



After Recording, Please Return To:

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MORTGAGE (Term Note A)

Date: January 28, 2014

Debtor: 455 NORTH FRANKLIN, LLC, a New York limited liability company with its chief executive office at c/o Hueber-Breuer Construction Co., Inc., 148 Berwyn Avenue, P.O. Box 515, Syracuse, New York 13205.

Mortgagee: M&T BANK, a New York banking corporation having offices at One M&T Plaza, Buffalo, New York 14203, Attn: Office of General Counsel.

Agency: CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, a New York public benefit corporation with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202.

The Debtor and the Agency shall be collectively referred to as the "Mortgagor".

WITNESSETH, to secure (a) the payment of an indebtedness in the principal sum of Four Million Dollars and 00/100 (\$4,000,000), lawful money of the United States, together with interest thereon and other charges with respect thereto, to be paid according to a certain Term Note A in the principal amount of Four Million Dollars and 00/100 (\$4,000,000) by the Debtor in favor of the Mortgagee (the "Note") and (b) if the Note is guaranteed by Debtor, to the extent of such principal sum and such interest and other charges, such guaranty (the "Guaranty"), Mortgagor hereby mortgages to Mortgagee, as continuing and collateral security for the payment of any and all indebtedness, liabilities and obligations of Debtor to Mortgagee, now existing or which may hereafter arise pursuant to or in connection with (as further described below) the Note, the Guaranty, this Mortgage or any amendments, renewals, extensions, modifications or substitutions of the Note, the Guaranty or this Mortgage (collectively, the "Indebtedness"), the premises described on the attached Schedule A.

TOGETHER with all buildings, structures, additions, enlargements, extensions, modifications, repairs, replacements and other improvements now or hereafter erected, constructed or situated upon said premises, and all fixtures and equipment and other personal property now or hereafter affixed to, or used in connection with, said premises and any and all replacements thereof and additions thereto, all of which shall be deemed to be and remain and form a part of said premises and are covered by the lien of this Mortgage (said premises, buildings, structures, other improvements, fixtures and equipment and other personal property being collectively referred to as the "Premises"),

TOGETHER with all strips and gores of land adjoining or abutting the Premises,

TOGETHER with all right, title and interest of Mortgagor in and to all streets, alleys, highways, waterways and public places open or proposed in front of, running through or adjoining the Premises, and all easements and rights of way, public and private, now or hereafter used in connection with the Premises,

TOGETHER with all tenements, hereditaments and appurtenances and all the estate and rights of Mortgagor in and to the Premises,

TOGETHER with all proceeds of, and any unearned premiums on, any insurance policies covering the Premises, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Premises,

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TOGETHER with the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Premises and to commence any action or proceeding to protect the interest of Mortgagee in the Premises,

TOGETHER with all awards heretofore or hereafter made by any federal, state, county, municipal or other governmental authority, or by whomsoever made in any condemnation or eminent domain proceedings whatsoever, to the present or subsequent owners of the Premises or any portion thereof, for the acquisition for public purposes of the Premises or any portion thereof or any interest therein or any use thereof, or for consequential damages on account thereof, including any award for any change of grade of streets affecting the Premises or any portion thereof and any award for any damage to the Premises or any portion thereof or any interest therein or any use thereof.

EXCEPTING THEREFROM, the Unassigned Rights of the Agency as defined in that certain Agency Lease Agreement dated as of December 1, 2002 by and between the Debtor and the Agency (as amended and/or supplemented from time to time, the "Agency Lease").

DEBTOR, AND ONLY WHERE SO NOTED, THE AGENCY, COVENANT WITH MORTGAGEE SO LONG AS THIS MORTGAGE IS IN EFFECT AS FOLLOWS:

1. INDEBTEDNESS. The Indebtedness shall be paid as provided in the Note or Guaranty, as the case may be, and as provided herein. Additionally, Debtor acknowledges and agrees that any amounts now or hereafter due and owing from Debtor to Mortgagee arising from or in connection with any interest rate swap agreement, now existing or hereafter entered into between the Debtor and Mortgagee, and any costs incurred by Mortgagee in connection therewith, including, without limitation, any interest, expenses, fees, penalties or other charges associated with any obligations undertaken by Mortgagee to hedge or offset Mortgagee's obligations pursuant to such swap agreement, or the termination of any such obligations, shall be (i) deemed additional interest and/or a related expense (to be determined in the sole discretion of Mortgagee) due in connection with the principal amount of the Indebtedness secured by this Mortgage, (ii) included (in the manner described above) as part of the Indebtedness secured by this Mortgage, and secured by this Mortgage to the full extent thereof, and (iii) included in any judgment in any proceeding instituted by Mortgagee or its agents against Mortgagor for foreclosure of this Mortgage or otherwise.

2. INSURANCE. Debtor shall keep the Premises insured against each risk to which the Premises may from time to time be subject (including fire, vandalism and other risks covered by all risk insurance; if requested by Mortgagee, earthquake; if the Premises or any portion thereof are located in an area identified as an area having special flood hazards and in which flood insurance has been made available, flood; and loss of rents by reason of such risks) for the benefit of Mortgagee. Such insurance shall be provided in such amounts, for such periods, in such form, with such special endorsements, on such terms and by such companies and against such risks as shall be satisfactory to Mortgagee. Without limiting the generality of the preceding two sentences, each policy pursuant to which such insurance is provided shall contain a mortgagee clause, in form and substance satisfactory to Mortgagee, (a) naming Mortgagee as mortgagee and (b) providing that (i) all moneys payable pursuant to such insurance shall be payable to Mortgagee, (ii) such insurance shall not be affected by any act or neglect of Mortgagor or Mortgagee, any occupancy, operation or use of the Premises or any portion thereof for purposes more hazardous than permitted by the terms of such policy, any foreclosure or other proceeding or notice of sale relating to the Premises or any portion thereof or any change in the title to or ownership of the Premises or any portion thereof and (iii) such policy and such mortgagee clause may not be canceled or amended except upon thirty (30) days' prior written notice to Mortgagee. Debtor hereby assigns and shall deliver each policy pursuant to which any such insurance is provided to Mortgagee. The acceptance by Mortgagee of such policies from Debtor shall not be deemed or construed as an approval by Mortgagee of the form, sufficiency or amount of such insurance. Mortgagee does not in any way represent that such insurance, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the business or interest of Debtor. In the event of the foreclosure of this Mortgage, or a transfer of title to the Premises in extinguishment of the Indebtedness, all right, title and interest of Debtor in and to any such policies then in force shall pass to the purchaser or grantee of the Premises. All the provisions of this Section 2 and any other provisions of this Mortgage pertaining to insurance which may be required under this Mortgage shall be construed with Section 254, Subdivision 4 of the New York Real Property Law, but, said Section 254 to the contrary notwithstanding, Mortgagor consents that Mortgagee may, without qualification or limitation by virtue of said Section 254, retain and apply the proceeds of any such insurance in satisfaction or reduction of the Indebtedness, whether or not then due and payable, or it may pay the same, wholly or in part, to the Debtor

for the repair or replacement of the Premises or for any other purpose satisfactory to Mortgagee, without affecting the lien of this Mortgage for the full amount of the Indebtedness before the making of such payment.

