (the "*Application*"), requesting the Agency consider undertaking a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "*Facility*"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 is governed by the New York State General Municipal Law which, effective June 15, 2016, requires, among other things, that each project applicant affirm, *under penalty of perjury*, the estimated amount of benefits requested from the Agency.

To that end, attached please find a PILOT benefit schedule reflecting the estimated real property tax benefits related to the Project, including an estimated savings valuation totaling \$529,699.01 to be realized by the Company over the fifteen (15) year term of the payment in lieu of taxes ("*PILOT*") agreement requested by the Company.

In addition, it has been estimated and confirmed by the Company within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project, and subject to New York State and local sales and use taxes, are estimated to cost an amount up to \$1,822,295, and therefore, the value of the State and local sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$151,400; and (ii) the mortgage recording tax exemption approved by the Agency shall be approximately \$29,942 based upon the Company's estimation in its application that the principal amount of the mortgages on the Project will be \$2,110,000 and \$1,822,295.

Before the Agency can confer the Financial Assistance, the Agency needs to receive back the signature of the Company on the affirmation below.

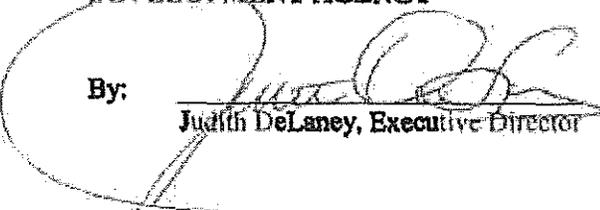
To that end, please review the foregoing and the enclosed PILOT Benefit Schedule. Unless you have any questions, please execute the verification below and have it notarized where indicated and return same to my attention such that it is received on or before May 14, 2021.

Please feel free to contact me with any questions.

Very truly yours,

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

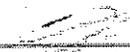
By:

  
Judith DeLaney, Executive Director

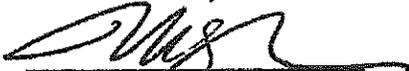
**VERIFICATION**

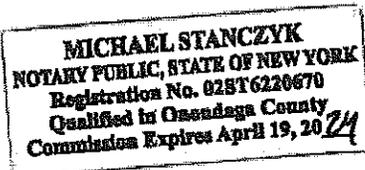
STATE OF NEW YORK        }  
COUNTY OF ONONDAGA } ss.:

**GRAZZI ZAZZARA, JR.**, deposes and says that: (i) he is the Managing Member of 444 East Genesee Street LLC; (ii) he has the authority to bind the Company; (iii) he has read the foregoing letter outlining the Financial Assistance approved for the Project, including but not limited to the attached PILOT Benefit Schedule, knows the contents thereof, and acknowledges same and knows that the same is true, accurate and complete, as subscribed and affirmed under the penalties of perjury.

  
\_\_\_\_\_  
Grazzi Zazzara, Jr.

Sworn to before me this  
30<sup>th</sup> day of April, 2021.

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



**EXHIBIT A**

**PILOT BENEFIT SCHEDULE**

<b>Comparison</b>	
Estimated 15 year Regular Taxes	\$1,102,900.16
Estimated 15 year PILOT Payments	\$573,201.15
Estimated 15 year Savings	\$529,699.01



**AFFIDAVIT RE: MORTGAGE TAX EXEMPTION**

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

**JUDITH DELANEY**, being duly sworn, deposes and says:

She is the Executive Director of the City of Syracuse Industrial Development Agency (the "*Agency*").

The Agency is an industrial development agency duly established under Title I of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "*Act*"), and it is a corporate governmental agency constituting a public benefit corporation of the State.

On or about April 27, 2021, the Agency adopted a resolution at the request of 444 East Genesee Street LLC (the "*Applicant*" and/or "*Company*") agreeing to undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "*Land*"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "*Facility*"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Company and the Agency are mortgaging their respective interests in the improved real property described on **Exhibit "A"** to: CPC Funding SPE 1 LLC (the "*Mortgagee*"), pursuant to a certain First Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (New York) dated June 3, 2021 in the amount of \$1,943,205, a certain First Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (New York) dated June 3, 2021 in the amount of \$166,795 and a

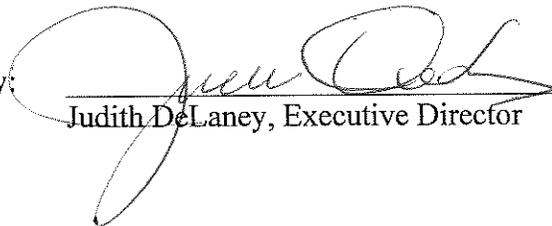
certain Second Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (New York) dated June 3, 2021 in the amount of \$1,866,464 (collectively, the "*Mortgages*") and an Assignment of Leases and Rents dated June 3, 2021 ("*Assignment of Leases and Rents*"). The Mortgages are pledged to secure notes given by the Company to the Mortgagee.

Pursuant to Article 18-A of the New York General Municipal Law, as amended from time to time (the "*Act*"), the Agency is regarded as performing a governmental function and is generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction, control or supervision or upon its activities.

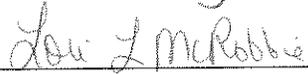
Deponent submits that no mortgage tax, other than as may be required in Section 874(1) of the Act and Section 252(2) of the Tax Law of the State of New York with respect to the portion of the tax allocable to the Central New York Regional Transportation District, should be imposed upon the Mortgages and the Assignment of Leases and Rents, insomuch as the Mortgages and the Assignment of Leases and Rents are being executed and delivered under the State authority creating the Agency, and as the use by the Agency of its powers to secure the payment of principal and interest on the loan is deemed by Article 18-A a public purpose essential to the public interest, and as both the New York State Department of Taxation and Finance and Counsel to the New York State Department of Taxation and Finance have expressed their opinion that the recording of similar documents by similar agencies organized under Article 18-A of the New York General Municipal Law are operations of said agencies entitled to exemption from the mortgage recording tax. The maximum amount of the exemption provided for hereby shall not exceed \$29,942.21.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Judith DeLaney, Executive Director

Subscribed and sworn to before me  
this 27<sup>th</sup> day of ~~June~~ <sup>July</sup>, 2021.

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

LORILL McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 22

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**Property: 444 East Genesee Street, Syracuse, New York**

**ALL THAT TRACT OR PARCEL OF LAND** located in the City of Syracuse, County of Onondaga and State of New York being more particularly described as being in Lot P 6, Block 123, designated as Section 102, Block 08 Lot 04.0 Sublot .0 (102.-08-04.0), Property #1531002100, 53.50' x 142.51' Mas Building.

**BEING MORE MODERNLY DESCRIBED AS:**

**ALL THAT TRACT OR PARCEL OF LAND**, situate in the City of Syracuse, County of Onondaga, State of New York, being part of Lot 6, Block 123 in said City and being more particularly described as follows:

**BEGINNING** at the current intersection of the southerly line of East Genesee Street with the westerly line of South Townsend Street, said point being the northeasterly corner of lands now or formerly owned by East Genesee Street, LLC as recorded in the Onondaga County - Clerk's Office in Liber of Deeds #5380, Page #175;

**thence** S.00°04'30"W., along the westerly line of said South Townsend Street and the easterly line of 444 East Genesee Street, LLC property, a distance of 145.44 feet to the northerly line of McCarthy Avenue;

**thence** N.89°48'10"W., along the northerly line of McCarthy Avenue and the southerly line of said 444 East Genesee Street, LLC property, a distance of 53.50 feet to the intersection of the common line between said 444 East Genesee Street, LLC and lands now or formerly owned by ARPA, LLC as recorded in the Onondaga County Clerk's Office, Instrument No. 2020-10387 with the northerly line of said McCarthy Avenue, said point also being the southeasterly corner of Lot 5, Block 123;

**thence** N.00°04'30"E., along the common line between said 444 East Genesee Street, LLC and ARPA, LLC properties and the common line between Lots 5 and 6, a distance of 145.75 feet to a point in the southerly line of East Genesee Street;

**thence** S.89°28'10"E., along the southerly line of said East Genesee Street, a distance of 53.50 feet to the **POINT OF BEGINNING. CONTAINING** 0.179 Acre of land more or less.



## GENERAL CERTIFICATE OF

### 444 EAST GENESEE STREET LLC

This certificate is made in connection with the execution by 444 East Genesee Street LLC, a Delaware limited liability company authorized to do business in the State of New York (the "**Company**") of the Project Agreement, Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by the Company in connection with the City of Syracuse Industrial Development Agency (the "**Agency**") agreeing, at the Company's request, to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 Project Facility is owned by the Company. The Company will lease the Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of June 1, 2021 (the "**Company Lease**") and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of June 1, 2021 (the "**Bill of Sale**") and the Agency will sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of June 1, 2021 (the "**Agency Lease**").

The Project shall contain 100% income restricted residential units in accordance with the US Department of Housing and Urban Development ("**HUD**") requirements set forth in that certain regulatory agreement dated as of June 3, 2021 by and between the Company and New York State Housing Finance Agency related to the Project (the "**Regulatory Agreement**"), provided however that at least 20% of the units are rent restricted to 65% of the area median income ("**AMI**") rent limit for the City of Syracuse, New York, inclusive of utilities, as designated annually by HUD (the "**HUD Rates**"), in accordance with the Agency's Uniform Tax Exemption Policy ("**UTEF**") (collectively, the "**Rent Restrictions**").

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 Certificate of Formation of the Company and any amendments thereto filed with the New York State Secretary of State with proof of publication thereof attached thereto, 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 partnership, duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized, licensed and in good standing under the laws of New York State to transact business as a limited partnership for the purpose of owning and operating the Project Facility in the State of New York. Attached hereto as **Exhibit "C"** is a true and correct copy of Certificates of Good Standing of the Company issued by the Delaware State Secretary of State and the New York State Secretary 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 Manager 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 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, Oneida and Cortland Counties. The Company further understands and agrees that failure to comply with these local labor requirements may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, Appendix I to the Agency's Application entitled "Local Access Agreement" has been completed and is attached hereto as **Exhibit "E"**. The Company further acknowledges that pursuant to a resolution dated April 27, 2021, at the request of the Company, the Agency provided a limited waiver of its Local Access Policy for one subcontractor; namely, Ajay Glass, a Canandaigua company with the understanding and commitment from the Company that while the subcontractor is located outside of the local region, all laborers would be local unless the Company could demonstrate, to the satisfaction of the Agency, that there was a shortage of qualified local laborers. In addition,

the Company agrees to provide evidence of such local labor as and when requested by the Agency.

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

as of June 1, 2021 by and between the Company and the Agency, to obtain worker's compensation insurance and provide proof of same to the Agency.

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 Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, the Regulatory 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 Project Agreement, the Company Lease, the Agency Lease, the Mortgage, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, the Regulatory 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 restates and affirms all of the obligations, representations and covenants in the Agency Lease and the Project Agreement and incorporates same herein by reference as if fully set forth herein.

16. The authorized representatives of the Company who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
Graziano Zazzara, Jr.		Manager

17. The Company represents and warrants that it has no employees and therefore is not now required to carry worker's compensation insurance. The Company represents and acknowledges that in the event it hires any employees in the future, it has an obligation pursuant to the Agency Lease, dated as of June 1, 2021 by and between the Company and the Agency, to obtain worker's compensation insurance and provide proof of same to the Agency.

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IN WITNESS WHEREOF, I have set my hand and signature as officer of the Company  
as of June 1, 2021.

444 EAST GENESEE STREET LLC

By:   
Graziano Zazzara, Jr., Its Manager

**EXHIBIT "A"**  
**CERTIFICATE OF FORMATION**

# Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, 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 "444 EAST GENESEE STREET LLC", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF MARCH, A.D. 2016, AT 4:53 O`CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

5991684 8100  
SR# 20161716326

Authentication: 202003269  
Date: 03-17-16

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 04:53 PM 03/17/2016  
FILED 04:53 PM 03/17/2016  
SR 20161716326 - File Number 5991684

**CERTIFICATE OF FORMATION**

**OF**

**444 EAST GENESEE STREET LLC**

Pursuant to Section 18-201 of the Delaware Limited Liability Company Act

FIRST: The name of the Limited Liability Company is 444 East Genesee Street LLC (the "LLC").

SECOND: The address of its registered agent in the State of Delaware is 850 New Burton Road, Suite 201, Dover, Delaware 19904, County of Kent. The name of its Registered Agent at such address is National Corporate Research, Ltd.

THIRD: Pursuant to Section 18-302 of the Delaware Limited Liability Company Act, the LLC may, in the manner provided for in the Operating Agreement of the LLC, create additional classes of members having such relative rights, powers, preferences and limitations as may from time to time be established pursuant to the Operating Agreement. The LLC shall initially have only one class of members.

FOURTH: The LLC shall be managed by one or more managers. Pursuant to Section 18-404 of the Delaware Limited Liability Company Act, the LLC may, in the manner provided for in the Operating Agreement of the LLC, create additional classes of managers having such relative rights, powers, preferences and limitations as may from time to time be established pursuant to the Operating Agreement. The LLC shall initially have only one class of managers.

  
\_\_\_\_\_  
Graziano Zazzara, Organizer

CERTIFICATE OF AUTHORITY UNDER SEC. 805 OF THE LIMITED LIABILITY COMPANY LAW

ENTITY NAME: 444 EAST GENESEE STREET LLC

DOCUMENT TYPE: APPLICATION FOR AUTHORITY (FOR LLC)

COUNTY: ONON

FILED: 05/20/2016 DURATION: \*\*\*\*\* CASH#: 160520000167 FILM #: 160520000162  
DOS ID: 4950311

FILER:

EXIST DATE

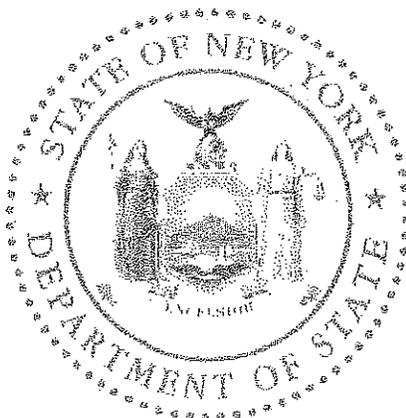
MARJORIE PEPE, BOSQUET  
HOLSTEIN PLLC  
110 W FAYETTE ST STE 900  
SYRACUSE, NY 13202

05/20/2016

ADDRESS FOR PROCESS:

THE LLC  
250 S CLINTON ST SUITE 201  
SYRACUSE, NY 13202

REGISTERED AGENT:



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

SERVICE COMPANY: ALBANY CORPORATE RESEARCH LTD. - 41

SERVICE CODE: 41

FEES 285.00  
FILING 250.00  
TAX 0.00  
CERT 0.00  
COPIES 10.00  
HANDLING 25.00

PAYMENTS 285.00  
CASH 0.00  
CHECK 0.00  
CHARGE 0.00  
DRAWDOWN 285.00  
OPAL 0.00  
REFUND 0.00

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 23, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

New York State  
Department of State  
Division of Corporations, State Records  
and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Ave.  
Albany, NY 12231  
www.dos.ny.gov

160520000 162

APPLICATION FOR AUTHORITY  
OF

444 EAST GENESEE STREET LLC

*(Insert name of Foreign Limited Liability Company)*

Under Section 802 of the Limited Liability Company Law

**FIRST:** The name of the limited liability company is:

444 EAST GENESEE STREET LLC

If the name does not contain the required words or abbreviation pursuant to Section 204 of the Limited Liability Company Law, the following words or abbreviation is added to the name for use in this state:

(Do not complete this section unless the limited liability company's true name is not available pursuant to §204 of the Limited Liability Company Law.) The fictitious name under which the limited liability company will do business in New York is:

*(The fictitious name must contain the words "Limited Liability Company" or abbreviation "LLC" or "L.L.C.")*

**SECOND:** The jurisdiction of organization of the limited liability company is: \_\_\_\_\_

Delaware

The date of its organization is: 03/17/2016

**THIRD:** The county within New York state in which the office, or if more than one office, the principal office of the limited liability company is to be located is: Onondaga

**FOURTH:** The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process served against him or her is:

250 S. Clinton St, Suite 201  
Syracuse, NY 13202

FIFTH: (Check and complete the statement that applies)

The address of the office required to be maintained in the jurisdiction of its formation is:

NATIONAL CORPORATE RESEARCH, LTD.  
850 New Burton Road, Suite 201  
Dover, DE 19904

If no office is required to be maintained in the jurisdiction of its formation, the address of the principal office of the limited liability company is:

SIXTH: The foreign limited liability company is in existence in its jurisdiction of formation at the time of filing of this application.

SEVENTH: The name of the authorized officer in its jurisdiction of its formation where a copy of its articles of organization is filed is (e.g. "Secretary of State"):

Jeffrey W. Bullock, Secretary of State

The address for such officer is:

491 Federal Street  
Dover, DE 19904

X

(Signature)

Graziano Zazzara JR

(Type or print name)

Capacity of signer (Check appropriate box):

- Member  
 Manager  
 Authorized Person

Please Note: A certificate of existence or, if no such certificate is issued by the jurisdiction of formation, a certified copy of the articles of organization of the limited liability company and all subsequent amendments thereto, or if no articles of organization have been filed, a certified copy of the certificate filed as its organizational base and all amendments thereto, must be attached to the application for authority when submitted for filing. If such certificate or certified copy is in a foreign language, a translation in English under oath of the translator shall be attached.

# Delaware

Page 1

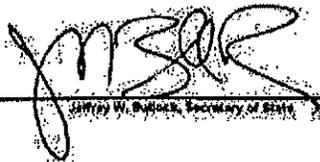
The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "444 EAST GENESEE STREET 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 NINETEENTH DAY OF MAY, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "444 EAST GENESEE STREET LLC" WAS FORMED ON THE SEVENTEENTH DAY OF MARCH, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL FRANCHISE TAXES HAVE BEEN ASSESSED TO DATE.



  
Jeffrey W. Bullock, Secretary of State

5991684 8300

SR# 20163437030

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202348558

Date: 05-19-16

162

ACR-41

APPLICATION FOR AUTHORITY  
OF

444 EAST GENESEE STREET LLC

*(Insert name of Foreign Limited Liability Company)*

Under Section 802 of the Limited Liability Company Law

DRAWDOWN

Filed by: Marjorie Pepe, Bousquet Holstein PLLC

*(Name)*

110 W Fayette St, Ste 900

*(Mailing address)*

Syracuse, NY 13202

*(City, State and Zip code)*

NOTE: This form was prepared by the New York State Department of State for filing an application for authority for a foreign limited liability company to conduct business in New York State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal supply stores. The Department of State recommends that legal documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$250 filing fee made payable to the Department of State.

FILED  
2016 MAY 20 AM 11:28  
*(For office use only.)*

Ice  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED MAY 20 2016  
TAXS \_\_\_\_\_  
BY: MBA

RECEIVED  
2016 MAY 19 PM 4:04

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

LIMITED LIABILITY COMPANY AGREEMENT

OF

444 EAST GENESEE STREET LLC

a Delaware Limited Liability Company

Effective as of March 17, 2016

This OPERATING AGREEMENT, effective as of March 17, 2016 is made by and between the Persons listed on the attached Exhibit A, collectively referred to herein as the "Members".

WHEREAS, the Members have, by the filing of Certificate of Formation on March 17, 2016, formed a limited liability company under the name of 444 East Genesee Street LLC (hereinafter the "Company") to conduct lawful business activities pursuant to the laws of the State of Delaware, under the terms and conditions set forth in this Operating Agreement;

WHEREAS, the Members, by execution of this Operating Agreement, intend that this Operating Agreement be the agreement controlling their relationship, superseding and rendering all prior oral or written agreements null and void.

