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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**BRADFORD & EUCLID, LLC PROJECT**

**TRANSCRIPT OF PROCEEDINGS**

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**CLOSING DATE: October 20, 2016**

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**BRADFORD & EUCLID, LLC PROJECT**

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## PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (the “*Project Agreement*”), made as of October 1, 2016, by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the “*Agency*”), **BRADFORD & EUCLID, LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State of New York, with offices at 225 Wilkinson Street, Syracuse, New York 13204 (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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “*Existing Building*”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “*Land*”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the

granting of certain financial assistance in the form of exemptions from real property taxes, State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, by resolutions of its members adopted on January 26, 2016 (collectively the “*Resolution*”), the Agency agreed to confer on the Company, in connection with the Project, certain financial assistance 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 the qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, construction or equipping of the Project Facility; and (b) an exemption from mortgage recording tax; and (collectively, the sales and use tax exemption benefit, the mortgage recording tax benefit, are hereinafter collectively referred to as the “*Financial Assistance*”); and

**WHEREAS**, it has been estimated and confirmed by the Company that the Company has included 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 in an amount up to **\$12,375,000**; and therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$990,000** and (ii) the mortgage recording tax exemption amount shall be approximately **\$195,000**; and

**WHEREAS**, the Company proposes to sublease the Land and Facility to the Agency, and the Agency desires to sublease the Land and Facility from the Company pursuant to the terms of a certain Company Lease Agreement dated as of October 1, 2016 (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 from the Company; and

**WHEREAS**, the Agency proposes to (sub)sublease the Project Facility to the Company, and the Company desires to (sub)sublease the Project Facility from the Agency, upon the terms and conditions set forth in a certain Agency Lease Agreement dated as of October 1, 2016 (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 October 1, 2016 (the “*PILOT Agreement*”), by and between the Agency and the Company; and

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

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

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

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

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

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

## **ARTICLE I**

### **PURPOSE OF PROJECT**

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

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

## **ARTICLE II**

### **REAL PROPERTY TAX EXEMPTION**

**Section 2.01. PILOT Agreement**. As of the date hereof, no PILOT Agreement has been executed.

## **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 Resolution 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 October 31, 2017, 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 incorporation and installation in certain premises located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “**Premises**”). The machinery, equipment and building materials (collectively, the “**Equipment**”) to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition of the Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of October 1, 2016 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 Resolution, 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 hereto as **Exhibit A**, the terms and provisions of which are incorporated herein; and (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 3.03(e) below.

**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 **\$12,375,000**, and, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$990,000**.

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

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

(e) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using “IDA Agent or Project Operator Exempt Purchase Certificate” (Form ST-123, a copy of which is attached hereto as **Schedule B to Exhibit B**), 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: The Bradford & Euclid, LLC Project, 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York; Project Number: 31021607.

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

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

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

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

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

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

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

**Section 3.05. Insurance Required.**

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

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date hereof and until the expiration or termination of the Agency Lease, 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, paying, as the same become due and payable, all premiums with respect thereto, with the Agency named on each such policy as an additional insured.

**ARTICLE IV**

**COMMITMENTS AND REPORTING**

**Section 4.01. Compliance Commitments.** The Company agrees and covenants that it shall meet and maintain the following commitments beginning in the first year (unless otherwise stated) in which Financial Assistance is so claimed, and continuing through the term of the PILOT Agreement:

(a) The total investment actually made with respect to the Project at the Project's completion date shall equal or exceed \$23,545,000 (which represents the product of 85% multiplied by \$27,700,000, being the total project cost as stated in the Company's Application for Financial Assistance (the "***Investment Commitment***").

(b) At least four (4) full time equivalent ("***FTE***") employees were retained by the Project Facility as of the date of the Application for Financial Assistance (the "***Baseline FTE***"). The Company shall create and maintain, in accordance with the schedule set forth in the Application, FTE employment at the Project Facility equal to 5.1 FTE employees (representing the sum of four (4) Baseline FTE plus two (2) FTE (being the total number of new FTE employee positions proposed to be created by the Company as stated in their Application for Financial Assistance) multiplied by 85% (the "***Employment Commitment***"); and

(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 (the "***Reporting Commitment***").

**Section 4.02. Reporting Requirement.** As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. **Exhibit B**

contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

## ARTICLE V

### SUSPENSION, DISCONTINUATION, RECAPTURE AND/OR TERMINATION OF FINANCIAL ASSISTANCE

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

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, 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 is 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 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 Resolution, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance to the extent any of the following occur (each a “*Deficit*”):

- a) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property

or services not authorized by the Agency (each, a “**Local Sales Tax Benefit Violation**”);

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

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

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

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

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

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

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

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

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

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

If to the Agency: City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attn: Chairman

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

If to the Company: Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Matthew R. Paulus

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

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

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

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

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

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

**Section 6.07. Term.** Except as specifically provided otherwise, the term of this Project Agreement shall be the longer of: (1) the term of the Agency Lease ; or (2) five (5) years following the Project's completion date. The Project will remain "active" for purposes of



Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of this Project Agreement.

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

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

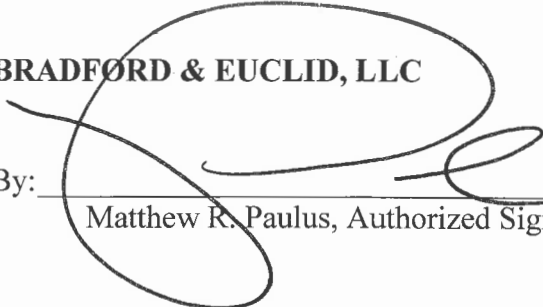
**IN WITNESS WHEREOF**, the parties hereto have executed this Project Agreement as of the day and year first above written.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

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

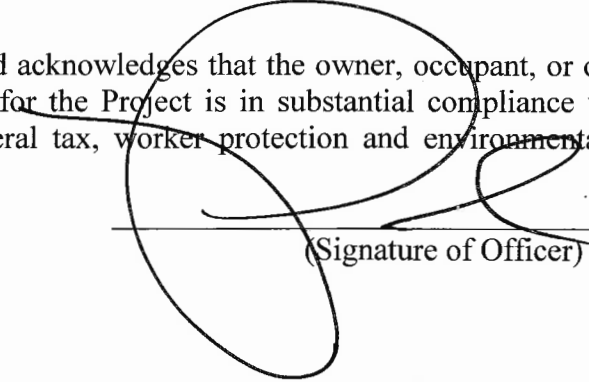
**BRADFORD & EUCLID, LLC**

By:   
Matthew R. Paulus, Authorized Signatory


STATE OF NEW YORK     )  
COUNTY OF                ) ss.:

Matthew R. Paulus, being first duly sworn, deposes and says:

1. That I am the Authorized Signatory of Bradford & Euclid, 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<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
(Notary Public)