3. ALTERATIONS, DEMOLITION OR REMOVAL. Except as in connection with the Project (as defined in the Agency Lease), no building, structure, other improvement, fixture or equipment or other personal property constituting any portion of the Premises shall be removed, demolished or substantially altered without the prior written consent of Mortgagee.

4. WASTE AND CHANGE IN USE. The Debtor shall not commit any waste on the Premises or make any change in the use of the Premises which may in any way increase any ordinary fire, environmental or other risk arising out of construction or operation.

5. MAINTENANCE AND REPAIRS; CONDEMNATION.

(a) Debtor shall keep and maintain, or cause to be kept and maintained, all buildings, structures, other improvements, fixtures and equipment and other personal property constituting any portion of the Premises and the sidewalks and curbs abutting the Premises in good order and rentable and tenantable condition and state of repair. Subject to subsection (b) below, in the event that the Premises or any portion thereof shall be damaged or destroyed by fire or any other casualty, or in the event of the condemnation or taking of any portion of the Premises as a result of any exercise of the power of eminent domain, Debtor shall promptly restore, replace, rebuild or alter the same as nearly as possible to the condition immediately prior to such fire, other casualty, condemnation or taking without regard to the adequacy of any proceeds of any insurance or award received. Debtor shall give prompt written notice to Mortgagee of any such damage or destruction or of the commencement of any condemnation or eminent domain proceeding affecting the Premises or any portion thereof.

(b) Provided no Event of Default has occurred and is continuing hereunder, the net insurance proceeds and net proceeds of any condemnation award (in each case after deducting the Mortgagee's reasonable costs and expenses, if any, in collecting the same) shall be made available for the restoration or repair of the Premises if, in the Mortgagee's sole judgment, (1) restoration or repair and the continued operation of the Premises is economically feasible, (2) the value of the Mortgagee's security is not reduced, (3) the loss or condemnation, as applicable, does not occur in the six (6) month period preceding the stated maturity date of the Note and Mortgagee's independent consultant certifies that the restoration of the Premises can be completed at least ninety (90) days prior to such maturity date, and (4) before such proceeds are made available, Debtor first expends an amount which the Mortgagee, in its sole discretion, determines is necessary, in addition to the net insurance proceeds or net proceeds of any condemnation award, as applicable, to pay in full the cost of the restoration or repair. Any excess proceeds remaining after completion of such repair shall be distributed first to Debtor to the extent Debtor has deposited funds with the Mortgagee for such repair with the balance applied to the Indebtedness. Notwithstanding the foregoing, it shall be a condition precedent to any disbursement of insurance proceeds held by the Mortgagee hereunder that the Mortgagee shall have approved (x) all plans and specifications for any proposed repair or restoration, (y) the construction schedule and (z) the architect's and general contractor's contract for all restoration. The Mortgagee may establish other conditions it deems reasonably necessary to assure the work is fully completed in a good and workmanlike manner in compliance with all applicable laws and free of all liens or claims by reason thereof. Debtor's expenditures made pursuant to this subsection (b) shall be made before the net insurance proceeds or net proceeds of any condemnation award, as applicable, for such restoration or repair. If the net insurance proceeds or net proceeds of any condemnation award, as applicable, are made available for restoration or repair, such work shall be completed by Debtor in an expeditious and diligent fashion, and in compliance with all applicable laws, rules and regulations. At the Mortgagee's option, the net insurance proceeds or net proceeds of any condemnation award, as applicable, shall be disbursed pursuant to Mortgagee's standard building loan requirements and procedures and in all respects acceptable to Mortgagee. If following the final payments for the completion of such restoration or repair there are any net insurance proceeds or net proceeds of any condemnation award, as applicable, remaining, such proceeds shall be paid (i) to Debtor to the extent Debtor was required to make a deposit pursuant to this subsection (b), (ii) then to the Mortgagee to be applied to the Indebtedness, whether or not due and payable until paid in full, and (iii) then to Debtor. If an Event of Default has occurred and is continuing hereunder, or any of the conditions set forth in subparagraphs (1) through (4) of this subsection (b) have not been met or satisfied, the net insurance proceeds or net proceeds of any condemnation award, as applicable, shall be applied to the Indebtedness, whether or not due and payable, with any excess paid to Debtor.

6. EXISTENCE AND AUTHORITY. Mortgagor represents and warrants, and continues to represent and warrant as long as this Mortgage is in effect, as follows: (a) If Mortgagor is not a natural person (e.g., corporation, partnership, limited

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liability company, etc.), it is duly organized, validly existing and in good standing under the laws of the above-named state of organization and will do all things necessary to preserve and keep in full force and effect the existence, franchises, rights and privileges of Mortgagor as the type of business entity it was as of the date of this Mortgage, under the laws of the state of its organization; (b) Debtor and Agency each have the full power and authority to grant the mortgage lien hereunder and to execute, deliver and perform its respective obligations in accordance with this Mortgage; (c) the execution and delivery of this Mortgage will not (i) violate any applicable law of any governmental authority or any judgment or order of any court, other governmental authority or arbitrator; (ii) violate any agreement to which Mortgagor is a party; or (iii) result in a lien or encumbrance on any of its assets (other than the mortgage lien hereunder); (d) Debtor's and Agency's, as applicable, certificate of incorporation, by-laws, partnership agreement, articles of organization or other organizational or governing documents ("Governing Documents") do not prohibit any term or condition of this Mortgage; (d) each authorization, approval or consent from, each registration and filing with, each declaration and notice to, and each other act by or relating to, any party required as a condition of Mortgagor's execution, delivery or performance of this Mortgage (including any shareholder or board of directors or similar approvals) has been duly obtained and is in full force and effect and no other action is required under its Governing Documents or otherwise; and (e) Mortgagor has the power and authority to transact the business in which it is engaged and is duly licensed or qualified and in good standing in each jurisdiction in which the conduct of its business or ownership of property requires such licensing or such qualifications.

7. TAXES AND ASSESSMENTS. Unless paid from an escrow established pursuant to Section 8 of this Mortgage, Debtor shall pay all taxes, general and special assessments and other governmental impositions with respect to the Premises before the end of any applicable grace period. Upon request by Mortgagee, Debtor shall promptly deliver to Mortgagee receipted bills showing payment of all such taxes, assessments and impositions within the applicable grace period.

8. ESCROW FOR TAXES, ASSESSMENTS AND INSURANCE. Upon the occurrence of an Event of Default and upon request by Mortgagee, Debtor shall pay (a) monthly to Mortgagee on or before the first day of each and every calendar month, until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of the yearly taxes, PILOT payments, general and special assessments, other governmental impositions and other liens and charges with respect to the Premises to be imposed for the ensuing year, as estimated by Mortgagee in good faith, and annual premiums for insurance on the Premises and (b) an initial payment such that, when such monthly payments are added thereto, the total of such payments will be sufficient to pay such taxes, PILOT payments, assessments, impositions and other liens and charges and such insurance premiums on or before the date when they become due. Absent manifest error, Mortgagee's calculation as to the amount to be paid into Escrow shall be deemed conclusive. So long as no Event of Default (as hereinafter defined) shall have occurred or exists, Mortgagee shall hold such payments in trust in an account maintained with Mortgagee without obligation to pay interest thereon, except such interest as may be mandatory by any applicable statute, regulation or other law, to pay, to the extent funds are available, such taxes, PILOT payments, assessments, impositions and other liens and charges and such insurance premiums within a reasonable time after they become due but in any event, prior to the incurrence of any interest or penalties therein; provided, however, that upon the occurrence or existence of any Event of Default, Mortgagee may apply the balance of any such payments held to the Indebtedness. If the total of such payments made by any Mortgagor shall exceed the amount of such payments made by Mortgagee, such excess shall be held or credited by Mortgagee for the benefit of Debtor. If the total of such payments made by the Debtor shall be less than the amount of such taxes, assessments, impositions and other liens and charges and such insurance premiums, then Debtor shall pay to Mortgagee any amount necessary to make up the deficiency on or before the date when any such amount shall be due.