NOW, THEREFORE, in consideration of the covenants and agreements made herein, the Members hereby agree:

**ARTICLE I**  
**DEFINITIONS**

Throughout this Agreement, including the Exhibits, the following capitalized words shall, unless the context clearly otherwise requires, have the following meanings:

1.01 General Definitions.

- (a) "Act" shall mean the Delaware Limited Liability Company Act, 6 Del. C. Sec. 18-101, et seq. (as amended from time to time).
- (b) "Affiliate" of, or a Person affiliated with, a specified Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For the purposes of this definition, the term control (including the terms controlled by and under common control with) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of securities, by contract or otherwise.
- (c) "Agreement" shall mean this agreement, as originally executed and as amended from time to time, as the context requires.
- (d) "Certificate of Formation" means the Certificate of Formation of the Company as filed with the Secretary of State of Delaware, as the same may be amended from time to time.
- (e) "Company" shall mean 444 East Genesee Street LLC, the Company subject to this Agreement.
- (f) "Fiscal Year" means the Company's fiscal year, which shall be the calendar year.
- (g) "Interest" shall mean the ownership interest of a Member in the Company, including the rights and obligations of such Member under this Agreement.
- (h) "Manager" shall mean a Manager of the Company duly appointed or elected as set forth in this Agreement.
- (i) "Member" means a Person who has been admitted as a member of the Company in accordance with the terms and provisions of the Act and this Agreement and has an Interest in the Company with the rights, obligations, preferences and limitations specified under this Agreement. Reference to a "Member" shall be to any of the Members.
- (k) "Person" means any association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, company (including a professional service company), foreign company (including a foreign professional service company), joint venture, limited partnership,

natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

(l) "Property" shall mean all property, real, personal, tangible or intangible, acquired by the Company or contributed to the capital of the Company, and any other property, real, personal, tangible or intangible, which the Company may acquire by any lawful means.

(m) "State" shall mean the State of Delaware.

#### 1.02 Definitions Relating to Buy/Sell Provisions.

(a) "For Cause Event" shall mean the Member's

- (1) intentional violation of the Company's policies;
- (2) willful, reckless or gross misconduct;
- (3) conviction of a felony or crime involving dishonesty or moral turpitude; or
- (4) breach of the duty of loyalty or any other fiduciary duty under law.

The following Actions by a Member shall constitute For Cause Events if, after notice from one or more of the other Members and a reasonable time (not to exceed thirty (30) days) in which to cure said violation, the Member persists in the

- (1) breach of any provision hereof or intentional violation of any other duty or obligation to the Company;
- (2) grossly negligent performance of any duties on behalf of the Company; or
- (3) refusal to perform Member's duties or the direction given by the Company or its Manager provided such direction is reasonably consistent with Member's duties;

(b) "Insolvency Event" means

- (i) a general assignment by a Member for the benefit of creditors;
- (ii) the appointment of a receiver, trustee or custodian for all or any substantial part of the property and assets of a Member;
- (iii) the entry of an order for relief under Title XI of the United States Code, as amended from time to time, against any of the Members, or any other judgment or decree entered against any Member by any court of competent jurisdiction (which order, judgment or decree continues unstayed and in effect for a period of sixty (60) consecutive days) in any involuntary

proceeding against any Member under present or future federal bankruptcy laws or under any other applicable bankruptcy, insolvency or other laws respecting debtor's rights; or

(iv) the commencement by any Member of any voluntary proceeding under present or future federal bankruptcy laws or under any other applicable bankruptcy, insolvency or other laws respecting debtor's rights.

(c) "Transferee" means an individual or entity which takes or receives an Interest by purchase, assignment, gift or succession.

### 1.03 Definitions relating to Economic and Tax Matters

(a) "Accountants" shall mean such firm of certified public accountants that may be engaged for the Company by the Manager.

(b) "Adjusted Capital Account Deficit" means with respect to any Member or Transferee of a Member, 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:

(1) 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

(2) 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."

(c) "Capital Account" means with respect to any Member or Transferee of a Member, the Capital Account maintained for such Person in accordance with the following provisions:

(1) 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 **paragraph 6.02**, 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.

(2) 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 **paragraph 6.02**, 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.

(3) 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.

(4) In determining the amount of any liability for purposes of paragraphs 1.03(c)(1) and (2) above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The forgoing 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 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 may make such modifications, provided it is not likely to have a material effect on the amounts distributed to any Member or Transferee of a Member pursuant to Article VII of the Agreement upon the dissolution of the Company. The Manager also shall make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and Transferees of Members 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 make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulation Section 1.704-1(b).

(d) "Capital Contribution" means, with respect to any Member or Transferee of a Member, 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 Transferee of a Member. The initial Capital Contribution of each of the initial Members is set forth at Exhibit A hereto together with the initial gross fair market value of any Property contributed to the Company that is not cash or a cash equivalent.

(e) "Code" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of future laws.

(f) "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.

(g) "Company Percentage" shall be the respective Company Percentages of the Members as set forth in Exhibit A of this Agreement.

(h) "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 Manager.

(i) "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(1) 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;

(2) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times:

(A) 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;

(B) the distribution by the Company to a Member or Transferee of more than a de minimis amount of assets as consideration for an Interest in the Company; and

(C) 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 (A) and (B) above shall be made only if the Manager reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic Interests of the Members and Transferees of Members in the Company;

(3) The Gross Asset Value of any Company asset distributed to any Member or Transferee of a Member shall be the gross fair market value of such asset on the date of distribution; and

(4) 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 **paragraph 6.02(g)**; provided, however, that Gross Asset Values shall not be adjusted pursuant to this **paragraph 1.03(i)(4)** to the extent the Manager determine that an adjustment pursuant to **paragraph 1.03(i)(2)** is necessary or appropriate in connection with a transaction that would

otherwise result in an adjustment pursuant to this **paragraph 1.03(i)(4)**. If the Gross Asset Value of an asset has been determined or adjusted pursuant to **paragraphs 1.03(i)(1), (2), or (4)** 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.

(j) "Improvements" means certain improvements consisting of, without limitation, a residential and commercial building, together with all appurtenances and tenant improvements now or hereafter located on the Land.

(k) "Land" means the real estate described in Schedule B.

(l) "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.

(m) "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.

(n) "Member Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

(o) "Net Cash Flow" shall mean for each Fiscal Year all cash funds of the Company received from operations, less the sum of

- (1) current charges and expenses,
- (2) debt service payments with respect to any Company loan,
- (3) expenditures for acquisition of Property not financed through capital contributions, borrowing, or reserves previously set aside by the Company for those purposes, and
- (4) payments to reserves or reserves established by the Manager.

Net Cash Flow shall not include Net Cash Proceeds.

(p) "Net Cash Proceeds" shall mean the cash proceeds to the Company resulting from any loan secured by the Property or from the sale, exchange, condemnation or similar eminent domain taking, casualty, or other disposition of all or substantially all of the Property, or from the sale of interests in the Property or any other similar items which in accordance with generally accepted accounting principles are attributable to capital, after payment of or provision for debts and obligations, repairs and replacements, deduction of all expenses incurred in connection with

the cash proceeds and satisfaction of liens pertaining thereto.

(q) "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.

(r) "Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

(s) "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:

(1) 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 paragraph shall be added to such taxable income or loss;

(2) 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 paragraph shall be subtracted from such taxable income or loss;

(3) In the event the Gross Asset Value of any Company asset is adjusted pursuant to **paragraphs 1.03(i)(2) or (3)** 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.

(4) 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;

(5) 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

(6) Notwithstanding any other provision of this paragraph, any items which are specially allocated pursuant to **paragraph 6.02** shall not be taken into account in computing Profits or Losses pursuant to this paragraph.

(t) "Real Property" means the Land and Improvements.

(u) "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).

(v) "Undistributed Capital" for each Member means the aggregate Capital Contributions of such Member less the aggregate distributions to such Member under paragraph 5.02(a)(i).

**ARTICLE II**  
**FORMATION; PURPOSE; TERM; OFFICE OF COMPANY**

2.01 Certificate of Formation. The Certificate of Formation of the Company was filed with the Office of the Delaware Secretary of State on March 17, 2016.

2.02 Acts Required for Formation; Costs. The Manager caused or shall cause to be done all such filing, recording, publishing, or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the formation and operation of a limited liability company in the State and any such requirements in any other jurisdiction in which the Company may do business. All costs incurred in connection with the foregoing, including, without limitation, legal fees in connection therewith, shall be expenses of the Company and shall be reimbursed promptly by the Company upon the completion of such action if paid by the Manager.

2.03 Purpose. The purpose of the Company is to engage in any activity for which limited liability companies may be organized in the State of Delaware. The Company shall possess and may exercise all of the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company. Without limiting the foregoing, the principal purpose of the Company shall be to acquire, own, hold, lease, operate, manage, maintain, develop and improve, the Real Property.

2.04 Term. The term of the Company commenced as of the date of the filing of the Certificate of Formation and shall continue until dissolved or terminated as provided in **paragraph 7.01** of this Agreement.

2.05 Principal Office. The principal office of the Company shall be at c/o The Icon Companies, 250 South Clinton Street, Syracuse, NY 13202, but the Manager, at its sole discretion, may change the principal office of the Company and/or select another or additional places of business from time to time.

**ARTICLE III**  
**MEMBERS; MANAGERS**

3.01 Members.

(a) Place of Meetings. Meetings of Members shall be held at the principal office of the Company or at any other place within or without the State as the Manager shall authorize.

(b) Meetings. Meetings of the Members may be called by the Manager or at the request, in writing, of Members representing majority of the Company Percentages of the Members. The request shall state the purpose or purposes of the proposed meeting. Business transacted at a meeting shall be confined to the purposes stated in the notice.

(c) Fixing Record Date. For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, the Manager shall fix, in advance, a date as the record date for any determination of Members. The date shall not be more than fifty or less than ten days before the date of the meeting, nor more than fifty days prior to any other action.

(d) Notice of Meetings of Members. Written notice of each meeting of Members shall state the purpose or purposes for which the meeting is called, the place, date and hour of the meeting and shall indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice shall be given either personally or by mail to each Member entitled to vote at the meeting, not less than ten or more than fifty days before the date of the meeting. If mailed, the notice is given when deposited in the United State mail, with postage thereon prepaid, directed to the Member at its address as it appears on the record of Member, or, if it shall have filed with the Secretary a written request that notices to him be mailed to some other address, then directed to him at such other address.

(e) Waivers. Notice of meeting need not be given to any Member who signs a waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of the meeting, shall constitute a waiver of notice by him.

(f) Quorum of Members. The presence of Members (by person or Proxy) possessing greater than fifty percent of the total Company Percentages held by all of the Members shall be required to constitute a quorum at any meeting of the Members where a vote is to be taken, except in any case where this Agreement shall expressly require the unanimous agreement of all Members, in which case the presence of all Members (in person or by written delegation of authority to vote) shall be required for a quorum. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any Members. The Members present may conduct business or adjourn the meeting despite the absence of a quorum.

(g) Proxies. Any Member may authorize, by execution of a Proxy, any other Member

to vote at a meeting of the Company on behalf of such authorizing Member by Proxy which shall be duly signed by the authorizing Member containing such restrictions and instruction regarding such authority to vote (and the period of time for which such Proxy shall be valid but if no period is specified such Proxy shall be valid for one year after the date of the Proxy, or if it be undated then one year after the date of receipt by the Company) as the authorizing Member shall determine, provided however that such Proxy shall not be effective unless and until an executed copy thereof be duly filed with the Company. If any such Proxy is so given, the authorizing Member shall be deemed to be present at any meeting of Members if the Member so authorized to vote is personally present at such meeting.

(h) Qualification and Vote. Each Member authorized to vote shall be entitled to cast one vote for every percentage point (and a fractional vote for each fractional part thereof) in such Member's Company Percentage in effect as of the record date fixed under **paragraph 1.03(c)**, it being the intent of the Members that the number of votes a Member is entitled to cast shall be directly proportional to such Member's Company Percentage. The affirmative vote of greater than fifty percent of the votes shall be required to approve any matter presented for decision, except where this Agreement shall expressly require a greater proportion of affirmative votes, in which case such greater proportion of affirmative votes shall be necessary for approval.

(i) Action by Members Without a Meeting. Whenever under this Operating Agreement Members are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if Members holding at least two-thirds of the Company Percentage of all Members consent or consents in writing, setting forth the action so taken.

(j) Business Transactions with Members. A Member or Manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, the Company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a Member or Manager.

(k) Other Business Ventures. The Members and Manager may engage in or possess interests in other business ventures of every kind and description for their own account or otherwise including, without limitation, the ownership, management, and operation of property similar to or in competition with property owned by or to be owned by the Company. Neither the Company nor any of the Members shall have any right by virtue of this Agreement in and to such independent business venture or to the profits derived therefrom.

(l) Liability of Members. Except as specifically set forth herein or as provided in the Act, no Member shall be liable for any debts, liabilities, contracts or other obligations of the Company nor shall any Member be required to lend funds to the Company. Except as otherwise specifically required by applicable law, no Member shall be required to make any Contributions to the Company.

(m) Act or Omission Resulting in Personal Liability of Member(s). Neither the Company, its Manager, officers, nor any Member or Members shall take any action or fail to take any action that may result in the personal liability of any Member or Members for any of the debts or obligations of the Company without the advance unanimous written agreement of all of the Members.

### 3.02 Manager.

(a) Management Authority. The Company shall be managed by its Manager. The Manager shall take all action which may be necessary or appropriate for the continuation of the Company's valid existence as a limited liability company under the laws of the State of Delaware and for the maintenance and operation of the business of the Company in accordance with the provisions of this Agreement and applicable laws and regulations. The Manager shall at all times act in good faith and exercise due diligence in all activities relating to the conduct of the business of the Company.

(b) Number of Managers. The Company shall have one Manager. The number of Managers may be amended from time to time only upon the unanimous agreement of the Members.

(c) Appointment of Manager. The Manager shall be Grazziano Zazzara, Jr. The Manager shall hold office until his or her successor has been appointed and qualified, or until his or her prior resignation or removal.

(d) Power and Authority of the Manager. The Manager, subject to the restrictions under this Agreement, shall have the right to manage the day-to-day business of the Company. The Manager shall at all times act in good faith and exercise due diligence in all actions relating to the conduct of the Company's business activities.

(e) Prohibited Actions. Although the Manager shall each have the authority provided in **paragraph 3.02(d)**, he shall not have the authority to engage the Company in the following prohibited actions without majority consent of the Managers:

- (1) change the purposes of the Company;
- (2) determine the need for additional capital;
- (3) determine the Gross Asset Value of property (other than cash) contributed to the Company or distributed to Members by the Company;
- (4) consent to the transfer of an Interest;
- (5) admit a Substituted Member following the permitted transfer of an Interest;

- Member;
- (6) consent to a specific or general release from any liability or obligation of a Member;
  - (7) admit an additional Member;
  - (8) permit the withdrawal of a Member from the Company;
  - (9) liquidate the Interest of a Transferee;
  - (10) dissolve the Company;
  - (11) create reserves for any contingent or unforeseen liabilities of the Company;
  - (12) defer the liquidation of the assets of the Company, or distribute assets in kind;
  - (13) amend this Agreement;
  - (14) sell, exchange, lease, mortgage, pledge or otherwise transfer all or substantially all of assets of the Company, whether in a single transaction or series of transactions;
  - (15) enter into any borrowing, financing or refinancing transaction, whether or not secured by the assets of the Company;
  - (16) confess a judgment against the Company;
  - (17) do any act in contravention of this Agreement; or
  - (18) do any act which would make it impossible to carry on the Company's business activity.

(f) Manager Meetings. Any Manager may call a meeting of Managers at the office of the Company on at least seven days' prior Notice of the date, time and purpose thereof, to consider any business deemed pertinent to the Company. A Manager may waive notice of a meeting.

(g) Liability of Managers. A Manager shall not be liable, responsible or accountable in damages or otherwise to any of the Members or the Company for any act or omission performed or omitted by him in good faith on behalf of the Company and in a manner reasonably believed by him to be within the scope of the authority granted by this Agreement and in the best interests of the Company; provided he was not guilty of gross negligence, willful misconduct or any other breach of his fiduciary duty with respect to such acts or omissions. The Company shall indemnify each Manager for all costs, losses, liabilities and damages paid or accrued by him in connection with the business of the Company, to the fullest extent provided or allowed by the Act. In addition the Company may advance costs to him for defense of any proceeding.

(h) Confirmation of Authority. Each Member agrees that, upon Notice from the Company at any time and from time to time, he shall at no cost or expense to the Company promptly furnish written confirmation of the legal authority of any Person to act on his behalf with respect to any matter, transaction, document or other act relating to or affecting the Company.

(i) Signature by a Manager. The signature of a Manager entered on behalf of the Company, for any transaction authorized by the Company pursuant to the terms of this Agreement, on any document or instrument, shall be sufficient and binding upon the Company as to third parties dealing with the Company, and any third party shall be entitled to rely on such signature as being the action of and binding on the Company.

(j) Formalities. The failure of the Company, the Manager, or the Members to observe any formalities or requirements relating to the exercise of its or their powers or management of its or their business or affairs under this Agreement or the Act shall not be grounds for disregarding the existence of the Company as a limited liability company.

(k) Incapacity. In the event a Manager becomes incapable of continuing his usual and customary services, duties or responsibilities as Manager resulting from bodily injury, disease or mental disorder, any and all rights of the Manager suffering the incapacity to participate in the management of the Company shall immediately terminate and the Members shall appoint a new Manager in accordance with **paragraph 3.03(m)**. In the event that the Manager who is incapacitated is also a Member, the replacement Manager shall be chosen by the Members who are not subject to incapacity. Except as otherwise provided for in this Agreement, the incapacity of a Manager who is also a Member shall not affect his rights as a Member. In the event there is a dispute relating to a Manager's incapacity, the determination of incapacity shall be made as follows. The Members other than the Manager who is purportedly incapacitated (remaining Managers) and the purportedly incapacitated Manager or his representative, if necessary, may agree to have one physician make the determination. If a single physician cannot be agreed upon, then one physician shall be chosen by the remaining Members and another by the purportedly incapacitated Manager or his legal representative. The two physicians so chosen shall then select a third. The opinion of the single physician or, if three physicians are used, the majority opinion, shall be binding and conclusive on all parties. Each Manager agrees to cooperate in any examination necessary to carry out the provisions of this paragraph and waives the doctor-patient privilege with respect to the results of such examination to the extent required to make a determination as to the incapacity of the Manager. The obligation to comply with these provisions is specifically enforceable. The remaining Managers can request that such examination be conducted by providing a written notice to the purportedly incapacitated Manager or Manager's legal representative. Such examination shall be made within thirty days of personal service or within thirty-five days of mailing. Any determination or decision made by such physicians shall be conclusive on all parties to this Agreement.

(l) Vacancies. Vacancies occurring in the position of Manager for any reason shall be filled by majority vote of the Members. A Manager appointed to fill a vacancy shall be elected to

hold office for the unexpired term of his predecessor and until his successor is elected and qualified.

(m) Removal of Managers. Any or all of the Managers may be removed with or without cause at any time by majority vote of the Members.

(n) Resignation. A Manager may resign at any time by giving written notice to the Members of the Company. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof and the acceptance of the resignation shall not be necessary to make it effective.

(o) Tax Returns and Other Elections. The Manager shall, at the expense of the Company, cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. All elections permitted to be made by the Company under federal or state laws shall be made by the Manager.