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

**EXHIBIT A**

**FORM OF SUB-AGENT APPOINTMENT AGREEMENT**

**THIS SUB-AGENT APPOINTMENT AGREEMENT** (the "*Agreement*"), dated as of \_\_\_\_\_, 20\_\_\_\_, is by and between **BRADFORD & EUCLID, LLC**, with a mailing address of 225 Wilkinson Street, 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 January 26, 2016 (the "*Resolution*"), the Agency authorized the Company to act as its agent for the purposes of undertaking a project for the benefit of the Company (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "*Existing Building*") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "*Land*"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "*Facility*"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, by the Resolution, the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of a project agreement by and between the Company and the Agency and compliance with the terms set forth therein;

**WHEREAS**, the Company and the Agency entered into a Project Agreement by and between the Company and the Agency dated as of October 1, 2016 (the "*Project Agreement*");

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

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

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

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

b. to be bound by and comply with the terms and conditions of the Agency's policies, the Resolution, the Project Agreement 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 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 **Schedule "B"**). It shall be the responsibility of the Sub-Agent 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.

d. 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 IDA project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: [FILL IN THE NAME OF THE PROJECT, THE STREET ADDRESS OF THE PROJECT SITE, AND IDA PROJECT NUMBER].

e. 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.

f. 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.

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

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

i. 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 insurance policies set forth on **Schedule "C"** attached hereto with an insurance company licensed in the State that has an A.M. Best rating of not less than A-.

j. 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 and the Recapture of the Recapture Amount 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 Project Agreement 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 3 shall survive the termination of this Agreement.

**[NO FURTHER TEXT ON THIS PAGE]**

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.

**BRADFORD & EUCLID, LLC**

By: \_\_\_\_\_  
Matthew R. Paulus  
Authorized Signatory

[NAME OF SUB-AGENT]

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



**Schedule A to Sub-Agent Appointment Agreement**

**Recapture Policy**

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**City of Syracuse**  
**Industrial Development Agency**  
333 West Washington Street, Suite 130  
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

## Schedule B to Sub-Agent Appointment Agreement

### Form ST-123



New York State Department of Taxation and Finance  
New York State Sales and Use Tax

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

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

**Exempt purchases**

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

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

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I rendered 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 1839 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

#### 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 Enforce the Tax Department's Enforcement Authority 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 or 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.

**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 04, Privacy Notification. See *Need help?* for the Web address and telephone number.

**Need help?**

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

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

**Sales Tax Information Center:** (518) 485-2889

**To order forms and publications:** (518) 457-5431

**Text Telephone (TTY) Hotline**  
(for persons with hearing and speech disabilities using a TTY): (518) 485-5032

#### 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 NA).

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 16-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, as is any agent or project operator. However, IDAs do not accept a business enterprise or developer certificate. IDAs instead accept a business enterprise or developer certificate or a certificate as an 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 enters a purchase and a purchase for the operation, purchases materials to be installed in the building, all these purchases made by contractor X 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 contract, number and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, materials of the contractor and the IDA agreement does not authorize contractor X to make such purchases as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present supplier with Form ST-123, Contractor Exempt Purchase Certificate, when making purchases that are exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-123.

#### Exempt purchases

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

A. Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.

B. Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam, and gas, electricity, refrigeration, and steam services.

C. Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exemption from tax.

## **Schedule C to Sub-Agent Appointment Agreement**

### **Insurance Requirements**

“All Risk” (excluding terrorism coverage if unavailable at commercially reasonable rates as determined by the Sub-Agent) builder’s risk insurance, including collapse coverage and coverage for material in storage and while in transit, for one hundred percent (100%) of the insurable replacement value of the Project on a replacement cost basis on all materials, equipment and supplies which are to become a permanent part of the Project, while awaiting erection and until completion; (ii) worker’s compensation insurance including employer’s liability to provide statutory benefits as required by applicable Legal Requirements; (iii) commercial general liability insurance for hazard of operation, independent contractors, products and completed operations, such liability insurance to include broad form property damage and afford coverage for explosion, collapse and underground hazards and personal injury liability insurance, and contractual liability coverage for the Sub-Agent’s indemnification obligations hereunder, all with limits of not less than Five Million Dollars (\$5,000,000) per occurrence on an “occurrence” basis and Ten Million Dollars (\$10,000,000) in the aggregate; and (iv) comprehensive automobile liability covering owned, non-owned and hired vehicles used in connection with the construction of the Project with limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage. The Sub-Agent shall deliver to the Agency any policies (or certificates thereof) with respect to insurance required hereunder prior to the commencement of construction or related work on the Project, and shall deliver renewal policies (or certificates thereof) at least thirty (30) days before the expiration date of any policy maintained in connection with the Project. All policies evidencing such insurance except the Workers’ Compensation policy shall name the Sub-Agent as insured and the Agency as an additional insured, as its interests may appear, and all policies shall provide that the coverage with respect to the Agency be primary and non-contributory and require at least thirty (30) days’ prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof; and (B) to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute), it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.



**EXHIBIT B**

FORM OF ANNUAL REPORTING QUESTIONNAIRE

## SIDA Reporting System

[Help](#)

## PROJECT DETAILS:

Please review the information below for accuracy, then click the link(s) at the bottom of the page to access your required forms. If any of the information below is incorrect, please contact us or make a note of the necessary changes in the "Additional Notes/Comments" section on the forms.

**Contact Name****Address**--  
United States**Email****Phone****Type of Financing****Developer/Borrower****Date of Financing****Principal Amount Financed****Maturity Date****Interest Rate****Notes****Required Forms**[Financial worksheet](#)  
[Jobs data worksheet](#)**Additional Documents**

# SIDA Reporting System

[Help](#)

## Financial worksheet

**IMPORTANT:** Please note that throughout the form below, "year" refers to the Year ended December 31, 2015.

**Project Name \***

If you do not see the project name in this field, please make sure you are using the correct URL from the email you received.

**Revenue Bonds Issued?**

 No 

Did the Agency Issue bonds for the benefit of the Project?

**Payment in Lieu of Tax (PILOT) Agreement?**

 No 

**Capital Investment**

\$

Investment in Capital – The Agency has adopted the definition of capital as that defined in US Generally Accepted Accounting Principles (US GAAP). As defined by US GAAP, capital shall represent tangible long-lived assets including land and land improvements, buildings, machinery and equipment, furniture and fixtures and other assets held for investment that have an estimated useful life longer than one year. The cost of a long-lived asset should include the asset's purchase price, freight, installation costs and direct and indirect costs. The value reported must be presented on a basis consistent to what was presented in your application to the Agency concerning total project costs.

**NYS Mortgage Recording Tax Exemption Claimed This Year**

\$

**NYS/Local Sales Tax Exemption Claimed This Year**

\$

**Additional Notes/Comments**

**Contact Email \***

The email address where form submission confirmation will be sent.