9. LEASES. Pursuant to Section 291-f of the New York Real Property Law and except for the Agency Lease and the Company Lease (as defined in the Agency Lease), Debtor shall not (a) amend, cancel, abridge, terminate, or otherwise modify any lease of the Premises or of any portion thereof or (b) accept any prepayment of installments of rent to become due thereunder for more than one month in advance other than in compliance with the terms of such lease, without the prior written consent of Mortgagee. Except for the Agency Lease and the Company Lease, the Debtor shall not make any new lease in place of or any lease renewal or extension of any lease of the Premises or any portion thereof (other than those that Debtor as landlord may be required to grant by the terms of an existing lease) without the prior written consent of Mortgagee. Upon request by Mortgagee, Debtor shall promptly furnish to Mortgagee a written statement containing the names and mailing addresses of all lessees of the Premises or of any portion thereof, the terms of their respective leases, the space occupied and the rentals payable thereunder and copies of their respective leases and shall cooperate in effecting delivery of notice of this covenant to each affected lessee.

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10. ASSIGNMENT OF LEASES AND RENTS. Mortgagor hereby assigns to Mortgagee all existing and future leases of the Premises or any portion thereof (including any amendments, renewals, extensions or modifications thereof) and the rents, issues and profits of the Premises (excluding the Agency's Unassigned Rights and the Agency Lease) including accounts receivable of the Premises ("Accounts"), as further security for the payment of the Indebtedness, and Mortgagor grants to Mortgagee the right to enter upon and to take possession of the Premises for the purpose of collecting the same and to let the Premises or any portion thereof, and after payment of each cost and expense (including each fee and disbursement of counsel to Mortgagee) incurred by Mortgagee in such entry and collection, to apply the remainder of the same to the Indebtedness, without affecting its right to maintain any action theretofore instituted, or to bring any action thereafter, to enforce the payment of the Indebtedness. In the event Mortgagee exercises such rights, it shall not thereby be deemed a mortgagee in possession, and it shall not in any way be made liable for any act or omission. The Debtor shall not assign such leases, rents, issues or profits or any interest therein or grant any similar rights to any other person without Mortgagee's prior written consent. Mortgagee hereby waives the right to enter upon and to take possession of the Premises for the purpose of collecting said rents, issues and profits, and Debtor shall be entitled to collect the same, until the occurrence or existence of any Event of Default, but such right of Debtor may be revoked by Mortgagee upon the occurrence or existence of any Event of Default. Upon the occurrence or existence of any Event of Default and if Debtor is a tenant of the Premises, Debtor shall pay monthly in advance to Mortgagee, or to any receiver appointed to collect said rents, issues and profits, a fair and reasonable monthly rental value for the use and occupation of the Premises, and upon default in any such payment shall vacate and surrender the possession of the Premises to Mortgagee or to such receiver, and in default thereof may be evicted by summary proceedings pursuant to Article 7 of the New York Real Property Actions and Proceedings Law. The rights and remedies under this section and any separately recorded assignment of rents and/or leases in favor of Mortgagee shall be cumulative. In the event of any irreconcilable inconsistencies between such agreements and this section, the separately recorded assignment of rents and/or leases shall control.

11. SECURITY AGREEMENT. This Mortgage constitutes a security agreement under the New York Uniform Commercial Code in effect in the State of New York, as amended from time to time (the "UCC"), and Mortgagor hereby grants to Mortgagee, to secure the Indebtedness, a continuing security interest in all personal property of Mortgagor used in connection with any portion of, or otherwise constituting a portion of, the Premises, including, without limitation, fixtures, goods that are or are to become fixtures, as-extracted items and timber to be cut, as such terms and categories may be defined or described in the UCC, as applicable, whether now existing or owned or hereafter arising or acquired, and in all proceeds, products, rents, issues, profits and accounts arising therefrom. Mortgagee shall have the right to file in any public office, without the signature of Mortgagor, any financing statement relating to such items of collateral. Mortgagee shall have each applicable right and remedy of a secured party under the UCC and each applicable right and remedy pursuant to any other law or pursuant to this Mortgage.

12. NO TRANSFER. Mortgagor shall not, without Mortgagee's prior written consent, sell, convey or transfer the Premises or any portion thereof or any interest therein or contract to do so except as may be provided by the Agency's Unassigned Rights. If the Debtor or any endorser or guarantor of the Indebtedness (a "Guarantor") is a corporation, or if any other person liable with respect to the Indebtedness or any portion thereof other than Debtor or any general partner of Debtor or any Guarantor, is a corporation, any direct or indirect change in the beneficial ownership or number of issued and outstanding shares of any class of stock of such Debtor, Guarantor or general partner, whether by operation of law or otherwise, after which the percentage of such shares beneficially owned by any person or group of persons having beneficial ownership of any such shares has changed by at least ten percent (10%) more or less than it was on the date of this Mortgage shall be deemed a sale, conveyance or transfer of the Premises within the meaning of this Section 12. If the Debtor or Guarantor is a partnership, including a limited liability partnership, any change in the partnership interests of the general partners of such Debtor or Guarantor or in the composition of the general partners of such Debtor or Guarantor, whether by operation of law or otherwise, shall be deemed a sale, conveyance or transfer of the Premises within the meaning of this Section 12. If the Debtor is a limited liability company, any change in the direct or indirect membership interest of any member or class of members of such Debtor, whether by operation of law or otherwise, after which the percentage of such membership interest owned by any such member or class has changed by at least ten percent (10%) more or less than it was on the date of this Mortgage shall be deemed a sale, conveyance or transfer of the Premises within the meaning of this Section 12; provided, however, notwithstanding the foregoing, transfers of membership interests in Debtor shall be permitted (a) between members, (b) to family members of members for estate planning purposes, and (c) to entities or trusts created for the benefit of members or their family members provided that (1) James V. Breuer and Nathan J. Podkaminer remain as the sole managers of Debtor, and (2) the current members, their affiliates and/or current principals retain no less than fifty-one percent (51%) voting and distribution control of Borrower in the aggregate.

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13. NO SECONDARY FINANCING OR OTHER LIENS. Mortgagor shall not, without Mortgagee's prior written consent, mortgage, pledge, assign, grant a security interest in or cause any other lien or encumbrance to be made or permit any other lien or encumbrance to exist upon the Premises or any portion thereof except for (a) taxes and assessments not yet delinquent, (b) any mortgage, pledge, security interest, assignment or other lien or encumbrance to Mortgagee or any affiliate of Mortgagee (an "Affiliate") and (c) Permitted Encumbrances (as defined in the Agency Lease).