(p) Standard of Care. A Manager shall perform his duties as a Manager, including his duties as a member of any class of managers, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

3.04 Indemnification of Members and Managers. The Company hereby indemnifies and holds harmless the Members and Managers, and their successors, executors, and administrators against any loss or damage incurred by such individual by reason of acts or omissions in good faith on behalf of the Company and in a manner reasonably believed by the individual to be within the scope of the authority granted to him or her by this Agreement; provided, however, that no indemnification may be made to or on behalf of any Person if a judgment or other final adjudication adverse to such Person establishes:

(a) that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or

(b) that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

**ARTICLE IV**  
**CAPITAL CONTRIBUTIONS; LIMITATION OF**  
**LIABILITY; CAPITAL ACCOUNTS**

4.01 Capital Contributions. The Members have made or shall make as soon after the execution of this Agreement as is reasonably practical, the contributions to the Company set forth at Exhibit A. No interest shall be paid by the Company on any contribution to Company capital.

4.02 Limitation of Liability. Each Member's liability shall be limited as set forth in this Operating Agreement, the Act, and other applicable law. No Member shall be liable for any of the debts, obligations, or losses of the Company and no Member shall have any obligation to make a Capital Contribution except as required by this Operating Agreement and the Act.

4.03 Capital Accounts. A Capital Account shall be maintained for each Member. A Member shall not be entitled to withdraw any part of his Capital Account or to receive any distribution from the Company except as provided in this Agreement.

**ARTICLE V**  
**DISTRIBUTIONS**

5.01 Distributions Other than in the Event of Dissolution and Liquidation.

(a) Distributions of Net Cash Flow and Net Cash Proceeds. Distributions of Net Cash Flow for each Fiscal Year may be made at the discretion of the Manager in the following order and priority:

(1) First, pari passu, to each Member in proportion to the Undistributed Capital balances of each Member, until each Member has received an amount under this paragraph 5.01(a)(i) sufficient to pay each Member the amount of each Member's Undistributed Capital balance; and

(2) Second, to each Member in accordance with the Members' respective Company Percentages.

(b) Limitation on Distributions. Notwithstanding the foregoing, the ability of the Company to make distributions is limited as set forth in Section 18-607 of the Act.

5.02 Distributions in the Event of Dissolution and Liquidation. Upon the dissolution of the Company and liquidation of its assets:

(a) Tax Consequences to Date of Dissolution. The Capital Accounts of the Members shall be adjusted to the date of dissolution to reflect income, gain, loss, or deduction accrued or incurred, as the case may be, from the date of the last accounting to the date of the dissolution. Any gain or loss on disposition of Property in the process of liquidation shall be charged or credited to the Members' Capital Accounts in accordance with the provisions of **paragraph 6.01**. Any property distributed in kind in the liquidation shall be valued and treated as though the Property was sold and the cash proceeds were distributed. The difference between the value of property distributed in kind and its book value shall be treated as a gain or loss on sale of the Property and shall be credited to the Members' Capital Accounts in accordance with the provisions of **paragraph 6.01**.

(b) Distributions in Liquidation. Following the adjustment required by **paragraph 5.02(a)**, the affairs of the Company shall be forthwith wound-up and the proceeds from the liquidation of the Property shall be distributed in the following priority:

(1) First, to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves; and

(2) Second, pari passu, to each Member in proportion to the Undistributed Capital

balances of each Member, until each Member has received an amount under this paragraph 5.01(b)(ii) sufficient to pay each Member the amount of each Member's Undistributed Capital balance; and

(3) Third, to each Member in accordance with the Members' respective Company Percentages.

In connection with any winding up and liquidation, the Accountants shall compile a balance sheet of the Company as of the date of dissolution, and such balance sheet shall be furnished promptly to all Members.

(c) Distributions According to Positive Capital Account Balances.

Notwithstanding anything contained in this Agreement to the contrary, upon liquidation of the Company (or any Member's Interest), liquidating distributions are required in all cases to be made in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the Company taxable year during which such liquidation occurs (other than those made pursuant to this paragraph) by the end of such taxable year (or, if later, within 90 days after the date of such liquidation) in strict compliance with Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

5.03 Tax Advances.

(a) Except as prohibited by the Act, and to the extent, but only to the extent, Net Cash Flow is available therefor, and subject to applicable covenants of the Company to the financial institution or institutions that have provided financing to the Company, the Company may, in the sole discretion of the Manager, advance funds to the Members in amounts equal to their respective Member Tax Liability (as defined below). Each such advance shall be limited to the amount by which each such Member's Member Tax Liability since inception of the Company exceeds the aggregate distributions to such Member since inception, together with the outstanding balance of all Tax Advances to such Member. All such advances shall be treated as an advance (a "Tax Advance") from the Company to be paid and satisfied in full from the respective Member's future distributions pursuant to **paragraph 5.1** prior to any distribution to such Member.

(b) "Member Tax Liability" means, with respect to a Member for a taxable year, an amount equal to that Member's distributive share of the Company's taxable income for that taxable year, as reflected in the tax return of the Company filed with respect to such taxable year, multiplied by the maximum combined effective federal and New York tax rate applicable to an individual resident in New York and deriving solely New York source income (taking into account the deductibility of state taxes for federal income tax purposes and any amounts withheld pursuant to **paragraph 6.3**). As to any taxable year for which the Company's tax returns have not yet been filed, the Member Tax Liability for each Member will be computed based upon the Manager's reasonable estimate of the Company's taxable income for that taxable year.

**ARTICLE VI**  
**INCOME TAX ALLOCATION PROVISIONS**

6.01 Profits and Losses.

(a) Generally. The Profits and Losses of the Company shall be determined for each Fiscal Year in accordance with the accounting method followed by the Company for federal income tax purposes and otherwise in accordance with generally accepted accounting principles applied in a consistent manner. Profits and Losses shall be allocated to the Members on a semi-monthly basis. For this purpose, the Company will utilize the "interim closing of the books" method and the books of the Company will be closed at the close of the 15th day of the month and at the close of the last day of the month. In determining the varying interest of the Members in the Company during the semi-monthly allocation period provided herein, Members entering the Company during the first 15 days of the month shall be deemed to have entered into the Company on the first day of the month and the Members entering the Company after the 15th day of the month (but before the end of the month) will be deemed as entering the Company on the 16th day of the month.

(b) Transferor-Transferee Allocations. As between a Member and his transferee, Profits and Losses for any month shall be apportioned to the person who is the holder of the Interest transferred on the last day of the semi-monthly allocation period provided without regard to the results of the Company's operations during the period before and after such transfer.

(c) Profits. Profits of the Company will be allocated as follows:

(1) First, to the Members until the cumulative Profits allocated to the Members pursuant to this **paragraph 6.01(c)(1)** for the current and all prior Fiscal Years is equal to the cumulative Losses allocated pursuant to **paragraph 6.01(d)(3)** hereof for all prior Fiscal Years in the proportion that such Losses were allocated pursuant to **paragraph 6.01(d)(3)**;

(2) Second, to the Members until the cumulative Profit allocated to the Members pursuant to this **paragraph 6.01(c)(2)** for the current and all prior Fiscal Years is equal to the cumulative Losses allocated pursuant to **paragraph 6.01(d)(2)** hereof for all prior Fiscal Years in the proportion that such Losses were allocated pursuant to **paragraph 6.01(d)(2)**;

(3) Third, to the Members in accordance with their respective Company Percentages.

(d) Losses. Losses of the Company will be allocated as follows:

(1) First, to the Members until the cumulative Losses allocated to the Members pursuant to this **paragraph 6.01(d)(1)** for the current and all prior Fiscal Years is equal to the cumulative Profits allocated pursuant to **paragraph 6.01(c)(3)** hereof for all prior Fiscal Years in the proportion that such Profits were allocated pursuant to **paragraph 6.01(c)(3)**;

(2) Thereafter, to each Member in the ratio that Member's total contribution to the capital of the Company bears to all contributions of all Members to the capital of the Company.

(3) Notwithstanding the foregoing allocations, no allocation of Loss shall be made to a Member that creates (or increases) an Adjusted Capital Account Deficit for that Member. All Losses in excess of such limitation shall be allocated among the Members for whom the allocation of the Losses would not create (or increase) an Adjusted Capital Account Deficit, pro rata according to positive Adjusted Capital Account balances of the Members.

(e) Credits. Unless otherwise required by applicable law, all tax credits shall be allocated among the Members in accordance with Section 1.704-1(b)(4)(ii) of the Regulations.

#### 6.02 Regulatory Allocations.

(a) Qualified Income Offset. In the event any Member (or Transferee of a Member) 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 **paragraph 6.02(a)** shall be made if and only to the extent that such Member (or Transferee of a Member) would have an Adjusted Capital Account Deficit after all other allocations provided for in Article VI have been tentatively made as if this **paragraph 6.02(a)** were not in this Agreement.

(b) Qualified Income Offset - Gross Income Allocation. If, after giving effect to the allocation provisions of Article VI (other than this **paragraph 6.02(b)**) and the distribution provisions of Article VI 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 (1) the amount such Member is obligated to restore and (2) 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) such Member shall be specially allocated items of gross income in the amount of such excess as quickly as possible provided that an allocation pursuant to this **paragraph 6.02(b)** shall be made if and only to the extent such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in Article VI have been tentatively made and as if **paragraph 6.02(a)** and **paragraph 6.02(b)** were not in this Agreement.

(c) Minimum Gain Chargeback - Company Minimum Gain. Except as otherwise provided in Section 1.704-2(f) of the Regulations and notwithstanding any other provision of Article VI, if there is a net decrease in Company Minimum Gain during any Company Fiscal Year, each Member and Transferee of a Member 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 Transferee of a Member 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 **paragraph 6.02(c)** is intended to comply with the minimum gain charge back requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(d) Minimum Gain Chargeback - Member Nonrecourse Debt Minimum Gain. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations and notwithstanding any other provision of Article VI except **paragraph 6.02(b)**, 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 Transferee of a Member 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 **paragraph 6.02(d)** 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.

(e) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Member or Transferee of a Member 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).

(f) Section 734(b) or Section 743(b) Adjustment. 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 Transferee of a Member) in complete liquidation of his Interest, 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.

(g) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year or other period shall be specifically allocated to the Members (or Transferees) in proportion to their respective Company Percentages.

(h) Excess Nonrecourse Liabilities. 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 Profits shall be deemed equal to their Company Percentages.

(i) Curative Allocations. The allocations set forth in **paragraphs 6.02(a), (b), (c), (d), (e), and (f)** (the "Regulatory Allocations") are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations (and any successor provisions thereto). Notwithstanding any other provision of this Article VI, the Regulatory Allocations shall be taken into account in allocating other Profits, Losses and items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other Profits, Losses and other items and the Regulation Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not been made.

(j) Contributed Property.

(1) 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 using the "remedial" method as authorized by Regulation Section 1.704-3(d).

(2) In the event the Gross Asset Value of any asset is adjusted pursuant to the provisions of this Agreement hereof dealing with the definition of Gross Asset Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(3) Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this **paragraph 6.02(j)** are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provisions of this Agreement.

**6.03 Section 754 Election.** Upon the written request of any Member that an election provided for in Section 754 of the Code be made, notice shall promptly be given to all the other Members of such request. Unless written objection to the making of such election is received within 30 days of such notice, the Company shall, if then permitted by applicable law, make such election. All costs and expenses incurred by the Company in connection with the making of such an election shall be borne by the Member(s) requesting the same.

6.04 Capital Account Maintenance. Notwithstanding anything contained in this Agreement to the contrary, the Capital Accounts of the Members shall, in all respects, be maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv), and any optional charges, credits or adjustments to such Capital Accounts of the Members which are provided for in such Regulations, and are otherwise proper under State law and this Agreement, and which are made by the Company shall be made with any and all correlative adjustments to the Capital Accounts of the Members required by Treasury Regulation Section 1.704-1(b)(2)(iv). This provision and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations.

**ARTICLE VII**  
**DISSOLUTION AND WINDING UP**  
**OF THE COMPANY**

7.01 Dissolution and Winding-Up.

(a) Dissolution. The Company is dissolved and its affairs shall be wound up only upon the first to occur of the following:

(1) the sale or other disposition of all or substantially all of the Property of the Company, unless all the Members consent to the election by the Company under Section 1033 of the Code, regarding involuntary conversions;

(2) upon unanimous agreement of the Members;

(3) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(b) Winding-Up. Upon the dissolution of the Company, unless the Company is continued by the vote or written consent of a majority of the Members, the Manager (or, if there are no Managers then remaining, by a person designated by a majority of the Members) shall:

(1) Cause the cancellation of the Articles of Organization;

(2) Subject to the provisions of **paragraph 7.01(c)**, liquidate the Company's assets; and

(3) Apply and distribute the proceeds of such liquidation in accordance with **paragraph 5.02.**

(c) Avoidance of Undue Loss. Notwithstanding the provisions of **paragraph 7.01(b)**, if, on dissolution of the Company, the Manager shall determine that an immediate sale of part or all of the Property would cause undue loss to the Members, the Manager may, in order to avoid such losses, either:

(1) Defer the liquidation of, and withhold from distribution for a reasonable time, any assets of the Company except those necessary to satisfy debts and liabilities of the Company; or

(2) Distribute to the Members, in lieu of cash, undivided interests in any Company assets as tenants in common and liquidate only such assets as are necessary in order to pay the debts and liabilities of the Company.

7.02 No Dissolution by Admission, Transfer of Interest of Dissolution of Member. Neither the admission to the Company of any additional Member nor the transfer of Interest of or event of

dissolution with respect to any Member shall result in the dissolution of the Company or affect the continuance of the Company in any manner whatsoever. If an event of dissolution shall occur with respect to any Member, the successor in interest of the Member shall have the same rights, for the purpose of settling the affairs of the Member and shall be subject to the same limitations, conditions and liabilities as applied to the Member whose Interest the successor is representing; provided, however, that upon the dissolution of a Member, the successor-in-interest to the Member may become a Substituted Member subject to the provisions of Article VIII.

**ARTICLE VIII**  
**WITHDRAWAL AND TRANSFER OF INTERESTS**

8.01 Restriction on Transfer and Withdrawal. Except as otherwise provided in this Article, no Member may sell, pledge, encumber, or otherwise transfer or dispose of or permit to be sold, pledged, encumbered, attached, or otherwise disposed of or transferred in any manner, either voluntarily or by operation of law (all of those events are collectively referred to as "transfer"), all or any portion of his Interest or withdraw from the Company without the approval of the Manager. Any transfer or attempted transfer by a Member in violation of the preceding sentence shall be null and void and of no effect whatever. Each Member hereby acknowledges the reasonableness of the restrictions on transfer imposed by this Agreement 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 permitted assigns) wholly and completely harmless from any cost, liability, or damage (including, without limitation, 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.

8.02 Purchase Rights in the Event of Death, For Cause Event, or Insolvency Event with respect to a Member.

(a) Company's First Purchase Option; Other Members' Second Purchase Option.

(1) In the event of a For Cause Event, death, or Insolvency Event with respect to a Member (the occurrence of which shall hereinafter be referred to as an "Option Event"), the Member with respect to whom an Option Event has occurred ("Affected Member") shall automatically be deemed to have offered to sell the Affected Member's Interest to the Company, at the Purchase Price and upon the terms and described in this **paragraph 8.02**. The Company shall have 30 days from the date of the occurrence of the Option Event during which to accept or reject the offer unless the Option Event is the death of a Member, in which event the Company shall have 30 days from the date of the appointment of the executor, administrator, or personal representative of the Member's estate. In no event shall the Company be entitled to accept the offer with respect to less than all of the Interest so offered. The Company shall communicate its acceptance or rejection to the offering Affected Member in writing, with a copy of such notice delivered to the other Members. If the Company fails to accept or reject the offer within the time period provided herein, it shall be deemed to have rejected the offer. The Affected Member shall have no vote in the Company's determination of whether to accept or reject the offer.

(2) If the Company rejects the offer to sell made by the Affected Member, the Affected Member shall automatically be deemed to have offered the Interest so rejected to the other Members at the Purchase Price and upon the terms and conditions described in this **paragraph 8.02**. The other Members shall have 30 days from the date of rejection (or deemed rejection) by the Company during which to notify the Affected Member of their acceptance or rejection of the offer. In no event shall the other Members be entitled to purchase, in the aggregate, less than all of the Interest so offered. If the other Members shall fail to accept or reject

the offer within the time period set forth herein, the other Members shall be deemed to have rejected the offer. If some, but not all, of the other Members choose to exercise the option described in this paragraph, the Interest of the Affected Member shall be purchased pro rata by those Members who choose to exercise the option based on the ratio of each Member's Company Percentage to the total of the Company Percentages of the exercising Members.

(3) In the event neither the Company nor the other Members purchase the Interest offered for sale, the Affected Member shall continue as a Member of the Company with all of the rights and obligations of a Member hereunder. The first option right and second option right shall be extinguished only with respect to the Option Event that gave rise to those rights under this **paragraph 8.02**, not with respect to any subsequent Option Event.

(4) In all cases, any Interest sold, assigned, transferred or otherwise conveyed pursuant to this paragraph shall continue to be subject to this Agreement and each Transferee shall execute an instrument in form satisfactory to legal counsel for the Company wherein such Transferee expressly agrees to be bound by this Agreement. No Transferee of a Member shall become a Substituted Member in the place of his Assignor without the consent of all of the other Members.

(c) Purchase Price. The Purchase Price of the Interest of an Affected Member shall be the Affected Member's Capital Account adjusted to reflect the fair market value of the Property as of the date of the Option Event. The difference between the fair market value of Property and its book value shall, for purposes of determining the Purchase Price of the Interest, be treated as a gain or loss on sale of the Property and shall be credited to the Member's Capital Accounts in accordance with the provisions of Article VI. The fair market value of the Property shall be determined by the Affected Member and the other Members mutually agreeing on a qualified appraiser whose determination shall conclusively establish the fair market value. In the event they cannot agree, the other Members shall name one qualified appraiser, and the Affected Member shall name one qualified appraiser. The two appraisers shall appoint a third appraiser whose determination shall conclusively establish the fair market value of the Property. If the appraisers cannot agree upon a third appraiser, either the other Members or Affected Member may apply to the appropriate court for the appointment of a third appraiser.

(d) Repayment of Debt and Releases. The closing of the purchase of the Interest of a Affected Member shall be contingent upon:

(1) the repayment in full of all amounts owed by the Company to the Affected Member and/or its Affiliates at or prior to the closing of the purchase of the Interest and

(2) the release, in a form satisfactory to the Affected Member, of the Affected Member and its Affiliates from any liability, direct or indirect, primary or contingent, for any of the obligations or liabilities of the Company.

If the contingency cannot be satisfied within 30 days after the date of the exercise of the purchase

option right by the Company or the other Members, the purchase right shall be extinguished with respect to the Option Event that gave rise to the purchase right.

(e) Closing and Payment Terms. The closing of the purchase of the Interest shall occur within 30 days after exercise of the purchase option right by the Company or the other Members. At the closing, the purchaser shall pay the Purchase Price to the Affected Member and shall provide proof on the satisfaction of the conditions precedent set forth in **paragraph 8.02(d)**.

(f) Transfer Documents. Upon receiving payment of the Purchase Price, the Affected Member shall execute and deliver to the purchaser of the Interest a bill of sale and assignment, assigning and releasing to the purchaser all the right, title and interest of the Affected Member in and to the Affected Member's Interest in the Company and the Property.

8.03 Requirements for Substitution. No transferee of the whole or a portion of a Member's Interest shall have the right to become a Substituted Member in place of his Assignor unless and until all of the following conditions are satisfied:

(a) a duly executed and acknowledged written instrument of transfer approved by the Manager has been filed with the Company setting forth the intention of the transferor that the transferee become a Substituted Member in his place;

(b) the transferor and transferee execute and acknowledge such other instruments as the Manager may reasonably deem necessary or desirable to effect such substitution, including the written acceptance and adoption by the transferee of the provisions of this Agreement;

(c) the approval of the Manager to such substitution shall be obtained; and

(d) a reasonable transfer fee has been paid to the Company sufficient to cover all reasonable expenses connected with the transfer and substitution.