**Verification \***

I agree to the terms

Terms: By submitting this form, I represent and acknowledge that I am authorized to: (i) bind \_\_\_\_\_ (the "Company"); and (ii) provide the information contained herein on behalf of the Company; and have read and reviewed the answers and/or information provided herein. I hereby verify that all of the information so provided is true and correct and further acknowledge and understand that the information will be relied upon by the City of Syracuse Industrial Development Agency ("the "Agency")

and its auditors. I hereby further acknowledge that such information shall be subject to independent verification and audit by representatives of the Agency and/or its auditors. The undersigned, with the authority to bind the Company, acknowledges, agrees and understands, that failure to: (i) provide complete and correct information; or (ii) cooperate with the Agency and/or its auditors to verify the information contained herein shall give rise to the Agency's right to recover, recapture, receive or otherwise obtain from the Company the Financial Assistance provided by the Agency for the benefit of the Project (the "Recapture Amount"). Terms used herein but not otherwise defined shall have the meaning ascribed thereto in the lease agreements executed and delivered by and between the Company and the Agency.

Submit

# SIDA Reporting System

[Help](#)

## Jobs data worksheet

Pursuant to Section 859 of the New York General Municipal Law, all Industrial Development Agencies and Authorities (IDAs) are required to file an annual financial report with the Office of the State Comptroller. This financial report must include information on the IDA-assisted projects which can be provided only by the project developers designated as Agency Project Operators or their operating agents. In particular, this includes job information related to the IDA project.

**Project Name \***

If you do not see the project name in this field, please make sure you are using the correct URL from the email you received.

### Full Time Equivalent (FTE) Jobs Created and Retained

**Number of FTE Employees as of 12/31/15**

Full-time equivalent employee (FTE) – The Agency has adopted the definition of a FTE as described by the Internal Revenue Service (IRS). As defined by the IRS: The number of full-time equivalent employees (FTEs) is determined by dividing the total number of hours of service for which wages were paid by the employer to employees during the taxable year by 2,080. Further additional guidance pertaining to permissible methods of calculating hours of service and the method for calculating the number of an employer's FTEs should consult the IRS for further guidance.

**How many of the above are part time employees?**

**Average Wage of Full-Time Employee**

\$

**Number of FTE Construction Jobs Created between 1/1/15 and 12/31/15**

**Additional Notes/Comments**

**Contact email \***

The email address where form submission confirmation will be sent.

**Verification \***

I agree to the terms

**Terms:** By submitting this form, I represent and acknowledge that I am authorized to: (i) bind \_\_\_\_\_ (the "Company"); and (ii) provide the information contained herein on behalf of the Company; and have read and reviewed the answers and/or information provided herein. I hereby verify that all of the information so provided is true and correct and further acknowledge and understand that the information will be relied upon by the City of Syracuse Industrial Development Agency ("the "Agency") and its auditors. I hereby further acknowledge that such information shall be subject to independent verification and audit by representatives of the Agency and/or its auditors. The undersigned, with the authority to bind the Company, acknowledges, agrees and understands, that failure to: (i) provide complete and correct information; or (ii) cooperate with the Agency and/or its auditors to verify the information contained herein shall give rise to the Agency's right to recover, recapture, receive or otherwise obtain from the Company the Financial Assistance provided by the Agency for the benefit of the Project (the "Recapture Amount"). Terms used herein but not otherwise defined shall have the meaning ascribed thereto in the lease agreements executed and delivered by and between the Company and the Agency.

Submit

2

ONONDAGA COUNTY CLERK'S OFFICE  
 LISA DELL - COUNTY CLERK  
 401 Montgomery St - Room 200  
 Syracuse, NY 13202

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

Doc Type: LEASE  
 Grantor: PARK AVENUE LANTERN CORP  
 BRADFORD & EUCLID LLC  
 Grantee: BRADFORD & EUCLID LLC  
 PARK AVENUE LANTERN CORP  
 Legal Desc: SYR L7-11&24-27 B429 N W & BLK ALSO  
 Receipt: 1314261 RS  
 Book/Page: 05397/0095 Inst: 37869  
 Date Filed: 10/25/2016 at 11:42AM  
 Updated: 10/26/2016 AD  
 Record and Return To:

BARCLAY DAMON  
 ATTORNEY PICK UP BOX

Prop Address: 225-303 WILKINSON ST

Submitted by: FITCH

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

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:		Consideration	\$0.00
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	3115
Net Add:	\$0.00	Map #:	105-07-06
Misc:	\$0.00		=====
	=====	Total Paid	\$ 75.50
<b>TOTAL</b>	<b>\$0.00</b>	Control no	3674

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

LISA DELL  
 Onondaga County Clerk

Book/Page 05397 / 0095 Instrument no.: 37869



D053970095



5/

CITY OF SYRACUSE  
3115

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**PARK AVENUE LANTERN CORPORATION**

**AND**

**BRADFORD & EUCLID, LLC**

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**MEMORANDUM OF GROUND LEASE**

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**DATED AS OF JANUARY 1, 2016**

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**THIS DOCUMENT IS INTENDED TO CONSTITUTE A  
MEMORANDUM OF LEASE OF REAL ESTATE, AND IS  
INTENDED TO BE RECORDED IN LIEU OF SUCH LEASE,  
IN ACCORDANCE WITH THE PROVISIONS OF  
SECTION 294 OF THE NEW YORK REAL PROPERTY LAW.**

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27526

11:42 10/25/16 3786916 R6 03-05977-55

## MEMORANDUM OF GROUND LEASE

The undersigned, **PARK AVENUE LANTERN CORPORATION**, as successor-in-interest to Syracuse Business Center, Inc. ("*Ground Lessor*"), a New York corporation having an office for the transaction of business located at 225 Wilkinson Street, Syracuse, New York 13204, and **BRADFORD & EUCLID, LLC** ("*Ground Lessee*"), a Delaware limited liability company having an office for the transaction of business at 225 Wilkinson Street, Syracuse, New York 13204, have entered into a certain Ground Lease dated as of January 1, 2016 (the "*Ground Lease*").

The Ground Lease covers a leasehold interest affecting the real property described on **Exhibit A** attached hereto and made a part hereof, and the improvements located thereon (the "*Premises*").

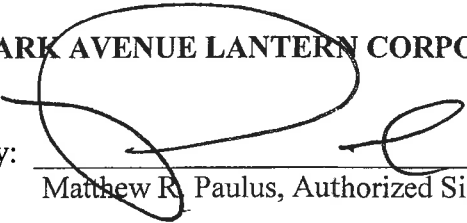
The term of the Ground Lease commences on the Rent Commencement Date, as defined in the Ground Lease, and continues until the [December 31, 2065], unless sooner terminated or extended pursuant to the terms of the Ground Lease.

This Memorandum of Ground Lease may be executed in multiple counterparts, each of which shall be deemed an original; but all of which together shall constitute one and the same instrument.