14. COMPLIANCE WITH LAWS. Debtor represents and warrants to Mortgagee, and continues to represent and warrant as long as this Mortgage is in effect, as follows: (a) the buildings, structures and other improvements now constituting any portion of the Premises are in full compliance with all applicable statutes, regulations and other laws (including all applicable zoning, building, fire and health codes and ordinances and the Americans With Disabilities Act of 1990) and all applicable deed restrictions, if any, and is not and shall not be used for any illegal purpose; (b) such compliance is based solely upon Debtor's ownership of the Premises and not upon title to or interest in any other property. Debtor shall comply with or cause compliance with all statutes, regulations and other laws (including all applicable zoning, building, fire and health codes and ordinances and the Americans With Disabilities Acts of 1990), all other requirements of all governmental authorities whatsoever having jurisdiction over or with respect to the Premises or any portion thereof or the use or occupation thereof and with all applicable deed restrictions, if any; provided, however, that Debtor may postpone such compliance if and so long as the validity or legality of any such requirement or restriction shall be contested by Debtor, with diligence and in good faith, by appropriate legal proceedings and Mortgagee is satisfied that such non-compliance will not impair or adversely affect the value of its security.

15. WARRANTY OF TITLE; TITLE INSURANCE. Debtor represents and warrants to Mortgagee, and continues to represent and warrant as long as this Mortgage is in effect, that Debtor holds good and marketable title in fee simple absolute to the Premises. Upon request by Mortgagee, Debtor shall furnish to Mortgagee at Debtor's own cost and expense a title insurance policy in the then amount of the Indebtedness, (a) naming Mortgagee as mortgagee, (b) covering the lien on the Premises granted pursuant to this Mortgage, (c) containing no exception not approved by Mortgagee, (d) issued by a title insurance company qualified to do business in the State of New York and satisfactory to Mortgagee and (e) otherwise in form and substance satisfactory to Mortgagee.

16. CERTAIN RIGHTS AND OBLIGATIONS.

(a) Upon the occurrence and during the continuation of an Event of Default, Mortgagee may take such action as Mortgagee deems appropriate to protect the Premises or the status or priority of the lien of this Mortgage, including: entry upon the Premises to protect the Premises from deterioration or damage, or to cause the Premises to be put in compliance with any governmental, insurance rating or contract requirements; payment of amounts due on liens having priority over this Mortgage; payment of any tax or charge for purposes of assuring the priority or enforceability of this Mortgage; obtaining insurance on the Premises (including flood insurance); or commencement or defense of any legal action or proceeding to assess or protect the validity or priority of the lien of this Mortgage. On demand, Debtor shall reimburse Mortgagee for all expenses in taking any such action, with interest, and the amount thereof shall be secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the Indebtedness evidenced by the Note.

(b) Mortgagor authorizes Mortgagee, without notice, demand or any reservation of rights and without affecting this Mortgage, from time to time: (i) to accept from any person or entity and hold additional collateral for the payment of the Indebtedness or any part thereof, and to exchange, enforce or refrain from enforcing, or release such collateral or any part thereof; (ii) to accept and hold any endorsement or guaranty of payment of the Indebtedness or any part thereof, and to release or substitute any such obligation of any such Guarantor or any person or entity who has given any collateral as security for the payment of the Indebtedness or any part thereof, or any other person or entity in any way obligated to pay the Indebtedness or any part thereof, and to enforce or refrain from enforcing, or compromise or modify, the terms of any obligation of any such Guarantor, person or entity; (iii) upon the occurrence of an Event of Default, to direct the order or manner of the disposition of any and all collateral and the enforcement of any and all endorsements and guaranties relating to the Indebtedness or any part thereof as Mortgagee, in its sole discretion, may determine; and (iv) upon the occurrence of an Event of Default to determine the manner, amount and time of application of payments and credits, if any, to be made on all or any part of any component or components of the Indebtedness (whether principal, interest, costs and expenses, or otherwise) including if the amount of the Indebtedness secured by this Mortgage is less than the total amount of the

obligations under the Note or the Guaranty, to make any such application to such obligations, if any, in excess of the amount of the Indebtedness secured by this Mortgage.

(c) Notwithstanding the occurrence of an Event of Default, this Mortgage shall remain valid, binding and enforceable: (i) without deduction by reason of any setoff, defense or counterclaim of Debtor or Guarantor, (ii) without requiring protest or notice of nonpayment or notice of default to Mortgagor, to Guarantor, or to any other person; (iii) without demand for payment or proof of such demand; (iv) without requiring Mortgagee to resort first to Debtor or to any other guaranty or any collateral which Mortgagee may hold; (v) without requiring notice of acceptance hereof or assent hereto by Mortgagee; and (vi) without requiring notice that any indebtedness has been incurred or of the reliance by Mortgagee upon this Mortgage; all of which Mortgagor hereby waives.

(d) The enforceability of this Mortgage shall not be affected by: (i) any failure to perfect or continue the perfection of any security interest in or other lien on any other collateral securing payment of the Indebtedness; (ii) the invalidity, unenforceability, or loss or change in priority of any such security interest or other lien; (iii) any failure to protect, preserve or insure any such collateral; (iv) any defense arising by reason of the cessation from any cause whatsoever of liability of Debtor or any Guarantor; (v) any compromise of any obligation of Debtor or any Guarantor; (vi) the invalidity or unenforceability of any of the Indebtedness; or (vii) any renewal, extension, acceleration, or other change in the time for payment of, or the terms of the interest on the Indebtedness or any part thereof; all of which Debtor hereby waives.

(e) If Mortgagee shall receive from or on behalf of Debtor any sum less than the full amount then due and payable, Mortgagee may, but shall not be obligated to, accept the same and, if it elects to accept any such payment, it may without waiving any Event of Default: (i) apply such payment on account of the Indebtedness or any amount payable hereunder, or (ii) hold same or any part thereof, without liability for interest, in a special account and from time to time apply same or any part thereof as specified in subsection (i) of this subsection.

17. LIEN LAW COVENANT. Mortgagor shall receive the advances secured by this Mortgage and shall hold the right to receive such advances as a trust fund in accordance with the provisions of Section 13 of the New York Lien Law.

18. RESERVED.

19. APPOINTMENT OF RECEIVER. In addition to any other remedy, upon the occurrence of any Event of Default, Mortgagee, in any action to foreclose this Mortgage, shall be entitled, without notice or demand and without regard to the adequacy of any security for the Indebtedness or the solvency or insolvency of any person liable for the payment thereof, to the appointment of a receiver of the rents, issues and profits of the Premises.

20. SALE IN ONE OR MORE PARCELS. In case of a foreclosure sale, the Premises may be sold in one or more parcels, any provision of any statute, regulation or other law to the contrary notwithstanding.

21. ESTOPPEL STATEMENT. Upon written request by Mortgagee, Debtor shall furnish to Mortgagee, within ten (10) days if such request is delivered in person or within fifteen (15) days if such request is otherwise delivered, a written statement duly acknowledged of the amount of the Indebtedness and whether any offsets or defenses exist against the Indebtedness.

22. RIGHT TO INSPECT AND EXAMINE. Upon prior written notice to Debtor but in no event no more often than semiannually (unless an Event of Default has occurred and is continuing, in which case, no prior notice or limitation on number of inspections shall be required), Debtor shall immediately permit Mortgagee and each officer, employee, accountant, attorney and other agent of Mortgagee to enter and inspect the Premises and to examine, audit, copy and extract each record of the Debtor relating to the Premises or any portion thereof.