8.04 Rights of Transferees.

(a) A Person who acquires an Interest in compliance with the provisions of this Agreement 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, 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 (and, without limiting the foregoing, shall have no right to appoint a Manager of the Company), shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement (collectively, the "Non-Economic Rights").

(b) In the event of a transfer to a Person who is not admitted as a Substituted Member, the transferring Member shall automatically be deemed to have relinquished all of the Non-Economic Rights associated with the Transferred Interest.

(c) Any Person who is the transferee 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 Article VIII to the same extent and in the same manner as any Member desiring to make an assignment of an Interest.

8.05 Distributions Subsequent to Transfer. Unless otherwise agreed among the transferee, the transferring Member, and the Company, any distributions made by the Company with respect to an Interest after the effective date of the transfer of the Interest shall be made to transferee.

8.06 Vote of Members. In any case under this Agreement in which a vote of the Members is required, the Members, but not their transferees who are not Substituted Members, shall be entitled to vote.

8.07 Specific Enforcement. Each Party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Article VIII are not performed by the Members in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that the Company, Affiliates and the Members shall be entitled to an injunction to prevent breaches of this Operating Agreement and to specific enforcement of its terms and provisions in any action instituted in any court of the United States or any state having subject matter jurisdiction, in addition to any other remedy to which the parties may be entitled at law or in equity. Each of the parties to this Operating Agreement hereby consents to personal jurisdiction in any such action brought in any court of the State of New York having subject matter jurisdiction.

**ARTICLE IX**  
**RECORDS AND ACCOUNTING**

9.01 Books, Records, and Reports.

(a) Availability. At all times during the existence of the Company, the Manager shall keep or cause to be kept full and true books of account in accordance with the accounting method followed by the Company for federal income tax purposes which shall reflect all Company transactions and shall be appropriate and adequate for the Company's business. Such books of account, together with a copy of this Agreement and any amendments thereto and a list of names and addresses of all of the Members shall be available to the Members and the Members shall have the right at any time to inspect and copy from such books and documents during normal business hours upon reasonable notice.

(b) Forms K-1. The Manager shall cause to be prepared and distributed to each Member, within 105 days after the close of each Fiscal Year, all information necessary for the preparation of the Members' federal income tax returns.

(c) Bank Accounts. The Manager shall open and maintain on behalf of the Company a bank account or accounts with depositories as it shall determine, in which all monies received by or on behalf of the Company shall be deposited. All withdrawals from the accounts shall be made upon the signature of the person or persons as the Manager may from time to time designate.

9.02 Accounting.

(a) Accounting Decisions. All decisions as to accounting matters shall be made by the Manager in accordance with the Company's method of accounting applied on a consistent basis. Such decisions must be acceptable to the Accountants.

(b) Taxable Year. The Company's taxable and Fiscal Year shall be the calendar year.

**ARTICLE X**  
**ADDITIONAL MEMBERS**

10.01 Admission of Additional Member. Any Person acceptable to all of the Members may become a Member upon satisfaction of such terms and conditions and the payment of such consideration as the Manager shall determine.

10.02 Requirements for Substitution. No Person shall have the right to become a Member unless and until all of the following conditions are satisfied:

(a) The Person and the Company shall have executed and acknowledged such instruments as the Manager may reasonably deem necessary or desirable to effect such admission, including without limitation the written acceptance and adoption by the transferee of the provisions of this Agreement;

(b) the approval of the Manager to such admission shall have been obtained;

(c) The conditions precedent to the admission, including the payment of consideration, shall have been satisfied.

**ARTICLE XI**  
**MISCELLANEOUS**

11.01 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 deemed to have been delivered, given and received for all purposes

(a) if delivered personally to the Member or to an officer of the Member to whom the same is directed, or

(b) whether or not the same is actually received, if sent by registered or certified mail, postage and charges prepaid, addressed as follows: if to the Company, to the principal office of the Company as set forth in **paragraph 2.05**, 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 as of the date so delivered, if delivered personally, or as of the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

11.02 Severability. Each provision hereof is intended to be severable, and the invalidity or illegality of any provision of this Agreement shall not affect the validity or legality of the remainder hereof.

11.03 Captions. Paragraph captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

11.04 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.

11.05 Binding Agreement. Subject to the restrictions on assignment herein contained, the terms and provisions of this Agreement shall be binding upon, and inure to the benefit of the successors, assigns, personal representatives, estates, heirs, and legatees of the respective Members.

11.06 Applicable Law. Notwithstanding the place where this Agreement may be executed, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of the State and that the Act and other applicable laws of the State as now adopted or as may hereafter amended shall govern interpretation and enforcement of this Agreement.

11.07 Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the matters set forth herein and supersedes any prior understanding or agreement, oral or written, with respect thereto.

11.08 Agreement in Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart.

11.09 Qualification in Other States. In the event the business of the Company is carried on or conducted in states in addition to the State, then the parties agree that this Company shall exist under the laws of each state in which business is actually conducted by the Company, and they severally agree to execute such other and further documents as may be required or requested in order that the Manager legally may qualify this Company in such states. A Company office or principal place of business in any state may be designated from time to time by the Manager.

11.10 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.

11.11 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.

11.12 Further Action. Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents which may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

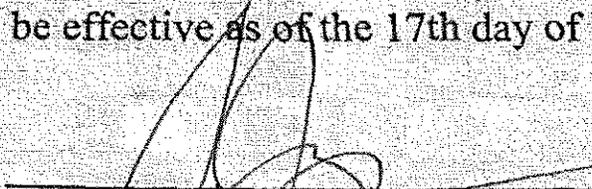
11.13 No Implied Waivers. The failure of a party to require performance by any other party of any provision hereof shall not affect the right to require such performance at any time thereafter. The waiver by any party of a breach of any provision hereof shall not be a waiver of the provision itself or a waiver of any breach thereafter or any other provision hereof, nor shall such waiver give rise to any claim, defense, offset, or counterclaim of any kind.

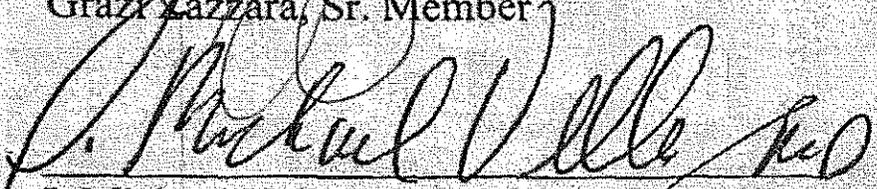
11.14 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Member shall not preclude or waive the right to use any or all other remedies. Unless otherwise provided in this Agreement, the rights and remedies set forth in this Agreement are in addition to any other rights the Members may have under applicable law.

11.15 No Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, shall give to any Person, other than the parties hereto and their successors hereunder (if any) and permitted assigns, any benefit or any legal or equitable right, remedy or claim under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Operating Agreement has been executed by t  
be effective as of the 17th day of March, 2016.

  
\_\_\_\_\_  
Grazi Zazzara, Sr. Member

  
\_\_\_\_\_  
I. Michael Vella, M.D., Member

  
\_\_\_\_\_  
Grazi Zazzara, Jr., Member and Manager

2710365\_2

**EXHIBIT A**

<u>Member Name and Address</u>	<u>Capital Contribution</u>	<u>Company Percentage</u>
Graziano Zazzara, Jr. The Icon Companies 250 S Clinton St Syracuse, NY 13202 Telephone: (315) 299-6292	\$75,000.00	24%
Graziano Zazzara, Sr. 5030 Bridle Path Road Fayetteville, New York 13066 Telephone (315) 729-7357 Fax (315) 729-7357	\$330,000.00	38%
I. Michael Vella 4919 East Lake Road, Cazenovia, NY 13035 Telephone (315) 391-3774	\$330,000 .00	38%
Total	\$735,000 .00	100%

**SCHEDULE B**

**LAND**

**EXHIBIT "C"**  
**GOOD STANDING CERTIFICATES**

**State of New York**  
**Department of State** } **ss:**

I hereby certify, that 444 EAST GENESEE STREET LLC a DELAWARE Limited Liability Company filed an Application for Authority pursuant to the Limited Liability Company Law on 05/20/2016. 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:

A Certificate of Publication of 444 EAST GENESEE STREET LLC was filed on 08/01/2016.

The Biennial Statement is past due.

I further certify, that no other documents have been filed by such Limited Liability Company.



\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 03rd day of May  
two thousand and twenty-one.*

*Brendan C. Hughes*

Brendan C. Hughes  
Executive Deputy Secretary of State

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "444 EAST GENESEE STREET 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 FOURTH DAY OF MAY, A.D. 2021.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "444 EAST GENESEE STREET LLC" WAS FORMED ON THE SEVENTEENTH DAY OF MARCH, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



5991684 8300

SR# 20211587861

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBULLOCK", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 203124200

Date: 05-04-21

**EXHIBIT "D"**  
**RESOLUTION**

**UNANIMOUS WRITTEN CONSENT  
OF THE MANAGER AND MEMBERS  
of  
444 EAST GENESEE STREET LLC**

The undersigned, being the manager and all of the members of 444 East Genesee Street LLC, a limited liability company duly organized in the State of Delaware and validly existing under the laws of the State of New York (the "Company"), do hereby consent to the adoption of the following resolutions, such action to have the same force and effect as if taken at a meeting duly called and held for that purpose:

WHEREAS, Graziano Zazzara, Sr., Graziano Zazzara, Jr. and I. Michael Vella are the only members of the Company (the "Members" or "Guarantors"), and Graziano Zazzara, Jr. is the sole manager of the Company (the "Manager");

WHEREAS, the Company previously acquired a fee simple interest in and to certain improved real property located at 444 East Genesee Street, Syracuse, County of Onondaga and State of New York consisting of approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building (the "Property");

WHEREAS, the Company will rehabilitate and develop the Property in a manner which shall include the reconstruction and renovation of approximately 25,424 sq. ft. of the building on the Property for mixed-use including: installation of a new glass and metal panel façade; renovation of approximately 7,400 sq. ft. on each of the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; renovation of approximately 3,224 sq. ft. on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and the creation of approximately 8 on-site parking spaces (the "Project"); and

WHEREAS, Community Preservation Corporation has issued a commitment letter dated April 1, 2021 (the "CPC Loan Commitment") whereby CPC Funding SPE 1 LLC ("CPC"), and New York State Housing Finance Agency ("HFA") as co-lender, have agreed to make to the Company a certain construction loan in the aggregate principal amount of \$3,976,464.00 (with CPC participating in the amount of \$2,110,000.00 and HFA participating in the amount of \$1,866,464.00) (collectively the "Loan") upon such terms and conditions of, and secured by, among other things, a first priority mortgage lien on the Property, which Loan shall be advanced to the Company in accordance with a CPC and HFA loan agreement and otherwise secured by other collateral and repaid by the Company to CPC and HFA in accordance with such other terms and conditions as are more fully set forth within the Commitment; and

NOW, THEREFORE, IT IS RESOLVED, that the Company is hereby authorized and Manager is empowered to (i) execute and enter into the CPC Loan Commitment with and receive the Loan from CPC and HFA; (ii) execute and deliver to CPC and HFA any and all other documents relating to the Loan for the Project, including but not limited to a mortgage lien on the Property and to secure the Loan with such other property of the Company; and (iii) execute such other documents or instruments as CPC and HFA shall deem necessary and advisable to carry out

the intents and purposes of the CPC Loan Commitment, which documents may contain such terms provisions, conditions, stipulations and agreements as the Manager executing the same may deem proper and advisable and the Manager is hereby authorized to act on behalf of the Company and to execute and deliver such documents to CPC and HFA, as the case may be; and it is

FURTHER RESOLVED, that the Manager is hereby authorized by the Company and empowered to take any and all other actions and execute and deliver such other agreements, instruments and documents as the Manager deems necessary or desirable to carry out the intent of the foregoing resolutions; and it is

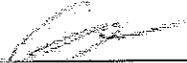
FURTHER RESOLVED, that all action taken and all instruments executed by the Manager prior to the adoption of these resolutions with respect to the development of the Project, the CPC Commitment or the Loan, and all matters related thereto, are hereby ratified by the Company, approved and confirmed as actions of the Company; and it is

FURTHER RESOLVED, that this consent may be executed in any number of counterparts, each of which counterpart shall constitute an original instrument, and all of which, when taken together, shall constitute one and the same instrument.

Balance of this page has intentionally been left blank.  
Signatures are on the following page.

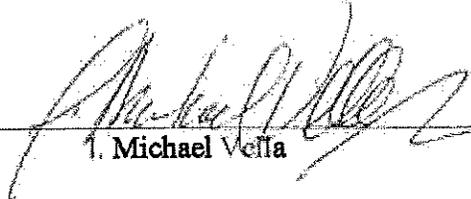
IN WITNESS WHEREOF, the undersigned have executed this instrument as of June 2 2021.

**444 East Genesee Street, LLC**  
A New York limited liability company

By:   
Name: Graziano Zazzara, Jr.  
Title: Manager

  
\_\_\_\_\_  
Graziano Zazzara, Sr.

  
\_\_\_\_\_  
Graziano Zazzara, Jr.

  
\_\_\_\_\_  
Michael Vella

**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**

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

**Local Access Agreement**

444 East Genesee Street 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.

<b>Company</b>	444 East Genesee Street LLC				<b>General Contractor</b>	Stone Hammer Construction					
<b>Representative for Contract Bids and Awards</b>	Graziano Zazzara Jr.				<b>Contact</b>	Christopher Doran					
<b>Address</b>	344 S. Warren St., 2 <sup>nd</sup> Fl.				<b>Address</b>	6171 Airport Road					
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13209
<b>Phone</b>	315.299.6292		<b>Fax</b>			<b>Phone</b>	315.857.7619		<b>Fax</b>		
<b>Email</b>	gzazzara@theiconcompanies.com				<b>Email</b>	chris@stonehammerhomes.com					
<b>Project Address</b>	444 E. Genesee Street				<b>Construction Start Date</b>	5-1-2021					
<b>City</b>	Syracuse	ST	NY	<b>Zip</b>	13202	<b>Occupancy Date</b>	1Q 2022				

Project Components – Indicate those for which bids will be sought:

Item	Estimated Value	Bid Date	Contact
Site work/Demolition	\$150,265	2/17/21	Chris Doran
Foundation and footings	\$73,590	2/17/21	Chris Doran
Building	\$337,000	2/17/21	Chris Doran
Masonry	\$18,000	2/17/21	Chris Doran
Metals	\$51,270	2/17/21	Chris Doran
Wood/casework	\$140,480	2/17/21	Chris Doran
Thermal/moisture proof	\$0		
Doors, windows, glazing ***	\$349,252	2/17/21	Chris Doran
Finishes	\$682,165	2/17/21	Chris Doran
Electrical	\$319,000	2/17/21	Chris Doran
HVAC	\$300,000	2/17/21	Chris Doran
Plumbing	\$265,500	2/17/21	Chris Doran
Specialties	\$107,624	2/17/21	Chris Doran
Machinery & Equipment	\$103,545	2/17/21	Chris Doran
Furniture and Fixtures	\$0		
Utilities	\$0		
Paving	\$14,680	2/17/21	Chris Doran
Landscaping	\$0		
Other (identify)	\$64,780 sprinkler	2/17/21	Chris Doran

Date: 5/10/21

Company: 444 East Genesee Street LLC

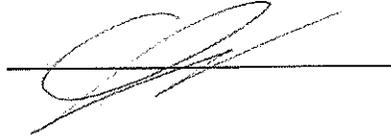
\*\*\* - on April 27, 2021 SIDA provided a waiver of its local access policy with respect to one subcontractor, being Ajay Glass, in the amount of \$562,000 to provide for exterior metal paneling and glazing installation

City of Syracuse

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Industrial Development Agency

Signature:



Name: Graziano Zazzara Jr.



**CLOSING AFFIDAVIT**  
*of*  
**444 EAST GENESEE STREET LLC**

I, **GRAZIANO ZAZZARA, JR.**, as the Manager of 444 East Genesee Street LLC ("Company"), being duly sworn, depose and say as follows:

1. Attached hereto as **Exhibit A** is a true and correct copy of the Certificate of Formation of 444 East Genesee Street LLC filed on the 17<sup>th</sup> day of March 2016 with the Delaware Secretary of State, and a copy of the receipt evidencing payment of the required filing fee.
2. Attached hereto as **Exhibit B** is a true and correct copy of the Application for Authority of 444 East Genesee Street LLC to conduct business in New York State filed on the 23<sup>rd</sup> day of May 2016 with the New York Secretary of State, and a copy of the receipt evidencing payment of the required filing fee.
3. Attached hereto as **Exhibit C** is a true and correct copy of the Operating Agreement of 444 East Genesee Street LLC. The Operating Agreement has not been repealed and remains in full force and effect on the date hereof. I confirm that the signature page attached to the Operating Agreement is the only and official signature page to same and there are no other members or third parties with any interest as a member or economic interest holder in the Company.
4. 444 East Genesee Street LLC is managed by one manager, to wit: Graziano Zazzara, Jr.
5. Pursuant to the Articles of Organization, and the Operating Agreement, and the Resolution of the Company, a copy of which is attached as **Exhibit D**, Graziano Zazzara, Jr. is authorized and empowered to execute documents for the Company for Construction and Permanent Mortgage Loans, and construction period and permanent period Project Loan, to encumber property known as 444 East Genesee Street, City of Syracuse, County of Onondaga and State of New York made by CPC Funding SPE I LLC ("CPC") with a participation interest by New York State Housing Finance Agency ("HFA") in the total aggregate amount of Three Million Nine Hundred Seventy Six Thousand Four Hundred Sixty Four and 00/100 Dollars (\$3,976,464.00) together with the execution of such additional and customary documents as may be reasonably required by CPC, HFA, or the title company.
6. Graziano Zazzara, Jr. as Manager is further authorized and empowered by the Resolution of the Company, a copy of which is attached as **Exhibit E**, to execute documents for the Company for economic benefits and incentives from Syracuse Industrial Development Agency ("SIDA") as set forth in the aforementioned Resolution.
7. 444 East Genesee Street LLC has not been dissolved and no event terminating the Company such as the bankruptcy, death, dissolution, expulsion or incapacity of any member has occurred. The Company is in good standing under the laws of the State of New York as shown in Certificate of Good Standing attached hereto as **Exhibit E**.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, I have hereunto set my hand this 26<sup>th</sup> day of May, 2021.

**444 EAST GENESEE STREET LLC**

  
By: **Graziano Zazzara, Jr.**  
Its: **Manager**

Sworn and subscribed to before me this  
26<sup>th</sup> day of May, 2021

  
Notary Public

**MICHAEL STANCZYK**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
Registration No. 02ST6220670  
Qualified in Onondaga County  
Commission Expires April 19, 20 22

**EXHIBIT A**  
**(Certificate of Formation)**

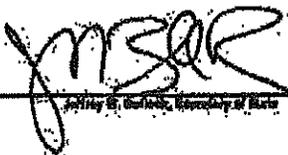
# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, 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 "444 EAST GENESEE STREET LLC", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF MARCH, A.D. 2016, AT 4:53 O'CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

5991684 8100  
SR# 20161716326

Authentication: 202003269  
Date: 03-17-16

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 04:53 PM 03/17/2016  
FILED 04:53 PM 03/17/2016  
SR 20161716326 - ELS Number 5991684

**CERTIFICATE OF FORMATION**  
**OF**  
**444 EAST GENESEE STREET LLC**

Pursuant to Section 18-201 of the Delaware Limited Liability Company Act

**FIRST:** The name of the Limited Liability Company is 444 East Genesee Street LLC (the "LLC").

**SECOND:** The address of its registered agent in the State of Delaware is 850 New Burton Road, Suite 201, Dover, Delaware 19904, County of Kent. The name of its Registered Agent at such address is National Corporate Research, Ltd.