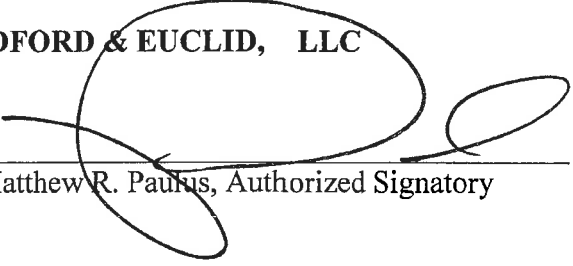
***[BALANCE OF PAGE BLANK; SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the Ground Lessor and the Ground Lessee have caused this Memorandum of Ground Lease to be executed in their respective names by their duly authorized officers and to be dated as of the 20 day of October, 2016.

**PARK AVENUE LANTERN CORPORATION**

By:   
Matthew R. Paulus, Authorized Signatory

**BRADFORD & EUCLID, LLC**

By:   
Matthew R. Paulus, Authorized Signatory

Signature Page to Memorandum of Ground Lease

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

On the 10<sup>th</sup> day of October, 2016 before me, the undersigned, a Notary Public in and for the State of New York, personally appeared Matthew Rauher, 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 that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.

  
Notary Public

*Pistell*  
LAUREN ANNE PISTELL  
NOTARY PUBLIC-STATE OF NEW YORK  
NO. 01PI6178861  
QUALIFIED IN ONONDAGA COUNTY  
MY COMMISSION EXPIRES 12-17-2019

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

On the 18<sup>th</sup> day of October, 2016 before me, the undersigned, a Notary Public in and for the State of New York, personally appeared Matthew Rauher, 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 that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.

  
Notary Public

*Pistell*  
LAUREN ANNE PISTELL  
NOTARY PUBLIC-STATE OF NEW YORK  
NO. 01PI6178861  
QUALIFIED IN ONONDAGA COUNTY  
MY COMMISSION EXPIRES 12-17-2019

12-17-19

EXHIBIT A

DESCRIPTION OF LAND

Parcel I:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

Parcel II:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

The above premises are also described as follows: ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

## GROUND LEASE

### 1. PARTIES

THIS LEASE is effective as of the 1st day of January, 2016, by and between **SYRACUSE BUSINESS CENTER, INC.**, with a mailing address of 225 Wilkinson Street, Syracuse, New York 13204 (hereinafter called the Lessor, which expression shall include its successors and assigns, wherever the context so allows), and **BRADFORD & EUCLID, LLC**, with a mailing address of 225 Wilkinson Street, Syracuse, New York 13204 (hereinafter called the Lessee, which expression shall include its successors and assigns, wherever the context so allows).

### 2. DEMISED PREMISES

In consideration of the rent and covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor does hereby demise and lease unto the Lessee the following described premises, together with the improvements and fixtures now or hereafter placed or erected thereon:

The building located at 225-303 Wilkinson Street, City of Syracuse, County of Onondaga, State of New York (the "Building"), together with the land parcels on which it is located, all collectively hereinafter referred to as the "Demised Premises". Lessee and its subtenants, customers, employees and invitees are hereby granted during the term of this Lease the non-exclusive right, in common with Lessor and any other tenants and their customers, employees and invitees, to use all exterior walkways, driveways and access areas (including curb cuts), sidewalks, parking areas, and other areas in the or otherwise available for the common use of the tenants (the "Common Areas") for the normal or intended purposes of such areas.

### 3. USE OF DEMISED PREMISES

The Demised Premises may be used for any lawful purpose deemed appropriate by Lessee. Lessee will store all trash and garbage within the areas designated and only in receptacles of the size, design and color from time to time agreed upon by Lessor and Lessee. Lessee shall be responsible for removal and disposal of the same. Lessee shall not operate an incinerator or burn trash or garbage within the Demised Premises. Lessee shall not permit any noxious odors to emanate from the Demised Premises. Nothing herein, however, shall prohibit Lessee from operating its normal business operations on the Demised Premises. Lessee shall not take any other action that in the reasonable judgment of Lessor would constitute a nuisance or would disturb the quiet enjoyment of other tenants of the Building or unreasonably interfere with their use of their respective premises; nor do anything that would tend to injure the reputation of the Building or constitutes a hazard to its operation. Lessee covenants not to use or maintain the

Demised Premises in such a manner as to constitute an actionable nuisance to Lessor or any third party; and not to commit or permit waste of the Demised Premises.

4. TERM

The original term of this Lease shall be for forty-nine (49) years, commencing as of January 1, 2016 ("Rent Commencement Date"), and ending on December 31, 2065.

5. RENT

Commencing on the Rent Commencement Date and continuing through the end of the Term, Lessee agrees to pay to Lessor, an annual rental amount of \$166,500.00, payable in twelve (12) monthly installments of \$13,875.00 each, on the first of each month. All amounts whatsoever which Lessee shall be obligated to pay pursuant to this Lease other than Rent shall be deemed "Additional Rent", and in the event of the non-payment by Lessee of any sum of money which Lessee from time to time shall be obligated to pay under any provisions of this Lease, Lessor shall have the same rights and remedies by reason of such non-payment as if Lessee had failed to pay any installment of Rent.

6. COVENANT OF QUIET ENJOYMENT; FAILURE TO PERFORM

The Lessor covenants that the Lessee, upon paying the Rent and performing the covenants on its part to be performed hereunder, shall and may peaceably and quietly have, hold and enjoy the Demised Premises during the term hereof. Lessor shall have the right to enter the Demised Premises, upon reasonable notice to Lessee, to view and inspect the Premises for compliance with the covenants and conditions contained herein. Lessor shall have the right to show the Demised Premises, upon reasonable notice to Lessee, commencing at least twelve (12) months prior to the expiration of the Term.

7. RIGHT TO REMODEL; IMPROVEMENTS

The Lessee shall have the right to rearrange, remodel, remove, replace and/or install and construct improvements in and to the Demised Premises ("Lessee's Work"). All such remodeling or improvements shall be at the sole cost and expense of Lessee, and shall comply with all applicable laws, regulations, building codes and rules of the board of fire underwriters. During the term of this Lease, Lessee shall be considered for all purposes to be the owner of the Building and its other improvements constructed by Lessee on the Demised Premises. Upon termination of this Lease, the ownership of said improvements (except as set out hereunder) constructed on the Demised Premises by the Lessee shall belong to Lessor. Should Lessee remove any such fixture, or any alteration or replacement thereof, affixed to the Demised Premises that was placed on the Demised Premises by Lessee, Lessee, at its sole cost and expense shall repair any damage to the Demised Premises caused by such removal. Lessor does not warrant or assume responsibility for the present condition of the Demised Premises (including its environmental condition) and any present improvements thereon, and Lessor will

not assume any responsibility for the replacement, improvement, maintenance, upkeep or repair necessary to keep the Demised Premises and any improvements (including but not limited to any structural elements) thereon in a safe, serviceable and useable condition. All such replacement, repair, upkeep, maintenance and operation shall be the responsibility of Lessee and at Lessee's sole cost and expense.