23. FINANCIAL STATEMENTS. Debtor shall provide, shall cause each Guarantor to provide, and shall use its best efforts to cause each lessee of any material portion of the Premises (a "Material Lessee") to provide, to Mortgagee, in form satisfactory to Mortgagee, promptly upon written request by Mortgagee, all information relating to such Guarantor, Debtor or Material Lessee or to such Guarantor's, Debtor's or Material Lessee's business, operations, assets, affairs or condition (financial or otherwise) or to the Premises or any portion thereof that is so requested. Without limiting the generality of the preceding sentence, Debtor shall so provide (a) within thirty (30) days of the filing thereof, the as-filed Federal income tax

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return of each Guarantor and the annual personal financial statement and global cash flow of each Guarantor within thirty (30) days of the filing of the Guarantors' Federal tax returns, in reasonable detail and certified by such Guarantor to be complete and accurate, (b) within one hundred twenty (120) days after the end of each fiscal year, internally prepared consolidating and consolidated statements of income and cash flows for the Debtor and its consolidating and consolidated balance sheet as of the end of such fiscal year, setting forth comparative figures for the preceding fiscal year, all such statements to be certified by Debtor's chief financial officer or partner to be correct and in accordance with Debtor's records and to present fairly the results of the Debtor's operations and cash flows and its financial position at year end in conformity with generally accepted accounting principles, together with the as-filed Federal tax returns of the Debtor for such fiscal year, (c) within one hundred twenty (120) days after the end of each fiscal year, any and all financial information pertaining specifically to the Premises, certified rent rolls and/or lease summaries containing the names of all tenants together with a statement of all the terms of the respective leases, and (d) with each statement of income, a certificate executed by such Debtor's chief executive and chief financial officers or managing partners or members (i) stating that the signers of the certificate have reviewed this Mortgage and the operations and condition (financial or other) of such Debtor and any affiliates during the relevant period and (ii) stating that no Event of Default occurred during the period, or if an Event of Default did occur, describing its nature, the date(s) of its occurrence or period of existence and what action Debtor has taken with respect thereto.

24. AUTHORIZATION AND POWER OF ATTORNEY. Mortgagee is irrevocably and unconditionally authorized to take, and Mortgagor irrevocably and unconditionally appoints Mortgagee as the attorney-in-fact of such Mortgagor, with full power of substitution and of revocation, to take, in the name of such Mortgagor or otherwise at the sole option of Mortgagee, each action relating to the Premises or any portion thereof that, subject to this Mortgage, such Mortgagor could take in the same manner, to the same extent and with the same effect as if such Mortgagor were to take such action; provided, however, that Mortgagee shall not have the right, pursuant to such authorization or as such attorney-in-fact, to sell or otherwise dispose of the Premises or any portion thereof. Such power of attorney is coupled with an interest in favor of Mortgagee, and shall not be terminated or otherwise affected by the death, disability or incompetence of any Mortgagor.

25. FURTHER ASSURANCES. Promptly upon request by Mortgagee, Debtor and the Agency (in compliance with Article 18-A of the New York General Municipal Law) shall execute and deliver each writing, and take each other action, that Mortgagee shall deem necessary or desirable at the sole option of Mortgagee (a) to perfect or accomplish any lien or security interest granted, or assignment made, pursuant to this Mortgage; (b) otherwise to accomplish any purpose of this Mortgage; (c) in connection with any transaction contemplated by this Mortgage; or (d) in connection with the Premises or any portion thereof.

26. ENVIRONMENTAL REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION. Debtor represents and warrants, and continues to represent and warrant as long as this Mortgage is in effect, to Mortgagee that other than as disclosed in the Environmental Report (as defined in that certain Environmental Compliance and Indemnification Agreement dated the date hereof by the Debtor in favor of the Mortgagee, as the same may be amended, modified and/or supplemented from time to time) (a) Debtor and the Premises are in compliance with each statute, regulation or other law and each judgment, order or award of any court, agency or other governmental authority or of any arbitrator (individually an "Environmental Requirement") relating to the protection of any water, water vapor, land surface or subsurface, air, fish, wildlife, biota or other natural resources or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of any chemical, natural or synthetic substance, waste, pollutant or contaminant (collectively "Regulated Materials"), (b) Debtor has not been charged with, or has received any notice that Debtor is under investigation for, the failure to comply with any Environmental Requirement, nor has Debtor received any notice that Debtor has or may have any liability or responsibility under any Environmental Requirement with respect to the Premises or otherwise, (c) the Premises have never been used for (i) the storage, treatment, generation, transportation, processing, handling, production or disposal of Regulated Materials, except as permitted by law, (ii) a landfill or other waste disposal site or (iii) military purposes, (d) no underground storage tanks are located on the Premises, (e) the environmental media at the Premises do not contain Regulated Materials beyond any legally permitted level, (f) there has never been any release, threatened release, migration or uncontrolled presence of any Regulated Materials on, at or from the Premises or, to the knowledge of Debtor, within the immediate vicinity of the Premises and (g) Debtor has not received any notice of any such release, threatened release, migration or uncontrolled presence. Debtor shall not cause or permit the Premises to be used in any way that would result in any of the representations and warranties contained in the preceding sentence to be false or misleading at any future time. To the extent any such representation or warranty at any time is or becomes false or misleading, Debtor shall promptly notify Mortgagee thereof. If at any time Debtor obtains any evidence or information which suggests that potential

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environmental problems may exist on, at or about the Premises, Mortgagee may request Debtor, at Debtor's own cost and expense, to conduct and complete investigations, studies, sampling and testing with respect to the Premises requested by Mortgagee. Debtor shall promptly furnish to Mortgagee copies of all such investigations, studies, samplings and tests. Debtor shall (a) conduct and complete all such investigations, studies, samplings and testing, and all remedial, removal and other actions legally necessary with respect to the Premises, in accordance with all applicable Environmental Requirements and promptly furnish to Mortgagee copies of all documents generated in connection therewith and (b) defend, reimburse, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, the violation of, or other liability or responsibility under, any Environmental Requirements, or the release, threatened release, migration or uncontrolled presence of any Regulated Materials on, at or from the Premises including attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. In the event this Mortgage is foreclosed, or Debtor tenders a deed in lieu of foreclosure which Mortgagee agrees to accept, Debtor shall be responsible to deliver the Premises to Mortgagee free of any and all Regulated Materials other than any that are (a) normally used in Debtor's business and (b) located and maintained thereon in compliance with all applicable Environmental Requirements and in a condition that conforms with all applicable Environmental Requirements. The provisions of this Section 26 shall be in addition to any and all other obligations and liabilities Debtor may have to Mortgagee at common law or any other agreement with Mortgagee, and shall survive the transactions contemplated in this Mortgage and the termination of this Mortgage.