**THIRD:** Pursuant to Section 18-302 of the Delaware Limited Liability Company Act, the LLC may, in the manner provided for in the Operating Agreement of the LLC, create additional classes of members having such relative rights, powers, preferences and limitations as may from time to time be established pursuant to the Operating Agreement. The LLC shall initially have only one class of members.

**FOURTH:** The LLC shall be managed by one or more managers. Pursuant to Section 18-404 of the Delaware Limited Liability Company Act, the LLC may, in the manner provided for in the Operating Agreement of the LLC, create additional classes of managers having such relative rights, powers, preferences and limitations as may from time to time be established pursuant to the Operating Agreement. The LLC shall initially have only one class of managers.

  
\_\_\_\_\_  
Graziano Zazzara, Organizer

**Exhibit B**  
**(Application for Authority)**

CERTIFICATE OF AUTHORITY UNDER SEC. 805 OF THE LIMITED LIABILITY COMPANY LAW

ENTITY NAME: 444 EAST GENESEE STREET LLC

DOCUMENT TYPE: APPLICATION FOR AUTHORITY (FOR LLC)

COUNTY: ONON

FILED:05/20/2016 DURATION:\*\*\*\*\* CASH#:160520000167 FILM #:160520000162  
DOS ID:4950311

FILER:

MARJORIE PEPE, BOSQUET  
HOLSTEIN PLLC  
110 W FAYETTE ST STE 900  
SYRACUSE, NY 13202

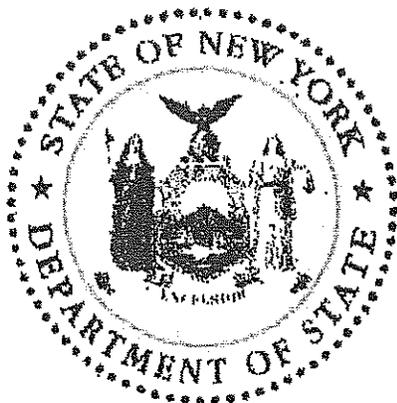
EXIST DATE

05/20/2016

ADDRESS FOR PROCESS:

THE LLC  
250 S CLINTON ST SUITE 201  
SYRACUSE, NY 13202

REGISTERED AGENT:



The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

SERVICE COMPANY: ALBANY CORPORATE RESEARCH LTD. - 41

SERVICE CODE: 41

FEEs 285.00

FILING 250.00

TAX 0.00

CERT 0.00

COPIES 10.00

HANDLING 25.00

PAYMENTS 285.00

CASH 0.00

CHECK 0.00

CHARGE 0.00

DRAWDOWN 285.00

OPAL 0.00

REFUND 0.00

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 23, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

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New York State  
Department of State  
Division of Corporations, State Records  
and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Ave.  
Albany, NY 12231  
www.dos.ny.gov

**APPLICATION FOR AUTHORITY  
OF**

**444 EAST GENESEE STREET LLC**

*(Insert name of Foreign Limited Liability Company)*

Under Section 862 of the Limited Liability Company Law

**FIRST:** The name of the limited liability company is:

**444 EAST GENESEE STREET LLC**

If the name does not contain the required words or abbreviation pursuant to Section 204 of the Limited Liability Company Law, the following words or abbreviation is added to the name for use in this state:

(Do not complete this section unless the limited liability company's true name is not available pursuant to §204 of the Limited Liability Company Law.) The fictitious name under which the limited liability company will do business in New York is:

*(The fictitious name must contain the words "Limited Liability Company" or abbreviation "LLC" or "L.L.C.")*

**SECOND:** The jurisdiction of organization of the limited liability company is: \_\_\_\_\_

Delaware. The date of its organization is: 03/17/2016

**THIRD:** The county within New York state in which the office, or if more than one office, the principal office of the limited liability company is to be located is: Onondaga

**FOURTH:** The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the Secretary of State shall mail a copy of any process served against him or her is:

260 S. Clinton St, Suite 201  
Syracuse, NY 13202

**FIFTH:** (Check and complete the statement that applies)

The address of the office required to be maintained in the jurisdiction of its formation is:

NATIONAL CORPORATE RESEARCH, LTD.  
850 New Burton Road, Suite 201  
Dover, DE 19904

If no office is required to be maintained in the jurisdiction of its formation, the address of the principal office of the limited liability company is:

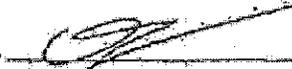
**SIXTH:** The foreign limited liability company is in existence in its jurisdiction of formation at the time of filing of this application.

**SEVENTH:** The name of the authorized officer in its jurisdiction of its formation whose a copy of its articles of organization is filed is (e.g. "Secretary of State"):

Jeffrey W. Bullock, Secretary of State

The address for such officer is:

491 Federal Street  
Dover, DE 19901

X   
(Signature)

Graziano Zazzara JR

(Type or print name)

Capacity of officer (Check appropriate box):

- Member  
 Manager  
 Authorized Person

Please Note: A certificate of existence or, if no such certificate is issued by the jurisdiction of formation, a certified copy of the articles of organization of the limited liability company; and all subsequent amendments thereto, or if no articles of organization have been filed, a certified copy of the certificate filed as its organizational base and all amendments thereto, must be attached to the application for authority when submitted for filing. If such certificate or certified copy is in a foreign language, a translation in English under oath of the translator shall be attached.

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "444 EAST GENESEE STREET 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 NINETEENTH DAY OF MAY, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "444 EAST GENESEE STREET LLC" WAS FORMED ON THE SEVENTEENTH DAY OF MARCH, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL FRANCHISE TAXES HAVE BEEN ASSESSED TO DATE.



5991684 8300

SR# 20163437030

You may verify this certificate online at [corp.delaware.gov/authwar.shtml](http://corp.delaware.gov/authwar.shtml)

A handwritten signature in black ink, appearing to read "JWB", written over a horizontal line.

Authentication: 202348558

Date: 05-19-16

162

AGR-41

APPLICATION FOR AUTHORITY  
OF

444 EAST GENESEE STREET LLC

*(Insert name of Foreign Limited Liability Company)*

*Under Section 802 of the Limited Liability Company Law*

DRAWDOWN

Filed by: Marjorie Papa, Bouquet Holstein PLLC  
*(Name)*  
110 W Fayette St, Ste 800  
*(Mailing address)*  
Syracuse, NY 13202  
*(City, State and Zip code)*

NOTE: This form was prepared by the New York State Department of State for filing an application for authority for a foreign limited liability company to conduct business in New York State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal supply stores. The Department of State recommends that legal documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$250 filing fee made payable to the Department of State.

FILED

2016 MAY 20 AM 11:20  
*(For office use only)*

ice  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED MAY 20 2016  
TAXS  
BY: MB

RECEIVED  
2016 MAY 19 PM 4:04

**EXHIBIT C**  
**(Operating Agreement)**

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**444 EAST GENESEE STREET LLC**

**a Delaware Limited Liability Company**

**Effective as of March 17, 2016**

This OPERATING AGREEMENT, effective as of March 17, 2016 is made by and between the Persons listed on the attached Exhibit A, collectively referred to herein as the "Members".

WHEREAS, the Members have, by the filing of Certificate of Formation on March 17, 2016, formed a limited liability company under the name of 444 East Genesee Street LLC (hereinafter the "Company") to conduct lawful business activities pursuant to the laws of the State of Delaware, under the terms and conditions set forth in this Operating Agreement;

WHEREAS, the Members, by execution of this Operating Agreement, intend that this Operating Agreement be the agreement controlling their relationship, superseding and rendering all prior oral or written agreements null and void.

NOW, THEREFORE, in consideration of the covenants and agreements made herein, the Members hereby agree:

**ARTICLE I**  
**DEFINITIONS**

Throughout this Agreement, including the Exhibits, the following capitalized words shall, unless the context clearly otherwise requires, have the following meanings:

1.01 **General Definitions.**

(a) "Act" shall mean the Delaware Limited Liability Company Act, 6 Del. C. Sec. 18-101, et seq. (as amended from time to time).

(b) "Affiliate" of, or a Person affiliated with, a specified Person means a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For the purposes of this definition, the term control (including the terms controlled by and under common control with) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of securities, by contract or otherwise.

(c) "Agreement" shall mean this agreement, as originally executed and as amended from time to time, as the context requires.

(d) "Certificate of Formation" means the Certificate of Formation of the Company as filed with the Secretary of State of Delaware, as the same may be amended from time to time.

(e) "Company" shall mean 444 East Genesee Street LLC, the Company subject to this Agreement.

(f) "Fiscal Year" means the Company's fiscal year, which shall be the calendar year.

(g) "Interest" shall mean the ownership interest of a Member in the Company, including the rights and obligations of such Member under this Agreement.

(h) "Manager" shall mean a Manager of the Company duly appointed or elected as set forth in this Agreement.

(i) "Member" means a Person who has been admitted as a member of the Company in accordance with the terms and provisions of the Act and this Agreement and has an Interest in the Company with the rights, obligations, preferences and limitations specified under this Agreement. Reference to a "Member" shall be to any of the Members.

(k) "Person" means any association, corporation, joint stock company, estate, general partnership (including any registered limited liability partnership or foreign limited liability partnership), limited association, company (including a professional service company), foreign company (including a foreign professional service company), joint venture, limited partnership,

natural person, real estate investment trust, business trust or other trust, custodian, nominee or any other individual or entity in its own or any representative capacity.

(l) "Property" shall mean all property, real, personal, tangible or intangible, acquired by the Company or contributed to the capital of the Company, and any other property, real, personal, tangible or intangible, which the Company may acquire by any lawful means.

(m) "State" shall mean the State of Delaware.

#### 1.02 Definitions Relating to Buy/Sell Provisions.

(a) "For Cause Event" shall mean the Member's

- (1) intentional violation of the Company's policies;
- (2) willful, reckless or gross misconduct;
- (3) conviction of a felony or crime involving dishonesty or moral turpitude; or
- (4) breach of the duty of loyalty or any other fiduciary duty under law.

The following Actions by a Member shall constitute For Cause Events if, after notice from one or more of the other Members and a reasonable time (not to exceed thirty (30) days) in which to cure said violation, the Member persists in the

(1) breach of any provision hereof or intentional violation of any other duty or obligation to the Company;

(2) grossly negligent performance of any duties on behalf of the Company; or

(3) refusal to perform Member's duties or the direction given by the Company or its Manager provided such direction is reasonably consistent with Member's duties;

(b) "Insolvency Event" means

(i) a general assignment by a Member for the benefit of creditors;

(ii) the appointment of a receiver, trustee or custodian for all or any substantial part of the property and assets of a Member;

(iii) the entry of an order for relief under Title XI of the United States Code, as amended from time to time, against any of the Members, or any other judgment or decree entered against any Member by any court of competent jurisdiction (which order, judgment or decree continues unstayed and in effect for a period of sixty (60) consecutive days) in any involuntary

proceeding against any Member under present or future federal bankruptcy laws or under any other applicable bankruptcy, insolvency or other laws respecting debtor's rights; or

(iv) the commencement by any Member of any voluntary proceeding under present or future federal bankruptcy laws or under any other applicable bankruptcy, insolvency or other laws respecting debtor's rights.

(c) "Transferee" means an individual or entity which takes or receives an Interest by purchase, assignment, gift or succession.

### 1.03 Definitions relating to Economic and Tax Matters

(a) "Accountants" shall mean such firm of certified public accountants that may be engaged for the Company by the Manager.

(b) "Adjusted Capital Account Deficit" means with respect to any Member or Transferee of a Member, 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:

(1) 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

(2) 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."

(c) "Capital Account" means with respect to any Member or Transferee of a Member, the Capital Account maintained for such Person in accordance with the following provisions:

(1) 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 **paragraph 6.02**, 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.

(2) 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 **paragraph 6.02**, 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.

(3) 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.

(4) In determining the amount of any liability for purposes of paragraphs 1.03(c)(1) and (2) above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The forgoing 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 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 may make such modifications, provided it is not likely to have a material effect on the amounts distributed to any Member or Transferee of a Member pursuant to Article VII of the Agreement upon the dissolution of the Company. The Manager also shall make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and Transferees of Members 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 make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulation Section 1.704-1(b).

(d) "Capital Contribution" means, with respect to any Member or Transferee of a Member, 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 Transferee of a Member. The initial Capital Contribution of each of the initial Members is set forth at Exhibit A hereto together with the initial gross fair market value of any Property contributed to the Company that is not cash or a cash equivalent.

(e) "Code" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of future laws.

(f) "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.

(g) "Company Percentage" shall be the respective Company Percentages of the Members as set forth in Exhibit A of this Agreement.

(h) "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 Manager.

(i) "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(1) 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;

(2) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times:

(A) 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;

(B) the distribution by the Company to a Member or Transferee of more than a de minimis amount of assets as consideration for an Interest in the Company; and

(C) 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 (A) and (B) above shall be made only if the Manager reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic Interests of the Members and Transferees of Members in the Company;

(3) The Gross Asset Value of any Company asset distributed to any Member or Transferee of a Member shall be the gross fair market value of such asset on the date of distribution; and

(4) 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 paragraph 6.02(g); provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph 1.03(i)(4) to the extent the Manager determine that an adjustment pursuant to paragraph 1.03(i)(2) is necessary or appropriate in connection with a transaction that would

otherwise result in an adjustment pursuant to this paragraph 1.03(i)(4). If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraphs 1.03(i)(1), (2), or (4) 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.

(j) "Improvements" means certain improvements consisting of, without limitation, a residential and commercial building, together with all appurtenances and tenant improvements now or hereafter located on the Land.

(k) "Land" means the real estate described in Schedule B.

(l) "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.

(m) "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.

(n) "Member Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

(o) "Net Cash Flow" shall mean for each Fiscal Year all cash funds of the Company received from operations, less the sum of

- (1) current charges and expenses,
- (2) debt service payments with respect to any Company loan,
- (3) expenditures for acquisition of Property not financed through capital contributions, borrowing, or reserves previously set aside by the Company for those purposes, and
- (4) payments to reserves or reserves established by the Manager.

Net Cash Flow shall not include Net Cash Proceeds.

(p) "Net Cash Proceeds" shall mean the cash proceeds to the Company resulting from any loan secured by the Property or from the sale, exchange, condemnation or similar eminent domain taking, casualty, or other disposition of all or substantially all of the Property, or from the sale of interests in the Property or any other similar items which in accordance with generally accepted accounting principles are attributable to capital, after payment of or provision for debts and obligations, repairs and replacements, deduction of all expenses incurred in connection with

the cash proceeds and satisfaction of liens pertaining thereto.

(q) "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.

(r) "Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

(s) "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:

(1) 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 paragraph shall be added to such taxable income or loss;

(2) 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 paragraph shall be subtracted from such taxable income or loss;

(3) In the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraphs 1.03(i)(2) or (3) 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.

(4) 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;

(5) 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

(6) Notwithstanding any other provision of this paragraph, any items which are specially allocated pursuant to paragraph 6.02 shall not be taken into account in computing Profits or Losses pursuant to this paragraph.

(t) "Real Property" means the Land and Improvements.

(u) "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).

(v) "Undistributed Capital" for each Member means the aggregate Capital Contributions of such Member less the aggregate distributions to such Member under paragraph 5.02(a)(i).

**ARTICLE II**  
**FORMATION; PURPOSE; TERM; OFFICE OF COMPANY**

2.01 **Certificate of Formation.** The Certificate of Formation of the Company was filed with the Office of the Delaware Secretary of State on March 17, 2016.

2.02 **Acts Required for Formation; Costs.** The Manager caused or shall cause to be done all such filing, recording, publishing, or other acts as may be necessary or appropriate from time to time to comply with the requirements of law for the formation and operation of a limited liability company in the State and any such requirements in any other jurisdiction in which the Company may do business. All costs incurred in connection with the foregoing, including, without limitation, legal fees in connection therewith, shall be expenses of the Company and shall be reimbursed promptly by the Company upon the completion of such action if paid by the Manager.

2.03 **Purpose.** The purpose of the Company is to engage in any activity for which limited liability companies may be organized in the State of Delaware. The Company shall possess and may exercise all of the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company. Without limiting the foregoing, the principal purpose of the Company shall be to acquire, own, hold, lease, operate, manage, maintain, develop and improve, the Real Property.

2.04 **Term.** The term of the Company commenced as of the date of the filing of the Certificate of Formation and shall continue until dissolved or terminated as provided in paragraph 7.01 of this Agreement.

2.05 **Principal Office.** The principal office of the Company shall be at c/o The Icon Companies, 250 South Clinton Street, Syracuse, NY 13202, but the Manager, at its sole discretion, may change the principal office of the Company and/or select another or additional places of business from time to time.

**ARTICLE III**  
**MEMBERS; MANAGERS**

3.01 Members.

(a) Place of Meetings. Meetings of Members shall be held at the principal office of the Company or at any other place within or without the State as the Manager shall authorize.

(b) Meetings. Meetings of the Members may be called by the Manager or at the request, in writing, of Members representing majority of the Company Percentages of the Members. The request shall state the purpose or purposes of the proposed meeting. Business transacted at a meeting shall be confined to the purposes stated in the notice.

(c) Fixing Record Date. For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or to express consent to or dissent from any proposal without a meeting, the Manager shall fix, in advance, a date as the record date for any determination of Members. The date shall not be more than fifty or less than ten days before the date of the meeting, nor more than fifty days prior to any other action.

(d) Notice of Meetings of Members. Written notice of each meeting of Members shall state the purpose or purposes for which the meeting is called, the place, date and hour of the meeting and shall indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice shall be given either personally or by mail to each Member entitled to vote at the meeting, not less than ten or more than fifty days before the date of the meeting. If mailed, the notice is given when deposited in the United State mail, with postage thereon prepaid, directed to the Member at its address as it appears on the record of Member, or, if it shall have filed with the Secretary a written request that notices to him be mailed to some other address, then directed to him at such other address.

(e) Waivers. Notice of meeting need not be given to any Member who signs a waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of the meeting, shall constitute a waiver of notice by him.

(f) Quorum of Members. The presence of Members (by person or Proxy) possessing greater than fifty percent of the total Company Percentages held by all of the Members shall be required to constitute a quorum at any meeting of the Members where a vote is to be taken, except in any case where this Agreement shall expressly require the unanimous agreement of all Members, in which case the presence of all Members (in person or by written delegation of authority to vote) shall be required for a quorum. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any Members. The Members present may conduct business or adjourn the meeting despite the absence of a quorum.

(g) Proxies. Any Member may authorize, by execution of a Proxy, any other Member

to vote at a meeting of the Company on behalf of such authorizing Member by Proxy which shall be duly signed by the authorizing Member containing such restrictions and instruction regarding such authority to vote (and the period of time for which such Proxy shall be valid but if no period is specified such Proxy shall be valid for one year after the date of the Proxy, or if it be undated then one year after the date of receipt by the Company) as the authorizing Member shall determine, provided however that such Proxy shall not be effective unless and until an executed copy thereof be duly filed with the Company. If any such Proxy is so given, the authorizing Member shall be deemed to be present at any meeting of Members if the Member so authorized to vote is personally present at such meeting.

(h) Qualification and Vote. Each Member authorized to vote shall be entitled to cast one vote for every percentage point (and a fractional vote for each fractional part thereof) in such Member's Company Percentage in effect as of the record date fixed under paragraph 1.03(c), it being the intent of the Members that the number of votes a Member is entitled to cast shall be directly proportional to such Member's Company Percentage. The affirmative vote of greater than fifty percent of the votes shall be required to approve any matter presented for decision, except where this Agreement shall expressly require a greater proportion of affirmative votes, in which case such greater proportion of affirmative votes shall be necessary for approval.

(i) Action by Members Without a Meeting. Whenever under this Operating Agreement Members are required or permitted to take any action by vote, such action may be taken without a meeting, without prior notice and without a vote, if Members holding at least two-thirds of the Company Percentage of all Members consent or consents in writing, setting forth the action so taken.