All work shall be completed in compliance with all codes, ordinances, rules and regulations of applicable governmental authorities, in a good and workmanlike manner by licensed contractors with appropriate building permits. Lessee agrees that all contractors performing work on the Demised Premises shall maintain public liability insurance of at least Two Million and 00/100 Dollars (\$2,000,000.00). All entries on the Demised Premises after the tender date and all work done by or on behalf of the Lessee shall be at Lessee's sole risk and Lessee shall indemnify the Lessor against any claims or damages arising out of Lessee's right under this Section and any of Lessee's Work. Lessee shall conduct the Lessee's Work in a manner to minimize any adverse impact to or disturbance of the Building's other tenants or customers.

#### 8. SUBORDINATION

This Lease is subject to and subordinate to all current and future mortgages, or the lien resulting from any other method of financing, which affect or are filed against the Demised Premises, and to any and all extensions, substitutions and replacements of such mortgage(s). At any time and from time to time either party, upon request of the other party, will execute, acknowledge and deliver an instrument, stating, if the same be true, that this Lease is a true and exact copy of the Lease between the parties hereto, that there are no amendments hereto (or stating what amendments there may be), that the same is then in full force and effect and that, to the best of its knowledge, there are no offsets, defenses or counterclaims with respect to the performance of the other terms, covenants and conditions hereof on the part of the Lessee or the Lessor, as the case may be, to be performed, and that as of such date no default has been declared hereunder by either party or if so, specifying the same. Such instrument will be executed by the other party and delivered to the requesting party within fifteen (15) days of receipt of a written request therefor.

#### 9. UTILITIES

During the term of this Lease, the Lessee shall be responsible to contract in its own name for and pay directly to the appropriate authority, all sewer charges and all charges for gas, electricity, telephone, cable, heat and hot water and all other utilities, attributable to the Demised Premises. If possible, the Demised Premises shall be separately metered for water and sewer by Lessee. The local government or utility authority may require the payment of certain fees for public utility facilities and services provided in whole or in part by the local government or authority. These fees are derived for one of two purposes: (i) to pay for the usage of a proportionate share of the local government's facilities for future capacity and infrastructure improvements or to pay for a new user's utilization of oversized facilities paid for by other parties, including the local government or utility authority (hereinafter referred to as "Connection



Fees" or "Impact Fees"); or (ii) to pay for local government's time and expense to program or turn on the public utility facilities to a building or structure for each new customer (hereinafter referred to as "Turn On Fees"). Lessee shall be responsible for payment of all Turn-On Fees and Connection Fees or Impact Fees.

#### 10. MAINTENANCE

Lessee, at Lessee's sole cost, agrees to maintain and keep the Demised Premises in the same repair, order and condition as the same are in at the commencement of the Term of this Lease, subject to normal wear and tear, during the Term of this Lease, and at the expiration or other termination of this Lease agrees to yield up the Demised Premises in substantially such repair, order and condition as aforesaid, ordinary wear and tear, taking by, or other acts of, public authority, damage by fire and/or other casualty, and acts and omissions of the Lessor, its agents or servants, excepted.

Lessee, at Lessee's sole cost, agrees to clean, maintain, repair, replace, upkeep and protect the Demised Premises, including repair and replacement to any structural and non-structural elements of the Demised Premises, repaving of the parking lot, snow removal and landscaping services.

If Lessee fails to maintain the Building as required hereunder, then thirty (30) days after written request (or such longer period as is necessary if the repair cannot reasonably be completed within the thirty (30) day period and Lessee promptly commences and diligently pursues the completion of such replacement or repair), Lessor shall have the right to enter the Premises and to make such repairs at Lessee's expense, and upon completion thereof Lessee shall pay, as Additional Rent, Lessor's actual costs for making such repairs upon presentation of an invoice therefor. Such payment shall be due within thirty (30) days after Lessee's receipt of an invoice therefor.

#### 11. TAXES

Lessee agrees to pay all taxes and assessments (general and special), all fines, penalties, costs and expenses, other governmental charges, excise profits, sales or transaction privilege tax (collectively, "Real Estate Taxes") now or hereafter levied or imposed by any government or governmental agency on account of, attributed to or measured by this Lease or with respect to the ownership and operation of the Demised Premises when due and to maintain any and all such Real Estate Taxes in a current and paid-up condition. Lessee shall be responsible for and shall pay before delinquency all municipal, county, state and federal taxes assessed during the Term of this Lease against personal property of any kind owned by or placed in, upon or about the Demised Premises by the Lessee. Such Real Estate Taxes shall be deemed "Additional Rent".

12. LIABILITY INSURANCE

During the Term or any extended term of this Lease, Lessee agrees to keep the Demised Premises insured against claims for personal injury or property damage under a policy of general public liability insurance, with limits of at least \$2,000,000 per occurrence (combined single limit) for property damage, bodily and personal injury and death. The foregoing insurance may be effected through blanket policies. Lessee agrees to provide Lessor with a certificate of such insurance. Lessee agrees to indemnify the Lessor from and against any injury to persons and property arising from Lessee's acts or omissions on the Demised Premises.

Lessor shall be named as an additional insured on all policies. All insurance shall be issued by an insurance company authorized to write insurance in the State of New York. Lessee's insurance policy will further provide for at least ten (10) days' notice to Lessor before cancellation.

13. PROPERTY INSURANCE; CASUALTY

During the term or any extended term of this Lease the Lessee agrees to carry property insurance, on a "replacement cost" basis, insuring the Demised Premises against fire and risks included in extended coverage and in the event of a casualty so insured against to use the net insurance proceeds obtained for such loss or damage to pay for the cost to repair or replace such property that was damaged or destroyed. The foregoing insurance may be effected through blanket policies. Lessee agrees to provide Lessor with a certificate of such insurance; provided that Lessor hereby discharges and releases Lessee, to the extent of Lessor's insurance coverage, even if such fire or other casualty is due to acts or omissions of Lessee (its agents or employees), for or on account of any and all claims and liabilities from loss or damage during the term or extended term hereof to any property of Lessor caused by fire or risks included in extended coverage, or any other risks covered by insurance procured by Lessor. Lessee's insurance policy will further provide for at least ten (10) days' notice to Lessor before cancellation.

In case the Demised Premises, or any part thereof, shall be destroyed or damaged by fire or other casualty insured against, the Lessee agrees to substantially restore the Demised Premises, to the extent possible under then existing applicable statutes, codes, ordinances, by-laws, or regulations in any manner affecting construction; provided, however, Lessee may at its election, in lieu of the foregoing, pay to Lessor the Lessee's share of the insurance proceeds and the Lease shall terminate upon payment thereof. In the event of a fire or casualty described herein, and in the event Lessee elects to so restore the Demised Premises, the rent shall be suspended or abated until the premises are so restored, provided that Lessee will complete said restoration within such time as is reasonable in all the then prevailing circumstances.