27. EVENTS OF DEFAULT.

(a) Any of the following events or conditions shall constitute an "Event of Default": (i) failure by Debtor to pay when due (whether at the stated maturity, by acceleration, upon demand or otherwise) the Indebtedness, or any part thereof, or there occurs any event or condition which after notice, lapse of time or after both notice and lapse of time will permit acceleration of the Indebtedness; (ii) default by Debtor in the performance of any obligation, term or condition of this Mortgage or any other agreement between Debtor and Mortgagee or any of its affiliates or subsidiaries (collectively, "Affiliates"); (iii) the occurrence of an event of default by Debtor with respect to any indebtedness for borrowed money owing to Mortgagee or its Affiliates (other than under the Note) in any amount, or owing to any third party that is in excess of Five Hundred Thousand Dollars (\$500,000.00); (iv) Debtor is dissolved, becomes insolvent, generally fails to pay or admits in writing its inability generally to pay its debts as they become due; (v) failure to pay, withhold or collect any tax as required by law; (vi) Debtor makes a general assignment, arrangement or composition agreement with or for the benefit of its creditors or makes, or sends notice of any intended, bulk sale; the sale, assignment, transfer or delivery of all or substantially all of the assets of Debtor to a third party; or the cessation by Debtor as a going business concern; (vii) Debtor files a petition in bankruptcy or institutes any action under federal or state law for the relief of debtors or seeks or consents to the appointment of an administrator, receiver, custodian or similar official for the wind up of its business (or has such a petition or action filed against it and such petition action or appointment is not dismissed or stayed within forty-five (45) days); (viii) the reorganization, merger, consolidation or dissolution of Debtor (or the making of any agreement therefor); (ix) the entry of any judgment or order of any court, other governmental authority or arbitrator against Debtor; (x) falsity, omission or inaccuracy of facts submitted to Mortgagee or any Affiliate (whether in a financial statement or otherwise); (xi) an adverse change in the Premises, Debtor, its business, operations, affairs or condition (financial or otherwise) from the status shown on any financial statement or other document submitted to Mortgagee, and which change Mortgagee determines will have a material adverse affect on (a) Debtor, the Premises, its business, operations or condition (financial or otherwise), or (b) the ability of Debtor to pay the Indebtedness or perform its obligations hereunder or the Note; (xii) there occurs any change in the management or ownership of Debtor which is, in the opinion of Mortgagee, materially adverse to its interest and which remains uncorrected for thirty (30) days after Mortgagee notifies Mortgagor of its opinion; (xiii) any pension plan of Debtor fails to comply with applicable law or has vested unfunded liabilities that, in the opinion of Mortgagee, might have a material adverse effect on Debtor's ability to repay its debts; (xiv) any indication or evidence received by Mortgagee that Debtor may have directly or indirectly been engaged in any type of activity which, in Mortgagee's discretion, might result in the forfeiture of the Premises to any governmental authority; (xv) the occurrence of any event described in Section 27(a)(i) through and including 27(a)(xiv) with respect to any Guarantor or Debtor (if Mortgagor and Debtor are not the same); or (xvi) Mortgagee in good faith believes that the prospect of payment of all or any part of the Indebtedness or performance of Debtor's or Agency's obligations under this Mortgage or the Note is impaired.

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(b) Mortgagee, at its sole election, may declare all or any part of any Indebtedness not payable on demand to be immediately due and payable without demand or notice of any kind upon the happening of any Event of Default. All or any part of any Indebtedness not payable on demand shall be automatically and immediately due and payable, without demand or notice of any kind, upon the commencement of Debtor's bankruptcy if voluntary and upon the lapse of sixty (60) days without dismissal if involuntary, unless an order for relief is entered sooner. The provisions of this paragraph are not intended in any way to affect any rights of Mortgagee with respect to any Indebtedness which may now or hereafter be payable on demand.

(c) Upon the happening of an Event of Default, whether or not foreclosure proceedings have been instituted, Mortgagor shall, upon demand, surrender possession of the Premises to Mortgagee. If Mortgagor remains in possession of the Premises after the happening of an Event of Default and demand by Mortgagee, the possession shall be as tenant of Mortgagee and Debtor agrees to pay in advance upon demand to Mortgagee a reasonable monthly rental for the Premises or portion so occupied. Mortgagee may dispossess, by summary proceedings or otherwise, any tenant of Debtor defaulting in the payment of rent. If a receiver is appointed, this covenant shall inure to the benefit of such receiver. Notwithstanding any provision of law to the contrary, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of tenants of the Premises which are subordinate to the lien of this Mortgage.

(d) If the Indebtedness, as evidenced by a single note or other written instrument shall exceed the amount secured by this Mortgage, or as evidenced by a combination of same that singularly or in part collectively may be less than said secured amount but combined exceed said secured amount, Mortgagee, in any foreclosure hereof, shall have the right to sue and collect the excess in the same action as commenced for the foreclosure hereof, and recover a money judgment for said excess with all the rights attendant thereto, including the issuance of an execution to the Sheriff for collection thereof, and Mortgagor hereby waives any defense based upon a claim that in doing so, Mortgagee is splitting its cause of action if it seeks to foreclose this Mortgage for part of the indebtedness and recover at law for another part.

(e) Upon the happening of an Event of Default, Mortgagee may pursue, take or refrain from pursuing any remedy for collection of the Indebtedness, including foreclosure of this Mortgage.

(f) Mortgagee may, either with or without entry or taking possession of the Premises as provided in this Mortgage or otherwise, personally or by its agents or attorneys, and without prejudice to the right to bring an action of foreclosure of this Mortgage: (A) sell the Premises or any part thereof pursuant to any procedures provided by applicable law including the procedures set forth in Article 14 of the New York Real Property Actions and Proceedings Law (and any amendments or substitute statutes in regard thereto) allowing non-judicial foreclosure of Mortgage by sale, and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entity or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law or (B) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure under this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee may elect. Any reference in this Mortgage to an action or right of Mortgagee in regard to or in connection with a "foreclosure proceeding" shall be deemed to include a sale and/or proceeding under this subsection, including a non-judicial foreclosure of mortgage by sale.

28. EXPENSES. Debtor shall pay to Mortgagee and Agency, as applicable, on demand all costs and expenses (including attorneys' fees and disbursements whether for internal or outside counsel) reasonably incurred by Mortgagee in connection with the Indebtedness or the Mortgage including costs of collection, of preserving or exercising any right or remedy of Mortgagee under this Mortgage or any related security agreement or guaranty, of workout or bankruptcy proceedings by or against Mortgagor, of defending against any claim asserted as a direct or indirect result of the Indebtedness or of performing any obligation of any Mortgagor pursuant to this Mortgage or otherwise (including payment of any amount Debtor is obligated to pay pursuant to this Mortgage and performance of any obligation of Mortgagor pursuant to this Mortgage). Debtor agrees to defend and indemnify Mortgagee from any and all third party claims arising from Mortgagor's duties as owner and/or occupant of the Premises, and further agrees to pay, upon demand, any expense that Mortgagee may incur (including attorneys' fees and disbursements whether for internal or outside counsel) due to Debtor's failure to provide appropriate defense and indemnification to Mortgagee in a timely manner. Mortgagee reserves the right to have Debtor pay, upon demand, administrative fee(s) in regard to any administrative action Mortgagee is required or requested to take including the preparation of discharges, releases or assignments to third parties. Costs and expenses shall accrue interest at

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the default rate set forth in the Note from the date of demand until payment is actually received by Mortgagee. Each such cost and expense and any interest thereon shall constitute part of the Indebtedness and be secured by this Mortgage and may be added to the judgment in any suit brought by Mortgagee or its agents against any Mortgagor on this Mortgage.