(j) Business Transactions with Members. A Member or Manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, the Company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a Member or Manager.

(k) Other Business Ventures. The Members and Manager may engage in or possess interests in other business ventures of every kind and description for their own account or otherwise including, without limitation, the ownership, management, and operation of property similar to or in competition with property owned by or to be owned by the Company. Neither the Company nor any of the Members shall have any right by virtue of this Agreement in and to such independent business venture or to the profits derived therefrom.

(l) Liability of Members. Except as specifically set forth herein or as provided in the Act, no Member shall be liable for any debts, liabilities, contracts or other obligations of the Company nor shall any Member be required to lend funds to the Company. Except as otherwise specifically required by applicable law, no Member shall be required to make any Contributions to the Company.

(m) Act or Omission Resulting in Personal Liability of Member(s). Neither the Company, its Manager, officers, nor any Member or Members shall take any action or fail to take any action that may result in the personal liability of any Member or Members for any of the debts or obligations of the Company without the advance unanimous written agreement of all of the Members.

### 3.02 Manager.

(a) Management Authority. The Company shall be managed by its Manager. The Manager shall take all action which may be necessary or appropriate for the continuation of the Company's valid existence as a limited liability company under the laws of the State of Delaware and for the maintenance and operation of the business of the Company in accordance with the provisions of this Agreement and applicable laws and regulations. The Manager shall at all times act in good faith and exercise due diligence in all activities relating to the conduct of the business of the Company.

(b) Number of Managers. The Company shall have one Manager. The number of Managers may be amended from time to time only upon the unanimous agreement of the Members.

(c) Appointment of Manager. The Manager shall be **Grazziano Zazzara, Jr.** The Manager shall hold office until his or her successor has been appointed and qualified, or until his or her prior resignation or removal.

(d) Power and Authority of the Manager. The Manager, subject to the restrictions under this Agreement, shall have the right to manage the day-to-day business of the Company. The Manager shall at all times act in good faith and exercise due diligence in all actions relating to the conduct of the Company's business activities.

(e) Prohibited Actions. Although the Manager shall each have the authority provided in paragraph 3.02(d), he shall not have the authority to engage the Company in the following prohibited actions without majority consent of the Managers:

- (1) change the purposes of the Company;
- (2) determine the need for additional capital;
- (3) determine the Gross Asset Value of property (other than cash) contributed to the Company or distributed to Members by the Company;
- (4) consent to the transfer of an Interest;
- (5) admit a Substituted Member following the permitted transfer of an Interest;

- Member;
- (6) consent to a specific or general release from any liability or obligation of a Member;
  - (7) admit an additional Member;
  - (8) permit the withdrawal of a Member from the Company;
  - (9) liquidate the Interest of a Transferee;
  - (10) dissolve the Company;
  - (11) create reserves for any contingent or unforeseen liabilities of the Company;
  - (12) defer the liquidation of the assets of the Company, or distribute assets in kind;
  - (13) amend this Agreement;
  - (14) sell, exchange, lease, mortgage, pledge or otherwise transfer all or substantially all of assets of the Company, whether in a single transaction or series of transactions;
  - (15) enter into any borrowing, financing or refinancing transaction, whether or not secured by the assets of the Company;
  - (16) confess a judgment against the Company;
  - (17) do any act in contravention of this Agreement; or
  - (18) do any act which would make it impossible to carry on the Company's business activity.

(f) Manager Meetings. Any Manager may call a meeting of Managers at the office of the Company on at least seven days' prior Notice of the date, time and purpose thereof, to consider any business deemed pertinent to the Company. A Manager may waive notice of a meeting.

(g) Liability of Managers. A Manager shall not be liable, responsible or accountable in damages or otherwise to any of the Members or the Company for any act or omission performed or omitted by him in good faith on behalf of the Company and in a manner reasonably believed by him to be within the scope of the authority granted by this Agreement and in the best interests of the Company; provided he was not guilty of gross negligence, willful misconduct or any other breach of his fiduciary duty with respect to such acts or omissions. The Company shall indemnify each Manager for all costs, losses, liabilities and damages paid or accrued by him in connection with the business of the Company, to the fullest extent provided or allowed by the Act. In addition the Company may advance costs to him for defense of any proceeding.

(h) Confirmation of Authority. Each Member agrees that, upon Notice from the Company at any time and from time to time, he shall at no cost or expense to the Company promptly furnish written confirmation of the legal authority of any Person to act on his behalf with respect to any matter, transaction, document or other act relating to or affecting the Company.

(i) Signature by a Manager. The signature of a Manager entered on behalf of the Company, for any transaction authorized by the Company pursuant to the terms of this Agreement, on any document or instrument, shall be sufficient and binding upon the Company as to third parties dealing with the Company, and any third party shall be entitled to rely on such signature as being the action of and binding on the Company.

(j) Formalities. The failure of the Company, the Manager, or the Members to observe any formalities or requirements relating to the exercise of its or their powers or management of its or their business or affairs under this Agreement or the Act shall not be grounds for disregarding the existence of the Company as a limited liability company.

(k) Incapacity. In the event a Manager becomes incapable of continuing his usual and customary services, duties or responsibilities as Manager resulting from bodily injury, disease or mental disorder, any and all rights of the Manager suffering the incapacity to participate in the management of the Company shall immediately terminate and the Members shall appoint a new Manager in accordance with paragraph 3.03(m). In the event that the Manager who is incapacitated is also a Member, the replacement Manager shall be chosen by the Members who are not subject to incapacity. Except as otherwise provided for in this Agreement, the incapacity of a Manager who is also a Member shall not affect his rights as a Member. In the event there is a dispute relating to a Manager's incapacity, the determination of incapacity shall be made as follows. The Members other than the Manager who is purportedly incapacitated (remaining Managers) and the purportedly incapacitated Manager or his representative, if necessary, may agree to have one physician make the determination. If a single physician cannot be agreed upon, then one physician shall be chosen by the remaining Members and another by the purportedly incapacitated Manager or his legal representative. The two physicians so chosen shall then select a third. The opinion of the single physician or, if three physicians are used, the majority opinion, shall be binding and conclusive on all parties. Each Manager agrees to cooperate in any examination necessary to carry out the provisions of this paragraph and waives the doctor-patient privilege with respect to the results of such examination to the extent required to make a determination as to the incapacity of the Manager. The obligation to comply with these provisions is specifically enforceable. The remaining Managers can request that such examination be conducted by providing a written notice to the purportedly incapacitated Manager or Manager's legal representative. Such examination shall be made within thirty days of personal service or within thirty-five days of mailing. Any determination or decision made by such physicians shall be conclusive on all parties to this Agreement.

(l) Vacancies. Vacancies occurring in the position of Manager for any reason shall be filled by majority vote of the Members. A Manager appointed to fill a vacancy shall be elected to

hold office for the unexpired term of his predecessor and until his successor is elected and qualified.

(m) Removal of Managers. Any or all of the Managers may be removed with or without cause at any time by majority vote of the Members.

(n) Resignation. A Manager may resign at any time by giving written notice to the Members of the Company. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof and the acceptance of the resignation shall not be necessary to make it effective.

(o) Tax Returns and Other Elections. The Manager shall, at the expense of the Company, cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. All elections permitted to be made by the Company under federal or state laws shall be made by the Manager.

(p) Standard of Care. A Manager shall perform his duties as a Manager, including his duties as a member of any class of managers, in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

3.04 Indemnification of Members and Managers. The Company hereby indemnifies and holds harmless the Members and Managers, and their successors, executors, and administrators against any loss or damage incurred by such individual by reason of acts or omissions in good faith on behalf of the Company and in a manner reasonably believed by the individual to be within the scope of the authority granted to him or her by this Agreement; provided, however, that no indemnification may be made to or on behalf of any Person if a judgment or other final adjudication adverse to such Person establishes:

(a) that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or

(b) that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

**ARTICLE IV**  
**CAPITAL CONTRIBUTIONS; LIMITATION OF**  
**LIABILITY; CAPITAL ACCOUNTS**

4.01 Capital Contributions. The Members have made or shall make as soon after the execution of this Agreement as is reasonably practical, the contributions to the Company set forth at Exhibit A. No interest shall be paid by the Company on any contribution to Company capital.

4.02 Limitation of Liability. Each Member's liability shall be limited as set forth in this Operating Agreement, the Act, and other applicable law. No Member shall be liable for any of the debts, obligations, or losses of the Company and no Member shall have any obligation to make a Capital Contribution except as required by this Operating Agreement and the Act.

4.03 Capital Accounts. A Capital Account shall be maintained for each Member. A Member shall not be entitled to withdraw any part of his Capital Account or to receive any distribution from the Company except as provided in this Agreement.

**ARTICLE V**  
**DISTRIBUTIONS**

5.01 Distributions Other than in the Event of Dissolution and Liquidation.

(a) Distributions of Net Cash Flow and Net Cash Proceeds. Distributions of Net Cash Flow for each Fiscal Year may be made at the discretion of the Manager in the following order and priority:

(1) First, *pari passu*, to each Member in proportion to the Undistributed Capital balances of each Member, until each Member has received an amount under this paragraph 5.01(a)(i) sufficient to pay each Member the amount of each Member's Undistributed Capital balance; and

(2) Second, to each Member in accordance with the Members' respective Company Percentages.

(b) Limitation on Distributions. Notwithstanding the foregoing, the ability of the Company to make distributions is limited as set forth in Section 18-607 of the Act.

5.02 Distributions in the Event of Dissolution and Liquidation. Upon the dissolution of the Company and liquidation of its assets:

(a) Tax Consequences to Date of Dissolution. The Capital Accounts of the Members shall be adjusted to the date of dissolution to reflect income, gain, loss, or deduction accrued or incurred, as the case may be, from the date of the last accounting to the date of the dissolution. Any gain or loss on disposition of Property in the process of liquidation shall be charged or credited to the Members' Capital Accounts in accordance with the provisions of **paragraph 6.01**. Any property distributed in kind in the liquidation shall be valued and treated as though the Property was sold and the cash proceeds were distributed. The difference between the value of property distributed in kind and its book value shall be treated as a gain or loss on sale of the Property and shall be credited to the Members' Capital Accounts in accordance with the provisions of **paragraph 6.01**.

(b) Distributions in Liquidation. Following the adjustment required by **paragraph 5.02(a)**, the affairs of the Company shall be forthwith wound-up and the proceeds from the liquidation of the Property shall be distributed in the following priority:

(1) First, to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves; and

(2) Second, *pari passu*, to each Member in proportion to the Undistributed Capital

balances of each Member, until each Member has received an amount under this paragraph 5.01(b)(ii) sufficient to pay each Member the amount of each Member's Undistributed Capital balance; and

(3) Third, to each Member in accordance with the Members' respective Company Percentages.

In connection with any winding up and liquidation, the Accountants shall compile a balance sheet of the Company as of the date of dissolution, and such balance sheet shall be furnished promptly to all Members.

(c) Distributions According to Positive Capital Account Balances.

Notwithstanding anything contained in this Agreement to the contrary, upon liquidation of the Company (or any Member's Interest), liquidating distributions are required in all cases to be made in accordance with the positive Capital Account balances of the Members, as determined after taking into account all Capital Account adjustments for the Company taxable year during which such liquidation occurs (other than those made pursuant to this paragraph) by the end of such taxable year (or, if later, within 90 days after the date of such liquidation) in strict compliance with Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations.

5.03 Tax Advances.

(a) Except as prohibited by the Act, and to the extent, but only to the extent, Net Cash Flow is available therefor, and subject to applicable covenants of the Company to the financial institution or institutions that have provided financing to the Company, the Company may, in the sole discretion of the Manager, advance funds to the Members in amounts equal to their respective Member Tax Liability (as defined below). Each such advance shall be limited to the amount by which each such Member's Member Tax Liability since inception of the Company exceeds the aggregate distributions to such Member since inception, together with the outstanding balance of all Tax Advances to such Member. All such advances shall be treated as an advance (a "Tax Advance") from the Company to be paid and satisfied in full from the respective Member's future distributions pursuant to paragraph 5.1 prior to any distribution to such Member.

(b) "Member Tax Liability" means, with respect to a Member for a taxable year, an amount equal to that Member's distributive share of the Company's taxable income for that taxable year, as reflected in the tax return of the Company filed with respect to such taxable year, multiplied by the maximum combined effective federal and New York tax rate applicable to an individual resident in New York and deriving solely New York source income (taking into account the deductibility of state taxes for federal income tax purposes and any amounts withheld pursuant to paragraph 6.3). As to any taxable year for which the Company's tax returns have not yet been filed, the Member Tax Liability for each Member will be computed based upon the Manager's reasonable estimate of the Company's taxable income for that taxable year.

**ARTICLE VI**  
**INCOME TAX ALLOCATION PROVISIONS**

**6.01 Profits and Losses.**

(a) **Generally.** The Profits and Losses of the Company shall be determined for each Fiscal Year in accordance with the accounting method followed by the Company for federal income tax purposes and otherwise in accordance with generally accepted accounting principles applied in a consistent manner. Profits and Losses shall be allocated to the Members on a semi-monthly basis. For this purpose, the Company will utilize the "interim closing of the books" method and the books of the Company will be closed at the close of the 15th day of the month and at the close of the last day of the month. In determining the varying interest of the Members in the Company during the semi-monthly allocation period provided herein, Members entering the Company during the first 15 days of the month shall be deemed to have entered into the Company on the first day of the month and the Members entering the Company after the 15th day of the month (but before the end of the month) will be deemed as entering the Company on the 16th day of the month.

(b) **Transferor-Transferee Allocations.** As between a Member and his transferee, Profits and Losses for any month shall be apportioned to the person who is the holder of the Interest transferred on the last day of the semi-monthly allocation period provided without regard to the results of the Company's operations during the period before and after such transfer.

(c) **Profits.** Profits of the Company will be allocated as follows:

(1) First, to the Members until the cumulative Profits allocated to the Members pursuant to this paragraph 6.01(c)(1) for the current and all prior Fiscal Years is equal to the cumulative Losses allocated pursuant to paragraph 6.01(d)(3) hereof for all prior Fiscal Years in the proportion that such Losses were allocated pursuant to paragraph 6.01(d)(3);

(2) Second, to the Members until the cumulative Profit allocated to the Members pursuant to this paragraph 6.01(c)(2) for the current and all prior Fiscal Years is equal to the cumulative Losses allocated pursuant to paragraph 6.01(d)(2) hereof for all prior Fiscal Years in the proportion that such Losses were allocated pursuant to paragraph 6.01(d)(2);

(3) Third, to the Members in accordance with their respective Company Percentages.

(d) **Losses.** Losses of the Company will be allocated as follows:

(1) First, to the Members until the cumulative Losses allocated to the Members pursuant to this paragraph 6.01(d)(1) for the current and all prior Fiscal Years is equal to the cumulative Profits allocated pursuant to paragraph 6.01(c)(3) hereof for all prior Fiscal Years in the proportion that such Profits were allocated pursuant to paragraph 6.01(c)(3);

(2) Thereafter, to each Member in the ratio that Member's total contribution to the capital of the Company bears to all contributions of all Members to the capital of the Company.

(3) Notwithstanding the foregoing allocations, no allocation of Loss shall be made to a Member that creates (or increases) an Adjusted Capital Account Deficit for that Member. All Losses in excess of such limitation shall be allocated among the Members for whom the allocation of the Losses would not create (or increase) an Adjusted Capital Account Deficit, pro rata according to positive Adjusted Capital Account balances of the Members.

(e) Credits. Unless otherwise required by applicable law, all tax credits shall be allocated among the Members in accordance with Section 1.704-1(b)(4)(ii) of the Regulations.

#### 6.02 Regulatory Allocations.

(a) Qualified Income Offset. In the event any Member (or Transferee of a Member) 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 paragraph 6.02(a) shall be made if and only to the extent that such Member (or Transferee of a Member) would have an Adjusted Capital Account Deficit after all other allocations provided for in Article VI have been tentatively made as if this paragraph 6.02(a) were not in this Agreement.

(b) Qualified Income Offset - Gross Income Allocation. If, after giving effect to the allocation provisions of Article VI (other than this paragraph 6.02(b)) and the distribution provisions of Article VI 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 (1) the amount such Member is obligated to restore and (2) 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) such Member shall be specially allocated items of gross income in the amount of such excess as quickly as possible provided that an allocation pursuant to this paragraph 6.02(b) shall be made if and only to the extent such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in Article VI have been tentatively made and as if paragraph 6.02(a) and paragraph 6.02(b) were not in this Agreement.

(c) Minimum Gain Chargeback - Company Minimum Gain. Except as otherwise provided in Section 1.704-2(f) of the Regulations and notwithstanding any other provision of Article VI, if there is a net decrease in Company Minimum Gain during any Company Fiscal Year, each Member and Transferee of a Member 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 Transferee of a Member 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 paragraph 6.02(c) is intended to comply with the minimum gain charge back requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(d) Minimum Gain Chargeback - Member Nonrecourse Debt Minimum Gain. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations and notwithstanding any other provision of Article VI except paragraph 6.02(b), 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 Transferee of a Member 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 paragraph 6.02(d) 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.

(e) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated to the Member or Transferee of a Member 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).

(f) Section 734(b) or Section 743(b) Adjustment. 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 Transferee of a Member) in complete liquidation of his Interest, 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.

(g) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year or other period shall be specifically allocated to the Members (or Transferees) in proportion to their respective Company Percentages.

(h) Excess Nonrecourse Liabilities. 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 Profits shall be deemed equal to their Company Percentages.

(i) Curative Allocations. The allocations set forth in paragraphs 6.02(a), (b), (c), (d), (e), and (f) (the "Regulatory Allocations") are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations (and any successor provisions thereto). Notwithstanding any other provision of this Article VI, the Regulatory Allocations shall be taken into account in allocating other Profits, Losses and items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other Profits, Losses and other items and the Regulation Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not been made.

(j) Contributed Property.

(1) 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 using the "remedial" method as authorized by Regulation Section 1.704-3(d).

(2) In the event the Gross Asset Value of any asset is adjusted pursuant to the provisions of this Agreement hereof dealing with the definition of Gross Asset Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(3) Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this paragraph 6.02(j) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provisions of this Agreement.

6.03 Section 754 Election. Upon the written request of any Member that an election provided for in Section 754 of the Code be made, notice shall promptly be given to all the other Members of such request. Unless written objection to the making of such election is received within 30 days of such notice, the Company shall, if then permitted by applicable law, make such election. All costs and expenses incurred by the Company in connection with the making of such an election shall be borne by the Member(s) requesting the same.

**6.04 Capital Account Maintenance.** Notwithstanding anything contained in this Agreement to the contrary, the Capital Accounts of the Members shall, in all respects, be maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv), and any optional charges, credits or adjustments to such Capital Accounts of the Members which are provided for in such Regulations, and are otherwise proper under State law and this Agreement, and which are made by the Company shall be made with any and all correlative adjustments to the Capital Accounts of the Members required by Treasury Regulation Section 1.704-1(b)(2)(iv). This provision and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations.

**ARTICLE VII**  
**DISSOLUTION AND WINDING UP**  
**OF THE COMPANY**

**7.01 Dissolution and Winding-Up.**

(a) **Dissolution.** The Company is dissolved and its affairs shall be wound up only upon the first to occur of the following:

(1) the sale or other disposition of all or substantially all of the Property of the Company, unless all the Members consent to the election by the Company under Section 1033 of the Code, regarding involuntary conversions;

(2) upon unanimous agreement of the Members;

(3) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(b) **Winding-Up.** Upon the dissolution of the Company, unless the Company is continued by the vote or written consent of a majority of the Members, the Manager (or, if there are no Managers then remaining, by a person designated by a majority of the Members) shall:

(1) Cause the cancellation of the Articles of Organization;

(2) Subject to the provisions of paragraph 7.01(c), liquidate the Company's assets; and

(3) Apply and distribute the proceeds of such liquidation in accordance with paragraph 5.02.