14. INDEMNITY

The Lessee shall indemnify, save harmless and defend Lessor from and against any and all suits, claims, actions, damages, liability and expense (including reasonable attorneys' fees) in connection with loss of life, personal injury and/or damage to property arising from or out of the

occupancy or use by the Lessee of the Demised Premises or arising from or out of the performance of Lessee's Work or the use or occupancy of the Demised Premises by Lessee for Lessee's Work or occasioned wholly or in part by the acts or omissions of Lessee, its officers, contractors, agents or employees (acting within the scope of their office, contract, agency or employment).

15. WAIVER OF SUBROGATION

The Lessor and Lessee hereby waive any rights each may have against the other on account of any loss or damage incurred by Lessor or Lessee, as the case may be, to their respective property, the Demised Premises, or its contents arising from any risk generally covered by fire and extended coverage insurance policies. The parties each, on behalf of their respective insurance companies insuring the property of either Lessor or Lessee against any such loss or damage, waive any right of subrogation that such companies may have against Lessor or Lessee, as the case may be. Each party covenants with each other that, to the extent such insurance endorsement is available, they will each obtain for the benefit of the other, a waiver of any right of subrogation from their respective insurance companies, if such endorsement is requested.

16. HAZARDOUS SUBSTANCES

The Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on, in or about the Demised Premises, without obtaining Lessor's prior written consent. If the Demised Premises become contaminated in any manner as a result of any breach of the foregoing covenant or any act or omission of Lessee or any of its agents, employees or contractors, Lessee shall indemnify, defend and hold harmless Lessor from any and all claims, demands, actions, damages, fines, judgments, penalties, costs (including attorneys', consultants', and experts' fees), liabilities, losses and expenses arising during or after the term of this Lease and arising as a result of such contamination. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on, in, or about the Demised Premises that results in contamination, Lessee, at its sole expense, shall complete all required clean up, removal and remediation. Lessee shall first obtain Lessor's approval for any such remedial action. Notwithstanding the foregoing, this indemnification shall only apply to contamination by Hazardous Substances resulting from Lessor's use and operation of the Demised Premises. Nothing herein contained shall be held to indemnify Lessor from liability or to create any liability on Lessee for Hazardous Substances contamination resulting from Lessor's ownership, use or operation, or the use or operation by any third party in, on or under the Demised Premises. As used herein, the term "Hazardous Substance" means any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State in which the Demised Premises are located, or the United States government. "Hazardous Substance" includes any and all materials or substances which are defined as "pollutant", "contaminant", "hazardous waste", "extremely

hazardous waste" or a "hazardous substance" pursuant to state, federal or local governmental law. "Hazardous Substance" includes, but is not limited to, asbestos, polychlorobiphenyls and petroleum. The provisions under this entire Section shall survive the expiration or earlier termination of this Lease.

17. ASSIGNMENT; SUBLEASING

The Lessee shall have the right to assign this Lease or sublet said Demised Premises, in whole or in part for the whole or any part of the Term of this Lease, with the prior written consent of Lessor, which consent may not be unreasonably withheld, conditioned or denied. Any transfer of Lessee's interest in this Lease or the Demised Premises by operation of law, regardless of whether the same is characterized as voluntary or involuntary, shall be construed as an "assignment" governed by this Section. Lessor's written consent to any one assignment shall not act as a waiver of the requirements of consent with respect to any subsequent assignment. Upon a permitted assignment, the assignee shall assume all rights and obligations of the Lessee under this Lease. Any assignee of Lessee shall deliver to Lessor an assumption agreement in a form reasonably satisfactory to Lessor no less than ten (10) days after the effective date of the proposed assignment.

18. DEFAULT

Subject to Lessee's right to notice and opportunity to cure provided herein, Lessee shall be deemed to be in default of its obligations under this Lease upon the occurrence of any of the following:

- (a) Lessee's failure to pay Rent or any other sums due under this Lease;
- (b) Lessee's failure to perform any material covenant, promise or obligation contained in this Lease;
- (c) The appointment of a receiver or trustee for all or substantially all of Lessee's assets;
- (d) Lessee's voluntarily petition for relief under, any bankruptcy or insolvency law;
- (e) The sale of Lessee's interest under this Lease by execution or other legal process;
- (f) The seizure, sequestration or impounding by virtue or under authority of any legal proceeding of all or substantially all of the personal property or fixtures of Lessee used in or incident to the operation of the Premises;
- (g) Lessee's making an assignment of this Lease for the benefit of creditors;
- (h) Any sale, transfer, assignment, subleasing, concession, license, or other disposition prohibited under the terms of this Lease; or

(i) Lessee shall do or permit to be done anything that creates a lien upon the Premises and shall fail to obtain the release of any such lien or bond off any such lien as required herein.

Lessee shall be deemed in default of this Lease upon the continued occurrence of (i) Lessee's failure to pay rent or any other monetary sum within five (5) days after written notice from Lessor to Lessee that such sums are due, or (ii) the occurrence of any event specified in (b); (h) or (i) above that is not cured by Lessee within thirty (30) days from Lessee's receipt of written notice from Lessor (provided this thirty (30) day cure period shall be extended for such reasonable period of time as is necessary to cure the default, if the alleged default is not reasonably capable of cure within said thirty (30) day period and Lessee commences and continues to diligently cure the alleged default).

#### 19. LESSOR'S REMEDIES

Upon Lessee's default hereunder Lessor may exercise the following options: (i) Terminate Lessee's right to possession under this Lease and reenter and take possession of the Premises and relet or attempt to relet the Premises on behalf of Lessee, at such rental and upon such terms and conditions as Lessor may, in the exercise of Lessor's reasonable discretion, deem best under the circumstances for the purpose of reducing Lessee's liability. The Lessor shall not be deemed to have thereby accepted a surrender of the Premises and Lessee shall remain liable for all rental and other charges due under this Lease and for all damages suffered by Lessor because of Lessee's breach of any of the covenants of this Lease. At any time during such repossession or reletting, Lessor may, by delivering written notice to Lessee, elect to exercise its option under the following Section to accept a surrender of the Premises, terminate and cancel this Lease and retake possession and occupancy of the Premises on behalf of Lessor; (ii) Declare this Lease to be terminated, and reenter upon and take possession of the Premises by any lawful means, whereupon the term hereby granted and all right, title, and interest of Lessee in the Premises shall terminate. Such termination shall be without prejudice to Lessor's right to collect from Lessee any rental or other charges or sums that have accrued prior to such termination, together with all damages suffered by Lessor because of Lessee's breach of any covenant contained in this Lease. Notwithstanding the foregoing, upon such termination and re-entry by Lessor, Lessee shall be forever released from any and all further obligations hereunder.

#### 20. COSTS OF ENFORCEMENT

In the event that Lessor shall bring an action to recover any sum due from Lessee or for any breach of Lessee hereunder, or in the event that the Lessor shall retain an attorney for the purpose of collecting any sum due hereunder or construing or enforcing any of the terms or conditions hereof or protecting their interest in any bankruptcy, receivership, or insolvency proceeding or otherwise against the other, the Lessor shall be entitled to recover all reasonable costs and expenses incurred, including reasonable attorneys' and legal assistants' fees and

disbursements prior to trial, at trial, and on appeal and for post-judgment proceedings. Such fees and costs shall be deemed "Additional Rent".