29. NOTICES. Any demand or notice hereunder or under any applicable law pertaining hereto (including Article 14 of New York Real Property Actions and Proceedings Law) shall be in writing and duly given if delivered to the Debtor or the Agency, as applicable, (at their respective addresses on page one or at such other address as the Debtor or the Agency, as applicable, may notify the Mortgagee in writing) or to Mortgagee (at the address on page one). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal service and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or on the business of delivery by a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Mortgagor and Mortgagee.

30. LITIGATION. Debtor shall promptly notify Mortgagee in writing of any litigation, proceeding, or counterclaim against, or of any investigation of, Debtor (or the threat thereof) if: (i) the outcome of such litigation, proceeding, counterclaim, or investigation may materially and adversely affect the finances or operations of Mortgagor or title to, or the value of, any assets secured by the Mortgage or (ii) such litigation, proceeding, counterclaim, or investigation questions the validity of the Mortgage, the Note or any document executed in connection therewith including any guaranties or any action taken, or to be taken, pursuant to any such documents. Debtor shall furnish to Mortgagee such information regarding any such litigation, proceeding, counterclaim, or investigation as Mortgagee shall request.

31. APPRAISED VALUE. In no event will the Indebtedness exceed eighty percent (80%) of the "as completed" appraised value of the Premises (the "Loan to Value Ratio"). Upon the reasonable request of the Mortgagee, Debtor agrees, at its cost, to provide to the Mortgagee updated appraisals from an appraiser acceptable to the Mortgagee. If Debtor fails to provide the Mortgagee with such an appraisal, then the Mortgagee may obtain its own appraisal and Debtor shall reimburse the Mortgagee for the cost of same. In the event the Indebtedness exceeds the Loan to Value Ratio, the Debtor agrees, upon notice from the Mortgagee, (a) to pay the Mortgagee an amount equal to the portion of such indebtedness which will reinstate the Loan to Value Ratio, (b) to provide the Mortgagee with liens and security interests in such additional collateral, satisfactory to the Mortgagee, as will reinstate the Loan to Value Ratio, or (c) to pay off the entire amount of such indebtedness then due including any prepayment premiums, if applicable, as set forth in the Note.

32. NOTICE OF NON-COMPLIANCE. Debtor shall notify Mortgagee in writing of any failure by Mortgagor to comply with any provision of the Note, the Mortgage or any document executed in connection therewith immediately upon learning of such non-compliance, or if any representation, warranty or covenant contained in any such document is no longer true. Debtor shall also immediately notify Mortgagee in writing if there is any material adverse change in any of the information or financial statements supplied to Mortgagee to induce Mortgagee to extend credit to Mortgagor or if such information or financial statement is required under this Mortgage or any other document executed in connection therewith.

33. COVENANTS SHALL RUN WITH THE LAND. The covenants contained in this Mortgage shall run with the land and bind Mortgagor, each heir, legal representative, successor and assign of Mortgagor and each subsequent owner, encumbrancer, tenant and subtenant of the Premises or any portion thereof, and shall inure to the benefit of, and be enforceable by, Mortgagee and each successor and assign of Mortgagee.

34. NONWAIVER BY MORTGAGEE. All rights and remedies of Mortgagee under this Mortgage and its other agreements with Mortgagor are cumulative, and no right or remedy shall be exclusive of any other right or remedy. No single, partial or delayed exercise by Mortgagee or its agents of any right or remedy shall preclude full and timely exercise by Mortgagee or its agents at any time of any right or remedy of Mortgagee without notice or demand, at Mortgagee's sole option. No course of dealing or other conduct, no oral agreement or representation made by Mortgagee or its agents or usage of trade shall operate as a waiver of any right or remedy of Mortgagee. No waiver of any right or remedy of Mortgagee hereunder shall be effective unless made specifically in writing by Mortgagee. No notice or demand on Mortgagor, Debtor or Guarantor in any case shall entitle Mortgagor, Debtor or Guarantor to any other or further notice in similar or other circumstances.

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35. RIGHT OF SETOFF. If an Event of Default occurs, Mortgagee and Affiliates shall also have the right to setoff against the Indebtedness any property held in a deposit or other account or otherwise owing by Mortgagee or Affiliates including, in any capacity to Debtor or Guarantor in any capacity whether or not the Indebtedness or the obligation to pay such moneys owed by Mortgagee is then due, and Mortgagee shall be deemed to have exercised such right of setoff immediately at the time of such election.

36. TERM; SURVIVAL. The term of this Mortgage and Mortgagor's obligations hereunder shall continue until the Indebtedness has been fully paid to Mortgagee's satisfaction or, solely with respect to the Agency, until the Agency no longer has an interest in the Premises, whichever is earlier. Debtor's obligation to pay the costs and expenses hereunder shall survive the term of this Mortgage and the entry of any judgment of foreclosure. Mortgagor's representations, warranties, covenants and agreements shall survive during the term of this Mortgage and shall be presumed to have been relied upon by Mortgagee. If after receipt of any payment of all or any part of the Indebtedness, Mortgagee is for any reason compelled to surrender such payment to any person or entity because such payment is determined to be void or voidable as a preference, impermissible set-off, or a diversion of trust funds, or for any other reason, this Mortgage shall continue in full force notwithstanding any contrary action which may have been taken by Mortgagee in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Mortgagee's rights under this Mortgage and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

37. MISCELLANEOUS. This Mortgage is absolute and unconditional. This Mortgage and all documents, including the Note, any Guaranty and any other document required to be executed by Debtor or Guarantor in connection with the transaction contemplated hereby constitute the entire agreement and understanding between the parties hereto with respect to such transaction and supersedes all prior negotiations, courses of dealing, understandings, and agreements between such parties with respect to such transactions. This Mortgage is a binding obligation enforceable against Mortgagor and its heirs and legal representatives and its successors and assigns and shall inure to the benefit of Mortgagee and its successors and assigns. Any reference herein to "Mortgagee" shall be deemed to include and apply to every subsequent holder of this Mortgage and any reference herein to "Debtor" or "Guarantor" shall include; (i) any successor individual or individuals, association, partnership, limited liability company or corporation to which all or substantially all of the business or assets of Debtor or Guarantor, as the case may be, shall have been transferred; (ii) in the case of a partnership Debtor or Guarantor (as the case may be) any new partnership which shall have been created by reason of the admission of any new partner or partners therein, or by reason of the dissolution of the existing partnership by voluntary agreement or the death, resignation or other withdrawal of any partner; and (iii) in the case of a corporate or limited liability company, Debtor or Guarantor (as the case may be) any other entity into or with which Debtor or Guarantor (as the case may be) shall have been merged, consolidated, reorganized, or absorbed. It is the intent of Mortgagor and Mortgagee that the provisions of this Mortgage, other than those included in the New York statutory form of mortgage, shall be construed as affording to Mortgagee rights additional to, and not exclusive of, the rights conferred under the provisions contained in such statutory form. Unless the context otherwise clearly requires, references to plural includes the singular and references to the singular include the plural; the word "or" has the inclusive meaning represented by the phrase "and/or"; the word "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and captions or section headings are solely for convenience and not part of the substance of this Mortgage. Any representation, warranty, covenant or agreement herein shall survive execution and delivery of this Mortgage and shall be deemed continuous. Each provision of this Mortgage shall be interpreted as consistent with existing law and shall be deemed amended to the extent necessary to comply with any conflicting law. If any provision nevertheless is held invalid, the other provisions shall remain in effect. Mortgagor agrees that in any legal proceeding, a photocopy of this Mortgage kept in Mortgagee's course of business may be admitted into evidence as an original.