(c) **Avoidance of Undue Loss.** Notwithstanding the provisions of paragraph 7.01(b), if, on dissolution of the Company, the Manager shall determine that an immediate sale of part or all of the Property would cause undue loss to the Members, the Manager may, in order to avoid such losses, either:

(1) Defer the liquidation of, and withhold from distribution for a reasonable time, any assets of the Company except those necessary to satisfy debts and liabilities of the Company; or

(2) Distribute to the Members, in lieu of cash, undivided interests in any Company assets as tenants in common and liquidate only such assets as are necessary in order to pay the debts and liabilities of the Company.

**7.02 No Dissolution by Admission. Transfer of Interest of Dissolution of Member.** Neither the admission to the Company of any additional Member nor the transfer of Interest of or event of

dissolution with respect to any Member shall result in the dissolution of the Company or affect the continuance of the Company in any manner whatsoever. If an event of dissolution shall occur with respect to any Member, the successor in interest of the Member shall have the same rights, for the purpose of settling the affairs of the Member and shall be subject to the same limitations, conditions and liabilities as applied to the Member whose Interest the successor is representing; provided, however, that upon the dissolution of a Member, the successor-in-interest to the Member may become a Substituted Member subject to the provisions of Article VIII.

**ARTICLE VIII**  
**WITHDRAWAL AND TRANSFER OF INTERESTS**

8.01 Restriction on Transfer and Withdrawal. Except as otherwise provided in this Article, no Member may sell, pledge, encumber, or otherwise transfer or dispose of or permit to be sold, pledged, encumbered, attached, or otherwise disposed of or transferred in any manner, either voluntarily or by operation of law (all of those events are collectively referred to as "transfer"), all or any portion of his Interest or withdraw from the Company without the approval of the Manager. Any transfer or attempted transfer by a Member in violation of the preceding sentence shall be null and void and of no effect whatever. Each Member hereby acknowledges the reasonableness of the restrictions on transfer imposed by this Agreement 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 permitted assigns) wholly and completely harmless from any cost, liability, or damage (including, without limitation, 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.

8.02 Purchase Rights in the Event of Death, For Cause Event, or Insolvency Event with respect to a Member.

(a) Company's First Purchase Option; Other Members' Second Purchase Option.

(1) In the event of a For Cause Event, death, or Insolvency Event with respect to a Member (the occurrence of which shall hereinafter be referred to as an "Option Event"), the Member with respect to whom an Option Event has occurred ("Affected Member") shall automatically be deemed to have offered to sell the Affected Member's Interest to the Company, at the Purchase Price and upon the terms and described in this paragraph 8.02. The Company shall have 30 days from the date of the occurrence of the Option Event during which to accept or reject the offer unless the Option Event is the death of a Member, in which event the Company shall have 30 days from the date of the appointment of the executor, administrator, or personal representative of the Member's estate. In no event shall the Company be entitled to accept the offer with respect to less than all of the Interest so offered. The Company shall communicate its acceptance or rejection to the offering Affected Member in writing, with a copy of such notice delivered to the other Members. If the Company fails to accept or reject the offer within the time period provided herein, it shall be deemed to have rejected the offer. The Affected Member shall have no vote in the Company's determination of whether to accept or reject the offer.

(2) If the Company rejects the offer to sell made by the Affected Member, the Affected Member shall automatically be deemed to have offered the Interest so rejected to the other Members at the Purchase Price and upon the terms and conditions described in this paragraph 8.02. The other Members shall have 30 days from the date of rejection (or deemed rejection) by the Company during which to notify the Affected Member of their acceptance or rejection of the offer. In no event shall the other Members be entitled to purchase, in the aggregate, less than all of the Interest so offered. If the other Members shall fail to accept or reject

the offer within the time period set forth herein, the other Members shall be deemed to have rejected the offer. If some, but not all, of the other Members choose to exercise the option described in this paragraph, the Interest of the Affected Member shall be purchased pro rata by those Members who choose to exercise the option based on the ratio of each Member's Company Percentage to the total of the Company Percentages of the exercising Members.

(3) In the event neither the Company nor the other Members purchase the Interest offered for sale, the Affected Member shall continue as a Member of the Company with all of the rights and obligations of a Member hereunder. The first option right and second option right shall be extinguished only with respect to the Option Event that gave rise to those rights under this paragraph 8.02, not with respect to any subsequent Option Event.

(4) In all cases, any Interest sold, assigned, transferred or otherwise conveyed pursuant to this paragraph shall continue to be subject to this Agreement and each Transferee shall execute an instrument in form satisfactory to legal counsel for the Company wherein such Transferee expressly agrees to be bound by this Agreement. No Transferee of a Member shall become a Substituted Member in the place of his Assignor without the consent of all of the other Members.

(c) Purchase Price. The Purchase Price of the Interest of an Affected Member shall be the Affected Member's Capital Account adjusted to reflect the fair market value of the Property as of the date of the Option Event. The difference between the fair market value of Property and its book value shall, for purposes of determining the Purchase Price of the Interest, be treated as a gain or loss on sale of the Property and shall be credited to the Member's Capital Accounts in accordance with the provisions of Article VI. The fair market value of the Property shall be determined by the Affected Member and the other Members mutually agreeing on a qualified appraiser whose determination shall conclusively establish the fair market value. In the event they cannot agree, the other Members shall name one qualified appraiser, and the Affected Member shall name one qualified appraiser. The two appraisers shall appoint a third appraiser whose determination shall conclusively establish the fair market value of the Property. If the appraisers cannot agree upon a third appraiser, either the other Members or Affected Member may apply to the appropriate court for the appointment of a third appraiser.

(d) Repayment of Debt and Releases. The closing of the purchase of the Interest of a Affected Member shall be contingent upon:

(1) the repayment in full of all amounts owed by the Company to the Affected Member and/or its Affiliates at or prior to the closing of the purchase of the Interest and

(2) the release, in a form satisfactory to the Affected Member, of the Affected Member and its Affiliates from any liability, direct or indirect, primary or contingent, for any of the obligations or liabilities of the Company.

If the contingency cannot be satisfied within 30 days after the date of the exercise of the purchase

option right by the Company or the other Members, the purchase right shall be extinguished with respect to the Option Event that gave rise to the purchase right.

(e) Closing and Payment Terms. The closing of the purchase of the Interest shall occur within 30 days after exercise of the purchase option right by the Company or the other Members. At the closing, the purchaser shall pay the Purchase Price to the Affected Member and shall provide proof on the satisfaction of the conditions precedent set forth in paragraph 8.02(d).

(f) Transfer Documents. Upon receiving payment of the Purchase Price, the Affected Member shall execute and deliver to the purchaser of the Interest a bill of sale and assignment, assigning and releasing to the purchaser all the right, title and interest of the Affected Member in and to the Affected Member's Interest in the Company and the Property.

**8.03 Requirements for Substitution.** No transferee of the whole or a portion of a Member's Interest shall have the right to become a Substituted Member in place of his Assignor unless and until all of the following conditions are satisfied:

(a) a duly executed and acknowledged written instrument of transfer approved by the Manager has been filed with the Company setting forth the intention of the transferor that the transferee become a Substituted Member in his place;

(b) the transferor and transferee execute and acknowledge such other instruments as the Manager may reasonably deem necessary or desirable to effect such substitution, including the written acceptance and adoption by the transferee of the provisions of this Agreement;

(c) the approval of the Manager to such substitution shall be obtained; and

(d) a reasonable transfer fee has been paid to the Company sufficient to cover all reasonable expenses connected with the transfer and substitution.

**8.04 Rights of Transferees.**

(a) A Person who acquires an Interest in compliance with the provisions of this Agreement 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, 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 (and, without limiting the foregoing, shall have no right to appoint a Manager of the Company), shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement (collectively, the "Non-Economic Rights").

(b) In the event of a transfer to a Person who is not admitted as a Substituted Member, the transferring Member shall automatically be deemed to have relinquished all of the Non-Economic Rights associated with the Transferred Interest.

(c) Any Person who is the transferee 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 Article VIII to the same extent and in the same manner as any Member desiring to make an assignment of an Interest.

**8.05 Distributions Subsequent to Transfer.** Unless otherwise agreed among the transferee, the transferring Member, and the Company, any distributions made by the Company with respect to an Interest after the effective date of the transfer of the Interest shall be made to transferee.

**8.06 Vote of Members.** In any case under this Agreement in which a vote of the Members is required, the Members, but not their transferees who are not Substituted Members, shall be entitled to vote.

**8.07 Specific Enforcement.** Each Party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Article VIII are not performed by the Members in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that the Company, Affiliates and the Members shall be entitled to an injunction to prevent breaches of this Operating Agreement and to specific enforcement of its terms and provisions in any action instituted in any court of the United States or any state having subject matter jurisdiction, in addition to any other remedy to which the parties may be entitled at law or in equity. Each of the parties to this Operating Agreement hereby consents to personal jurisdiction in any such action brought in any court of the State of New York having subject matter jurisdiction.

**ARTICLE IX**  
**RECORDS AND ACCOUNTING**

**9.01 Books, Records, and Reports.**

(a) **Availability.** At all times during the existence of the Company, the Manager shall keep or cause to be kept full and true books of account in accordance with the accounting method followed by the Company for federal income tax purposes which shall reflect all Company transactions and shall be appropriate and adequate for the Company's business. Such books of account, together with a copy of this Agreement and any amendments thereto and a list of names and addresses of all of the Members shall be available to the Members and the Members shall have the right at any time to inspect and copy from such books and documents during normal business hours upon reasonable notice.

(b) **Forms K-1.** The Manager shall cause to be prepared and distributed to each Member, within 105 days after the close of each Fiscal Year, all information necessary for the preparation of the Members' federal income tax returns.

(c) **Bank Accounts.** The Manager shall open and maintain on behalf of the Company a bank account or accounts with depositories as it shall determine, in which all monies received by or on behalf of the Company shall be deposited. All withdrawals from the accounts shall be made upon the signature of the person or persons as the Manager may from time to time designate.

**9.02 Accounting.**

(a) **Accounting Decisions.** All decisions as to accounting matters shall be made by the Manager in accordance with the Company's method of accounting applied on a consistent basis. Such decisions must be acceptable to the Accountants.

(b) **Taxable Year.** The Company's taxable and Fiscal Year shall be the calendar year.

**ARTICLE X**  
**ADDITIONAL MEMBERS**

10.01 Admission of Additional Member. Any Person acceptable to all of the Members may become a Member upon satisfaction of such terms and conditions and the payment of such consideration as the Manager shall determine.

10.02 Requirements for Substitution. No Person shall have the right to become a Member unless and until all of the following conditions are satisfied:

(a) The Person and the Company shall have executed and acknowledged such instruments as the Manager may reasonably deem necessary or desirable to effect such admission, including without limitation the written acceptance and adoption by the transferee of the provisions of this Agreement;

(b) the approval of the Manager to such admission shall have been obtained;

(c) The conditions precedent to the admission, including the payment of consideration, shall have been satisfied.

**ARTICLE XI**  
**MISCELLANEOUS**

11.01 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 deemed to have been delivered, given and received for all purposes

(a) if delivered personally to the Member or to an officer of the Member to whom the same is directed, or

(b) whether or not the same is actually received, if sent by registered or certified mail, postage and charges prepaid, addressed as follows: if to the Company, to the principal office of the Company as set forth in paragraph 2.05, 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 as of the date so delivered, if delivered personally, or as of the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and sent as aforesaid.

11.02 Severability. Each provision hereof is intended to be severable, and the invalidity or illegality of any provision of this Agreement shall not affect the validity or legality of the remainder hereof.

11.03 Captions. Paragraph captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

11.04 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.

11.05 Binding Agreement. Subject to the restrictions on assignment herein contained, the terms and provisions of this Agreement shall be binding upon, and inure to the benefit of the successors, assigns, personal representatives, estates, heirs, and legatees of the respective Members.

11.06 Applicable Law. Notwithstanding the place where this Agreement may be executed, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of the State and that the Act and other applicable laws of the State as now adopted or as may hereafter amended shall govern interpretation and enforcement of this Agreement.

11.07 Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the matters set forth herein and supersedes any prior understanding or agreement, oral or written, with respect thereto.

11.08 Agreement in Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart.

11.09 Qualification in Other States. In the event the business of the Company is carried on or conducted in states in addition to the State, then the parties agree that this Company shall exist under the laws of each state in which business is actually conducted by the Company, and they severally agree to execute such other and further documents as may be required or requested in order that the Manager legally may qualify this Company in such states. A Company office or principal place of business in any state may be designated from time to time by the Manager.

11.10 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.

11.11 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.

11.12 Further Action. Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents which may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

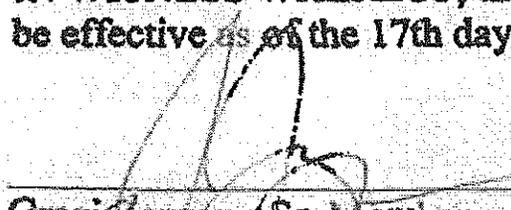
11.13 No Implied Waivers. The failure of a party to require performance by any other party of any provision hereof shall not affect the right to require such performance at any time thereafter. The waiver by any party of a breach of any provision hereof shall not be a waiver of the provision itself or a waiver of any breach thereafter or any other provision hereof, nor shall such waiver give rise to any claim, defense, offset, or counterclaim of any kind.

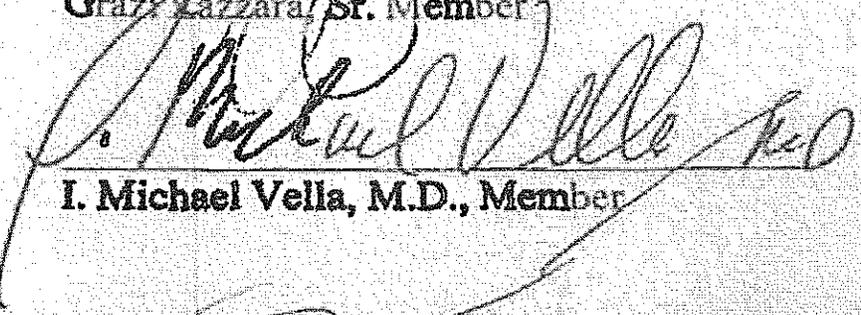
11.14 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Member shall not preclude or waive the right to use any or all other remedies. Unless otherwise provided in this Agreement, the rights and remedies set forth in this Agreement are in addition to any other rights the Members may have under applicable law.

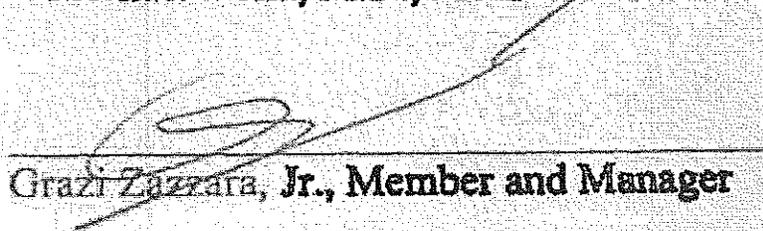
11.15 No Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, shall give to any Person, other than the parties hereto and their successors hereunder (if any) and permitted assigns, any benefit or any legal or equitable right, remedy or claim under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Operating Agreement has been executed by  
be effective as of the 17th day of March, 2016.

  
\_\_\_\_\_  
Grazi Zazzara, Sr. Member

  
\_\_\_\_\_  
I. Michael Vella, M.D., Member

  
\_\_\_\_\_  
Grazi Zazzara, Jr., Member and Manager

2710365\_2

**EXHIBIT A**

<u>Member Name and Address</u>	<u>Capital Contribution</u>	<u>Company Percentage</u>
Graziano Zazzara, Jr. The Icon Companies 250 S Clinton St Syracuse, NY 13202 Telephone: (315) 299-6292	\$75,000.00	24%
Graziano Zazzara, Sr. 5030 Bridle Path Road Fayetteville, New York 13066 Telephone (315) 729-7357 Fax (315) 729-7357	\$330,000.00	38%
I. Michael Vella 4919 East Lake Road, Cazenovia, NY 13035 Telephone (315) 391-3774	\$330,000 .00	38%
Total	\$735,000 .00	100%

**SCHEDULE B**

**LAND**

**EXHIBIT D**  
**(Resolution of Members to Borrow from CPC/NYS HFA)**

**UNANIMOUS WRITTEN CONSENT  
OF THE MANAGER AND MEMBERS  
of  
444 EAST GENESEE STREET LLC**

The undersigned, being the manager and all of the members of 444 East Genesee Street LLC, a limited liability company duly organized in the State of Delaware and validly existing under the laws of the State of New York (the "Company"), do hereby consent to the adoption of the following resolutions, such action to have the same force and effect as if taken at a meeting duly called and held for that purpose:

WHEREAS, Graziano Zazzara, Sr., Graziano Zazzara, Jr. and I. Michael Vella are the only members of the Company (the "Members" or "Guarantors"), and Graziano Zazzara, Jr. is the sole manager of the Company (the "Manager");

WHEREAS, the Company previously acquired a fee simple interest in and to certain improved real property located at 444 East Genesee Street, Syracuse, County of Onondaga and State of New York consisting of approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building (the "Property");

WHEREAS, the Company will rehabilitate and develop the Property in a manner which shall include the reconstruction and renovation of approximately 25,424 sq. ft. of the building on the Property for mixed-use including: installation of a new glass and metal panel façade; renovation of approximately 7,400 sq. ft. on each of the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; renovation of approximately 3,224 sq. ft. on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and the creation of approximately 8 on-site parking spaces (the "Project"); and

WHEREAS, Community Preservation Corporation has issued a commitment letter dated April 1, 2021 (the "CPC Loan Commitment") whereby CPC Funding SPE 1 LLC ("CPC"), and New York State Housing Finance Agency ("HFA") as co-lender, have agreed to make to the Company a certain construction loan in the aggregate principal amount of \$3,976,464.00 (with CPC participating in the amount of \$2,110,000.00 and HFA participating in the amount of \$1,866,464.00) (collectively the "Loan") upon such terms and conditions of, and secured by, among other things, a first priority mortgage lien on the Property, which Loan shall be advanced to the Company in accordance with a CPC and HFA loan agreement and otherwise secured by other collateral and repaid by the Company to CPC and HFA in accordance with such other terms and conditions as are more fully set forth within the Commitment; and

NOW, THEREFORE, IT IS RESOLVED, that the Company is hereby authorized and Manager is empowered to (i) execute and enter into the CPC Loan Commitment with and receive the Loan from CPC and HFA; (ii) execute and deliver to CPC and HFA any and all other documents relating to the Loan for the Project, including but not limited to a mortgage lien on the Property and to secure the Loan with such other property of the Company; and (iii) execute such other documents or instruments as CPC and HFA shall deem necessary and advisable to carry out

the intents and purposes of the CPC Loan Commitment, which documents may contain such terms provisions, conditions, stipulations and agreements as the Manager executing the same may deem proper and advisable and the Manager is hereby authorized to act on behalf of the Company and to execute and deliver such documents to CPC and HFA, as the case may be; and it is

FURTHER RESOLVED, that the Manager is hereby authorized by the Company and empowered to take any and all other actions and execute and deliver such other agreements, instruments and documents as the Manager deems necessary or desirable to carry out the intent of the foregoing resolutions; and it is

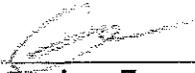
FURTHER RESOLVED, that all action taken and all instruments executed by the Manager prior to the adoption of these resolutions with respect to the development of the Project, the CPC Commitment or the Loan, and all matters related thereto, are hereby ratified by the Company, approved and confirmed as actions of the Company; and it is

FURTHER RESOLVED, that this consent may be executed in any number of counterparts, each of which counterpart shall constitute an original instrument, and all of which, when taken together, shall constitute one and the same instrument.