21. MECHANICS' LIENS

If any mechanics' or other liens, or orders for payment of money shall be filed against the Demised Premises by reason of or arising out of any labor or materials furnished or alleged to have been furnished, or to be furnished, to or for Lessee at the Demised Premises, Lessee shall within ten (10) days after notice of filing thereof cause the same to be canceled and discharged of record, by bond or otherwise at Lessee's expense. In the event Lessee fails to do so within such ten (10) day period, in addition to other remedies hereunder, Lessor may cause the same to be paid, discharged, or cancelled, and the amount so paid by Lessor, with interest thereon at a rate of 10%, from the date of payment by Lessor, shall become due and payable by Lessee as Additional Rent with the next installment of Rent.

22. BROKER

Lessor and Lessee represent and warrant to each other that they have not consulted or contacted any agent, broker, or finder in connection with this Lease. Lessor and Lessee agree to defend, indemnify and hold the other harmless from any and all claims for compensation or commission in connection with this Lease by any broker, agent, or finder claiming to have dealt with such party.

23. COMPLIANCE WITH LAWS

Lessee shall, at its own cost and expense, (a) comply with all governmental laws, ordinances, orders and regulations affecting the Demised Premises now in force or which hereafter may be in force; (b) comply with and execute all rules, requirements and regulations of the Board of Fire Underwriters, Lessee's Insurance companies and other organizations establishing insurance rates; (c) not permit, or commit any waste or nuisance. Subject to the reasonable approval of the Lessor, which approval shall not be unreasonably withheld, Lessor hereby grants to Lessee the right to erect signs identifying its business, in harmony with the size, architectural treatment and exterior of the other facilities located at the Demised Premises. All Lessee's signage shall be in compliance with all applicable governmental codes and shall be maintained by Lessee in good repair and clean condition.

24. NOTICE

Written notices to be given by the Lessee to the Lessor shall be addressed to the Lessor at: 225 Wilkinson Street, Syracuse, New York 13204. Written notices to be given by Lessor to the Lessee at: 225 Wilkinson Street, Syracuse, New York 13204. All notices shall be sent by registered overnight courier, deposited in the United States Post Office, properly addressed as aforesaid, postage prepaid, for delivery by registered or certified mail or by personal delivery.

25. TRADE FIXTURES OF LESSEE

Upon the date of expiration or other termination of any term of this Lease, the Lessee shall remove from the Demised Premises any of its equipment, or its trade fixtures, or any other personal property of Lessee. Lessee shall repair any damage caused to the Demised Premises by any such removal described in this Section, within a reasonable time thereafter.

26. HOLDOVER

If Lessee or its subtenant, or sublessee, or assignee remains in possession of the Demised Premises after the expiration or other termination of the term of this Lease, except pursuant to any option to extend, such possession shall be as a tenant from month-to-month only. Notwithstanding the foregoing, by accepting any holdover rent, Lessor does not waive any of its rights or remedies under this Lease to recover the Demised Premises, or to seek any other remedy or relief to which Lessor may be entitled under law or under this Lease.

27. ACCESS

The Lessor's agents, employees, contractors, and prospective purchasers shall have the right to enter the Demised Premises at reasonable hours upon prior notice to the Lessee for the purpose of inspecting the Building and its mechanical systems. The Lessor shall use reasonable diligent efforts to minimize any interference with Lessee's business as a result of any such entry.

28. WAIVER

The waiver by Lessor of any breach or default of any term, covenant or condition shall not be deemed to be a waiver of any subsequent breach or default of the same or any other term, covenant or condition, nor shall the acceptance or payment of Rent or other payment be deemed to be a waiver of any such breach or default. No term, covenant or condition of this Lease shall be deemed to have been waived by Lessor, unless such waiver is in writing.

29. LESSEE'S ACCEPTANCE OF DEMISED PREMISES

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the condition of the Demised Premises, the land upon which the Building is constructed, or any other matter or thing affecting or related to the Demised Premises, except as herein expressly set forth in this Lease. Nothing in this paragraph shall have any affect or any warranty, representation, agreement, or covenant of Lessor elsewhere in the Lease as to the condition of the Demised Premises.

30. INTERPRETATION

If any provisions of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not

be affected thereby. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto, including, but not limited to, the heirs, executors, administrators, trustees, and other legal representatives of said parties. The paragraph headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning or the contents of such paragraphs. This Lease shall be governed by and construed in accordance with the laws of the state in which the Demised Premises is located.

31. ENTIRE AGREEMENT

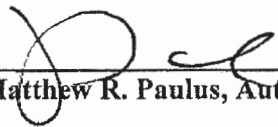
Execution of this Lease by Lessor constitutes an offer which shall not be deemed accepted by Lessee until Lessee has executed this Lease and delivered a duplicate original thereof to Lessor. This Lease represents the entire agreement between the Parties hereto and there are no collateral or oral agreements or understandings. All additions, variations or modifications of this Lease shall be void and ineffective unless they are in writing and signed by the Parties.

[SIGNATURE PAGE FOLLOWS]

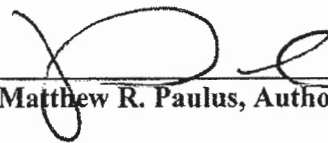


IN WITNESS WHEREOF the parties hereto have set their hands to this Lease effective as of the day and year first above written.

**SYRACUSE BUSINESS CENTER, INC.**

By:   
Matthew R. Paulus, Authorized Signatory

**BRADFORD & EUCLID, LLC**

By:   
Matthew R. Paulus, Authorized Signatory

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## ASSIGNMENT AND ASSUMPTION AGREEMENT

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "*Assignment*") is made as of the 9th day of August, 2016 (the "*Effective Date*"), between **SYRACUSE BUSINESS CENTER INC.**, a New York corporation, with a mailing address of 225 Wilkinson Street, Syracuse, New York 13204 ("*Assignor*") and **PARK AVENUE LANTERN CORPORATION**, a New York corporation, with a mailing address of 225 Wilkinson Street, Syracuse, New York 13204 ("*Assignee*").

### RECITALS :

**WHEREAS**, Effective January 1, 2016, Assignor, as ground lessor, entered into a certain Ground Lease of its facility located at 225 Wilkinson Street, Syracuse, New York 13204 (the "*Premises*") with Bradford & Euclid, LLC ("*B&E*"), as ground lessee (the "*Ground Lease*");

**WHEREAS**, on August 9, 2016, Assignor transferred all right, title and interest in, to and under the Premises to Assignee, subject to the Ground Lease; and

**WHEREAS**, Assignor desires to formally assign its right, title and interest in, to and under the Ground Lease to Assignee and Assignee desires to acquire Assignor's right, title and interest in, to and under the Ground Lease and to assume all Assignor's obligations thereunder as if Assignee had been the original signatory thereto.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Assignment.** Effective as of the Effective Date, Assignor assigns to Assignee all of Assignor's right, title and interest in, to and under the Ground Lease.