38. JOINT AND SEVERAL. If there is more than one Debtor, each of them shall be jointly and severally liable for all amounts and obligations which become due or should be performed under this Mortgage and the term "Debtor" shall include each as well as all of them.

39. GOVERNING LAW; JURISDICTION. This Mortgage has been delivered to and accepted by Mortgagee and will be deemed to be made in the State of New York. This Mortgage will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. **MORTGAGOR HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN NEW YORK STATE IN ONONDAGA COUNTY OR THE NORTHERN DISTRICT OF NEW YORK AND CONSENTS THAT MORTGAGEE MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT MORTGAGOR'S**

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ADDRESS SET FORTH ABOVE FOR PROVIDING NOTICE OR DEMAND; PROVIDED THAT NOTHING CONTAINED IN THIS MORTGAGE WILL PREVENT MORTGAGEE FROM BRINGING ANY ACTION, ENFORCING ANY AWARD OR JUDGMENT OR EXERCISING ANY RIGHTS AGAINST DEBTOR INDIVIDUALLY, AGAINST ANY SECURITY OR AGAINST ANY PROPERTY OF DEBTOR WITHIN ANY OTHER COUNTY, STATE OR OTHER FOREIGN OR DOMESTIC JURISDICTION. Mortgagor acknowledges and agrees that the venue provided above is the most convenient forum for both Mortgagee and Mortgagor. Mortgagor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Mortgage.

40. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY EACH WAIVE ANY RIGHT TO TRIAL BY JURY THEY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS MORTGAGE OR THE TRANSACTIONS RELATED THERETO. MORTGAGOR REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF MORTGAGEE HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT MORTGAGEE WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS RIGHT TO JURY TRIAL WAIVER. MORTGAGOR ACKNOWLEDGES THAT MORTGAGEE HAS BEEN INDUCED TO ACCEPT THIS MORTGAGE BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

41. EXCULPATION OF AGENCY. The Agency has executed this instrument solely for the purpose of subjecting its interest in the Premises to the lien of this instrument and to evidence its consent to the terms, covenants and agreements contained in this instrument. The Agency shall not be obligated to perform any such terms, covenants or agreements, and the Mortgagee shall have no recourse to the Agency for any breach thereof. No provision, covenant or agreement contained in this instrument or any obligation herein imposed upon the Agency or the breach thereof shall constitute or give rise to a pecuniary liability to the Agency or a charge upon the Agency's general credit. The obligations and agreements of the Agency contained in this Mortgage and in any other instrument or document executed in connection herewith, and any instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Debtor), or employee of the Agency in his individual capacity; and the members, officers, agents (other than the Debtor), 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 of 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 from the lease, sale or other disposition of the Premises. 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) business 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) business days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period;

(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 (other than the Debtor), or employees shall be subject to potential liability, the party seeking such order or decree shall (i) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Debtor), and employees against any liability incurred as a result of its compliance with such demand; and (ii) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than Debtor), and employees against all liability expected to be incurred as a result of compliance with such request.

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42. DEBTOR'S OBLIGATIONS TO COMPLY WITH COMPANY LEASE, THE AGENCY LEASE AND THE PILOT AGREEMENT. Debtor shall (i) pay all other sums of money due and payable at any time and from time to time under the Company Lease, the Agency Lease and the PILOT Agreement (as each such term is defined in the Agency Lease) as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Company Lease, the Agency Lease 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 Company Lease, the Agency Lease and the PILOT Agreement to be performed, observed or complied with by Debtor as lessor under the Company Lease and lessee under the Agency Lease and as a party to the PILOT Agreement, as applicable. If the Company Lease, the Agency Lease and the PILOT Agreement do not provide for a grace period for the payment of a sum of money, Debtor shall make the payment on or before the date on which the payment becomes due and payable. Debtor shall deliver evidence of the payment to Mortgagee within ten (10) days after receipt of a written request from Mortgagee for evidence of the payment.

43. AGENCY EXECUTING AT THE DIRECTION OF DEBTOR. The Debtor directs the Agency to execute and deliver this Mortgage to the Mortgagee, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Mortgage, including but not limited to reasonable attorney's fees.

44. HOLD HARMLESS PROVISIONS.

(a) The Debtor 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 execution and/or enforcement of this Mortgage.

(b) The Debtor acknowledges and reiterates the provisions and obligations of the Debtor pursuant to Sections 8.2 and 11.11 of the Agency Lease as if fully set forth herein and hereby agrees that such provisions shall be applicable to this Mortgage and the Agency's participation herein as well as the Project (as defined in the Agency Lease).

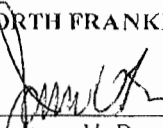
45. SUBORDINATION PROVISIONS. Notwithstanding anything herein to the contrary, Mortgagee by accepting this Mortgage acknowledges and agrees that the rights of Mortgagee hereunder shall be subordinate to the rights of the Agency to receive payments in lieu of taxes pursuant to the PILOT Agreement and that such payments in lieu of taxes to be made by Debtor to the Agency shall have the same force, priority and effect as a real property tax lien under State law against the Mortgaged Property and/or the Premises.

46. COUNTERPARTS. This Mortgage may be executed in counterparts, each of which is deemed to be an original and all of which constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor the day and year first above written.

455 NORTH FRANKLIN, LLC

By: 
James V. Breuer, Manager

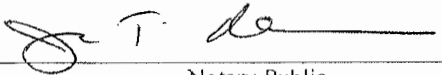
CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY

By: 
William M. Ryan, Chairman

ACKNOWLEDGMENT

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

On the 28th day of January, in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared James V. Breuer, 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.

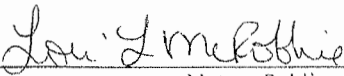

Notary Public

JOSEPH T. MANCUSO
Notary Public, State of New York
Qual. in Onon. Co., No. 02MA6004179
My Commission Expires Mar. 16, 2018

ACKNOWLEDGMENT

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

On the 27th day of January, in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or 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, 2014

{H2139771.2}

SCHEDULE "A"

Property Description

Parcel 1

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, being part of Marsh Lots 39 and 40, Onondaga Salt Springs Reservation, known as Lot 3B according to a map of Franklin Square, made by C. T. Male Associates, P.C. and filed in the Onondaga County Clerk's Office on October 28, 1993 as Map No. 7872.

Parcel 2

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being a part of Marsh Lots 39 & 40 in said City, and being more specifically described as follows:

Beginning at the intersection of the southerly line of Plum Street with the westerly line of North Franklin Street; running thence S. 61° 50' 50" W., a distance of 277.65 feet along the southerly line of Plum Street to a point; thence S. 28° 14' 50" E., a distance of 142.15 feet to a point (said last described course running partly along the easterly exterior wall of an existing one story metal building); thence N. 61° 50' 50" East a distance of 277.41 feet to a point in the westerly line of North Franklin Street; thence N. 28° 09' 10" W., a distance of 142.15 feet along the westerly line of North Franklin Street to the place of beginning.