Balance of this page has intentionally been left blank.  
Signatures are on the following page.

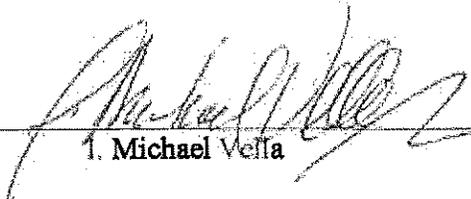
IN WITNESS WHEREOF, the undersigned have executed this instrument as of June 2 2021.

**444 East Genesee Street, LLC**  
A New York limited liability company

By:   
Name: Graziano Zazzara, Jr.  
Title: Manager

  
\_\_\_\_\_  
Graziano Zazzara, Sr.

  
\_\_\_\_\_  
Graziano Zazzara, Jr.

  
\_\_\_\_\_  
I. Michael Vella

**EXHIBIT E**  
**(SIDA Resolution)**

**UNANIMOUS WRITTEN CONSENT**

**of the Manager and Members of**

**444 EAST GENESEE STREET LLC**

---

The undersigned, being the members and the manager ("Manager") of 444 East Genesee Street LLC ("Company") hereby consent to the adoptions of the following resolutions on behalf of the Company:

**RESOLVED** that the Company is authorized and directed to do the following with respect to a project (the "Project") consisting of: (i) the redevelopment of improved real property located at 444 East Genesee Street, in the City of Syracuse, New York (the "Land") into a mixed use building with 24 residential one-bedroom units (all being affordable housing units) on the upper three floors and the bottom floor to have one or more retail/commercial units, mail and package delivery room, bike storage room, trash and recycling room and parking for tenants all located on Land (the "Facility"); (ii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); and it is further

**RESOLVED** that the Company is authorized and directed to enter into a transaction with the City of Syracuse Industrial Development Agency ("IDA" or "Agency") whereby the Company shall be appointed as the agent of the IDA in connection with the acquisition, renovation, reconstruction and equipping of the Project Facility; the Company shall cooperate with the granting by the IDA of certain financial assistance in the form of exemptions from State and local sales and use taxation, real property taxes and mortgage recording tax (the "Financial Assistance"); and the Company shall enter into certain lease documents with the IDA whereby the Company shall lease the Land and Facility to the Agency; the Company shall execute and deliver a bill of sale for the Equipment to the Agency; and the Company shall sublease the Project Facility back from the Agency pursuant to a certain sublease agreement; the Company shall execute and deliver an environmental compliance and indemnification agreement in favor of the Agency, and any and all other certificates or documents as may be necessary in conjunction with the Project, all of the foregoing collectively the "Transaction Documents"), all in accordance with and as more fully set forth and particularized in resolutions of the IDA adopted on April 27, 2021 (collectively the "IDA Resolutions"); and it is further

**RESOLVED** that Graziano Zazzara, Jr., as Manager of the Company be and hereby is authorized on behalf of the Company to execute and deliver the Transaction Documents and any and all documents or instruments as are necessary and appropriate to carry out the intent and purpose of these resolutions, the IDA Resolution and/or as may be reasonably required by the IDA or its counsel; and it if further

**RESOLVED** that Graziano Zazzara, Jr. may take any action deemed necessary and proper in furtherance of the IDA Resolution and the intent of these resolutions, and that the IDA, its successors, assigns, attorneys or agents may rely upon such actions as being the actions and consent of the Company, and it is further

**RESOLVED** that the IDA, its successors, assigns, attorneys or agents may rely upon the acts of Graziano Zazzara, Jr. and any action taken by him shall be deemed an action of and binding upon the Company; and it is further

**RESOLVED** that all action taken and all instruments executed by any member of the Company prior to the adoption of these resolutions with the Agency and with respect to the Project are hereby ratified by the Company, approved and confirmed as actions of the Company; and it is

**RESOLVED** that that the foregoing Resolutions are made and entered into in full compliance with the Operating Agreement of the Company and this Resolution shall constitute any required authority and/or approval as may be required thereunder; and shall remain in full force and effect and may be relied upon by the IDA, its successor, assigns, attorneys or agents notwithstanding the dissolution or termination of the existence of the Company or any change in the identity of, or any modification or termination of any authority of, any authorized person or Company until a copy of a subsequent Resolution revoking or amending same shall be actually received by the IDA, its successors, attorneys, agents or assigns; and any action taken by any of the foregoing prior to such actual receipt shall be binding upon the Company irrespective of when such Resolutions may have been adopted. This resolution may be signed in counterparts.

Dated: June 3, 2021

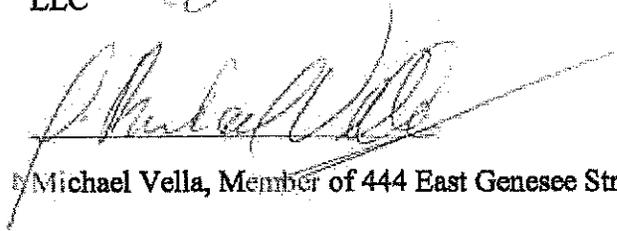
**SIGNATURE PAGE FOLLOWS**



Graziano Zazzara, Jr., Manager and Member of 444 East  
Genesee Street LLC



Graziano Zazzara, Jr., Member of 444 East Genesee Street  
LLC



Michael Vella, Member of 444 East Genesee Street LLC

**CERTIFICATION**

I hereby certify that I am the Manager of 444 East Genesee Street LLC; that all of the foregoing is a true and complete copy of resolutions of said Company duly adopted by the Company in accordance with the governing documents of the Company and the laws of the jurisdiction in which the Company is organized, and that said resolutions have not been amended and is in full force and effect.

IN WITNESS WHEREOF, I have hereunto signed my name this 26 day of May, 2021.

  
\_\_\_\_\_  
Graziano Zazzara, Jr.





# BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET • ONE LINCOLN CENTER • SUITE 1000 • SYRACUSE, NEW YORK 13202 • PH: 315.422.1500 • FX: 315.422.3549

June 3, 2021

City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

444 East Genesee Street LLC  
344 South Warren Street, Suite 202  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
444 East Genesee Street LLC Project

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 444 East Genesee Street LLC (the “*Company*”) consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 “financial assistance” (as defined in Section 854(14) of the New York General Municipal Law) (the “*Financial Assistance*”) to the Project in the form of exemptions from State and local sales and use taxes, mortgage recording taxes and real property tax which real property tax exemption is evidenced by a payment in lieu of taxes agreement (the “*PILOT Agreement*”) dated as of June 1, 2021 between the Agency and the Company.

Capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Agency Lease.

As counsel to the Agency, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, and documents as we have deemed necessary or appropriate for the purposes of the opinion expressed below. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies, and have assumed the accuracy and truthfulness of the factual information, expectations, conclusions, representations, warranties, covenants and opinions of the Company and its counsel and representatives as set forth in the various documents executed and delivered by them or any of them and identified in the Closing Memorandum in connection with the Project.

We are of the opinion that:

1. The Agency is a duly organized and existing corporate governmental agency constituting a public benefit corporation of the State of New York.
2. The Agency is duly authorized and empowered by law to acquire, reconstruct, renovate and equip the Project, to lease the Land and the Facility from the Company pursuant to the Company Lease; to accept an interest in the Equipment pursuant to the Bill of Sale; to sublease the Project Facility back to the Company pursuant to the Agency Lease, to provide the Financial Assistance 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.



June 3, 2021  
Page 3

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.

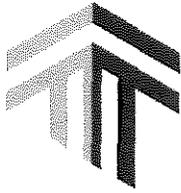
This opinion is rendered to the addressees named above and their successors and/or assigns, and may not be relied upon by any other person without our prior, express written consent.

Very truly yours,

BOUSQUET HOLSTEIN PLLC

*Bousquet Holstein PLLC*





LYNN D'ELIA  
TEMES &  
STANCZYK

June 3, 2021

100 MADISON STREET  
SUITE 1905  
SYRACUSE, NY 13202  
(315) 476-1010

1177 SIXTH AVENUE  
FIFTH FLOOR  
NEW YORK, NY 10036  
(212) 328-1763

WWW.LDTS-LAW.COM

City of Syracuse Industrial Development Agency  
201 East Washington Street, 6<sup>th</sup> Floor  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
444 East Genesee Street LLC

Dear Madam/Sir:

We have acted as counsel to 444 East Genesee Street LLC (the "**Company**") in connection with a certain project (the "**Project**") undertaken by the City of Syracuse Industrial Development Agency (the "**Agency**") at the Company's request. The Project consists of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement.

The Agency has acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of June 1, 2021 (the "**Company Lease**") and an interest in

the Equipment pursuant to a bill of sale dated as of June 1, 2021 (the "**Bill of Sale**") and the Agency will Sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of June 1, 2021 (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 and the Company entered into a Payment in Lieu of Taxes Agreement dated June 1, 2021 (the "**PILOT Agreement**") with respect to the Project.

In that regard, we have examined the Project Agreement, the Company Lease, the Agency Lease, the Bill of Sale, the Mortgages, the Environmental Compliance, the Indemnification Agreement, the PILOT Agreement, the Regulatory Agreement and all other documents both identified in the Closing Memorandum and as defined in the Agency Lease to which the Company is a party in connection with the Project (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 duly formed and validly existing a Delaware limited partnership authorized to conduct business in the State of New York and possesses full corporate power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.

2. The execution, delivery and performance of the Company Documents have been duly authorized by the Company and the Company Documents have been duly executed and delivered by an Authorized Representative of the Company.

3. The Company Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting

creditors' rights generally and to the extent that the availability of the remedy of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

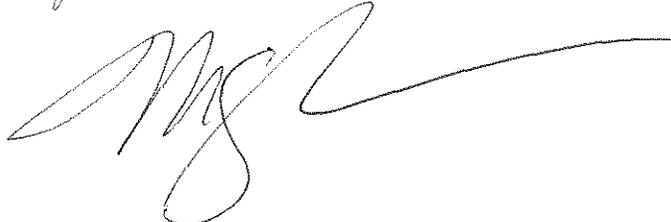
4. To the best of our knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by the Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not constitute a breach of, or default under the Company's Articles of Organization, Operating Agreement or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company or any of its Property may be bound, for which a valid consent has not been secured; nor is any approval or any action by any governmental authority required in connection with the execution, delivery and performance thereof by the Company.

5. To the best of our knowledge, in reliance on the certificates and opinions specified herein, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting the Company wherein an unfavorable decision, ruling or finding would in any way adversely affect in a material fashion the validity or enforceability of the Company Documents.

Our examination of law relevant to matters herein is limited to the laws of the State of New York and also the Federal law, where appropriate, and we express no opinion as to matters governed by the laws of any other state or jurisdiction.

This opinion is only for the benefit of and may be relied upon only by the Agency, its successors and assigns. The opinions set forth in this letter are limited to those expressly stated and no other opinion may be inferred nor is any implied. No other use of this opinion may be made without prior written consent. This opinion is given as of the date hereof and we undertake no obligation, and hereby disclaim any obligation, to update or supplement this opinion in response to a subsequent change in the law or future events affecting the documents identified in this letter.

Very truly yours,

*Lynn D. Flinn Teno & Son, LLC*  




## CLOSING MEMORANDUM

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

#### 444 EAST GENESEE STREET LLC PROJECT

DATE OF CLOSING: June 3, 2021

PLACE OF CLOSING: Escrow

#### **I. Action Taken Prior to Closing**

At the request of 444 East Genesee Street LLC (the "**Company**"), the City of Syracuse Industrial Development Agency (the "**Agency**"), a public benefit corporation organized under the laws of the State of New York, has undertaken a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 7,600 sq.ft. of land improved by a four story approximately 27,000 sq. ft. building all located at 444 East Genesee Street in the City of Syracuse, New York (the "**Land**"); (ii) the reconstruction and renovation of approximately 25,424 sq. ft. of the building for mixed-use including: (a) installation of a new glass and metal panel façade; (b) renovation of approximately 7,400 sq. ft. on each the 2nd, 3rd and 4th floors to house approximately 8 affordable one-bedroom apartment units per floor for a total of 24 units; (c) renovation of approximately 3,224 sq.ft on the first floor of which approximately 1,813 sq. ft. will be allocated to retail space with the balance to be used as a lobby, a mail and package delivery room, a bike storage room and a trash and recycling room; and (d) the creation of approximately 8 on-site parking spaces (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, reconstruction, renovation, equipping and completion 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 Project shall contain 100% income restricted residential units in accordance with the US Department of Housing and Urban Development ("**HUD**") requirements set forth in that certain regulatory agreement dated as of June 1, 2021 by and between the Company and New York State Housing Finance Agency related to the Project (the "**Regulatory Agreement**"), provided however that at least 20% of the units are rent restricted to 65% of the area median income ("**AMI**") rent limit for the City of Syracuse, New York, inclusive of utilities, as designated annually by HUD (the "**HUD Rates**"), in accordance with the Agency's Uniform Tax Exemption Policy ("**UTEP**") (collectively, the "**Rent Restrictions**").

The Company also requested that the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

The Company is, or will be at the time of closing, the owner of the Project Facility.

The Agency will acquire a leasehold interest in the Land and Facility from the Company pursuant to a Company Lease Agreement dated as of June 1, 2021 (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 June 1, 2021 (the "**Bill of Sale**"). The Agency will sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of June 1, 2021 (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:

- |                |   |
|----------------|---|
| March 3, 2021  | The Company submitted an application for financial assistance for the project.  |
| March 23, 2021 | A resolution determining that the acquisition, reconstruction, renovation, equipping and completion of a commercial facility constitutes a project; describing the financial assistance in connection therewith; and authorizing a public hearing (the " <b>Public Hearing Resolution</b> ").             |
| March 23, 2021 | A resolution classifying a certain project as a Type I Action and declaring the intent of the City of Syracuse Industrial Development Agency to be lead agency for purposes of a coordinated review pursuant to the State Environmental Quality Review Act (the " <b>SEQRA Lead Agency Resolution</b> "). |
| April 1, 2021  | Notice of Intent to Act as Lead Agency for Coordinated SEQRA Review sent to involved agencies.  |

- April 12, 2021 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.
- April 13, 2021 Notice of the Public Hearing was published in the Post-Standard pursuant to Section 859-a of the Act.
- April 27, 2021 The Agency conducted the Public Hearing pursuant to Section 859-a of the Act.
- April 27, 2021 A resolution determining that the undertaking of a certain project at the request of 444 East Genesee Street LLC will not have a significant effect on the environment (the "**SEQRA Resolution**").
- April 27, 2021 A resolution authorizing the undertaking of the acquisition, reconstruction, renovation, equipping and completion of a commercial project; appointing the Company as agent of the Agency for the purpose of the acquisition, reconstruction, renovation, equipping and completion of the Project; and authorizing the execution and delivery of an agreement between the Agency and the Company (the "**Inducement Resolution**").
- April 27, 2021 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**").
- April 27, 2021 A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the "**Final Approving Resolution**").
- April 27, 2021 A resolution authorizing a waiver of the Agency's Local Access Policy (the "**Waiver Resolution**").

## II. Action To Be Taken At Closing

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency (A), Agency's Counsel (AC), the Company (C), Company's Counsel (CC), Lender's Counsel (LC) as follows:

A.	Basic Documents	Responsible Party	Signatories
1.	Project Agreement	AC	C, A
2.	Company Lease Agreement	AC	C, A
3.	Memorandum of Company Lease Agreement with TP-584	AC	C, A
4.	Bill of Sale		
5.	Agency Lease Agreement	AC	C, A
6.	Memorandum of Agency Lease Agreement with Form TP-584	AC	C, A
7.	Company Certification re: Local Labor Policy	AC	C
8.	Certificates of casualty, liability, workers' compensation and other required insurance	AC	
9.	Environmental Compliance and Indemnification Agreement	AC	C
10.	Closing Receipt	AC	C, A
11.	Sales Tax Exemption Letter	AC	A
12.	Form ST-60 indicating appointment of the Company to act as the agent of the Agency	AC	A
13.	Sub-Agent Agreement	AC	C, Sub-Agent
14.	Form ST-60 indicating appointment of the Sub-Agent to act as the agent of the Agency	AC	A
15.	PILOT Agreement	AC	A, C
16.	412-a	AC	A
17.	First Multifamily Construction Loan Mortgage – CPC	LC	A, C

18.	First Multifamily Project Loan Mortgage - CPC	LC	A, C
19.	Assignment of Leases and Rents - CPC	LC	A, C
20.	Second Multifamily Construction Loan	LC	A, C
21.	[UCC-1 Financing Statements]	LC	
22.	Regulatory Agreement between Company and NYSHFA	LC	C, A, NYSHFA
23.	Approval of HFA Permanent Note and Mortgage	LC	C, A
24.	Survey	CC	
<b>B. Items To Be Delivered By The Agency</b>			
1.	General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits:	AC	A
	Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended	A	
	Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members	A	
	Exhibit "C" - By-laws	A	
	Exhibit "D" - Public Hearing Resolution	AC	
	Exhibit "E" - Lead Agency Resolution		
	Exhibit "F" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions	AC	
	Exhibit "G" - SEQRA Resolution	AC	
	Exhibit "H" - Inducement Resolution	AC	
	Exhibit "I" - PILOT Resolution	AC	

	Exhibit "J" – Final Approving Resolution	AC	
	Exhibit "K" – Waiver Resolution	AC	
2.	PILOT Benefit Letter	AC	
3.	Mortgage Recording Tax Affidavit	AC	A
<b>C. Items To Be Delivered By The Company</b>			
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" - Certificate of Good Standing (DE & NY)	C	
	Exhibit "D" - Company Resolution	C	
	Exhibit "E" - Local Access Agreement	C	
2.	Closing Affidavit	C	C
<b>D. Opinions of Counsel</b>			
1.	Opinion of Bousquet Holstein PLLC, counsel to the Agency, addressed to the Company and the Agency	AC	AC
2.	Opinion of Lynn D'Elia Temes & Stanczyk LLC, counsel to the Company, addressed to the Agency and the Company.	AC	CC

**III. Action To Be Required Concurrently With Or After Closing**

Memorandum of Company Lease Agreement, Memorandum of Agency Lease Agreement, Mortgages and Assignment of Leases and Rents are to be filed with the Onondaga County Clerk and the UCC-1 Financing Statement(s) are to be filed as appropriate under the Uniform Commercial Code.

The Real Property Tax Exemption Form (412-a), with a copy of the Payment in Lieu of Tax Agreement attached, to be mailed to the assessor and the chief executive officer of each affected tax jurisdiction.

The ST-60 for the Company to be mailed to the New York State Department of Taxation and Finance, upon finalization and submission of all required documents.

Scan copy of Local Access Agreement to the Agency.

**SCHEDULE "A"**

**PERSONS APPEARING**

For the Agency:	City of Syracuse Industrial Development Agency Kathleen Murphy, Chair Judith DeLaney, Executive Director
For the Company:	444 East Genesee Street LLC Graziano Zazzara, Jr., Managing Member
Company Counsel:	Lynn, D'Elia, Temes & Stanczyk LLC Michael Stanczyk, Esq.
For CPC:	Community Preservation Corporation ("CPC") Nick Petraghani Jaime Tuozzolo
CPC's counsel:	Cannon, Heyman & Weiss, LLP Constance Giessert, Esq.
For NYS HCR:	NYS HCR Madeline Fletcher
HCR's counsel:	Schoeman Updike Kaufman & Gerber LLP Mark Schwartz, Esq.
Agency's Counsel:	Bousquet Holstein PLLC Susan R. Katzoff, Esq.