**2. Acceptance and Assumption.** Effective as of the Effective Date, Assignee accepts the foregoing assignment and assumes all of Assignor's obligations under the Ground Lease as if Assignee was the original signatory thereto.

**3. Counterparts.** This Assignment may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Assignment. Faxed or other electronic signatures (PDF) shall have the same binding effect as original signatures.

*[Balance of Page Blank; Signature Page Follows]*

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment as of the Effective Date.


**ASSIGNOR:**

**SYRACUSE BUSINESS CENTER INC.**

By:   
Matthew R. Paulus, Authorized Signatory

**ASSIGNEE:**

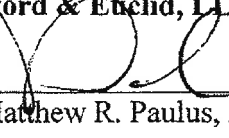
**PARK AVENUE LANTERN CORPORATION**

By:   
Matthew R. Paulus, Authorized Signatory

**CONSENT OF THIRD PARTY**

Bradford & Euclid, LLC hereby consents to Assignor's assignment of all right, title and interest in, to and under the Ground Lease to Assignee effective on the Effective Date and agrees to attorn to Assignee.

Dated: August 9, 2016

**Bradford & Euclid, LLC**  
By:   
Matthew R. Paulus, Authorized Signatory

*Signature Page: SBC To B&E Assignment/Assumption of Ground Lease*

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**BRADFORD & EUCLID, LLC**

**AND**

**CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY**

**AS ACKNOWLEDGED AND CONSENTED TO BY:**

**PARK AVENUE LANTERN CORPORATION**

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**COMPANY LEASE AGREEMENT**

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**DATED AS OF OCTOBER 1, 2016**

## COMPANY LEASE AGREEMENT

**THIS COMPANY LEASE AGREEMENT** (the “*Company Lease*”), made and entered into as of October 1, 2016, by and between **BRADFORD & EUCLID, LLC** (the “*Company*”), a limited liability company organized under the laws of the State of Delaware and authorized to do business in New York State with an office at 225 Wilkinson Street, Syracuse, New York 13204 and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the “*Agency*”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202, as acknowledged and consented to by **PARK AVENUE LANTERN CORPORATION**, a business corporation organized under the laws of the State of New York with an office to conduct business at 225 Wilkinson Street, Syracuse, New York 13204 (the “*Corporation*”).

### 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 January 26, 2016, agreed, at the request of the Company to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “*Existing Building*”) located at 225-303 Wilkinson Street &

Leavenworth Avenue, in the City of Syracuse, New York (the "**Land**"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, the Corporation is the current owner of the Land and the Facility and has leased the Land and the Facility to the Company pursuant to a forty-nine (49) year ground lease dated January 1, 2016 (the "**Ground Lease**") between Syracuse Business Center, Inc. ("SBCI") and the Company as assigned to the Corporation pursuant to an Assignment and Assumption Agreement between SCBI and the Corporation dated as of August 9, 2016; and

**WHEREAS**, the financing of the Project includes the infusion of capital by RE Dietz Building Master Tenant, LLC, a New York limited liability company, as the tax credit investor ("**TCI**"). To accommodate such structure, the Company must transfer certain of its membership interests in the Company to the TCI and transfer certain of its leasehold interests in the Project Facility to an entity controlled by the TCI (the "**Title and Membership Transfers**"); and

**WHEREAS**, , the Company will enter into an approximately twenty-two (22) year master sublease of the Project Facility (the "**Master Lease**") with the TCI as the master tenant (the "**Master Tenant**"). Chase Community Equity, LLC ("**Chase**") holds ninety-nine (99%) percent of the membership interests in the Master Tenant and RE Dietz Building Master Tenant, LLC holds the remaining one (1%) percent of the membership interests in the Master Tenant. The Company will grant a ten (10%) percent of its membership interests to the Master Tenant as the TCI; and

**WHEREAS**, the Company, with the consent of Corporation, proposes to sublease, in accordance with the terms of the Ground Lease, the Land and Facility to the Agency pursuant to this Company Lease; and

**WHEREAS**, the Corporation has conveyed its interests, including fee title, if any, to the Equipment to the Agency pursuant to that certain bill of sale dated as of October 1, 2016 (the "**Corporate Bill of Sale**"); and

**WHEREAS**, the Company has conveyed its interests, including fee title, if any, in the Equipment to the Agency pursuant to that certain bill of sale dated as of October 1, 2016 (the



“*Company Bill of Sale*” and together with the Corporate Bill of Sale, collectively, the “*Bill of Sale*”); 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, or its designee, as its agent with respect to the Project Facility; (2) accepting a subleasehold 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 a bill of sale from the Corporation; and (3) (sub)subleasing the Project Facility to the Company pursuant to the Agency Lease; and

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

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

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

## **ARTICLE I**

### **RECITALS AND DEFINITIONS**

#### **1.0 RECITALS.**

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

#### **1.1 DEFINITIONS.**

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

#### **1.2 INTERPRETATION.**

In this Company Lease, unless the context otherwise requires:

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

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

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

## **ARTICLE II**

### **DEMISE; PREMISES; TERM**

#### **2.1 DEMISE.**

The Company hereby subleases to the Agency, and the Agency hereby subleases 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 October 1, 2016, and shall end on the expiration or earlier termination of the Agency Lease.

#### **2.4 MANDATORY CONVEYANCE.**

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

## **2.5 CONSIDERATION.**

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

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

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

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of 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 leasehold interest in the Land and the Facility and shall remain and retain such interests for the term of this Company Lease unless otherwise consented to in writing by the Agency.

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

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

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

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

(g) So long as the Agency holds an interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the

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

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

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

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

### **ARTICLE III**

#### **DISPUTE RESOLUTION**

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

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

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

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

## ARTICLE IV

### MISCELLANEOUS CLAUSES

#### 4.1 NOTICES.

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

(a) To the Agency:

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attn: Chairman

With copies to:

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

(b) To the Company:

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Matthew R. Paulus

With a copy to:

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

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

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

**4.3 ENTIRE AGREEMENT.**

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

**4.4 AGENCY REPRESENTATIONS.**

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

**4.5 BINDING EFFECT.**

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

**4.6 PARAGRAPH HEADINGS.**

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

**4.7 CONSENT; SUBORDINATION.**

The Company and the Corporation hereby consent 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 and the Assignment;

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

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

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

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

(c) Notwithstanding any other provisions of this Company Lease, the obligations of the Company pursuant to this Section 4.8 shall remain in full force and effect after the termination of the Agency Lease and this Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution

relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company), or employees, relating thereto.

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

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

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

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

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

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



by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents, and employees against all liability expected to be incurred as a result of compliance with such request.

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

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

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

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

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

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

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

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

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

#### **4.13 REMEDIES.**

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

- 1) Terminate the Company Lease; or

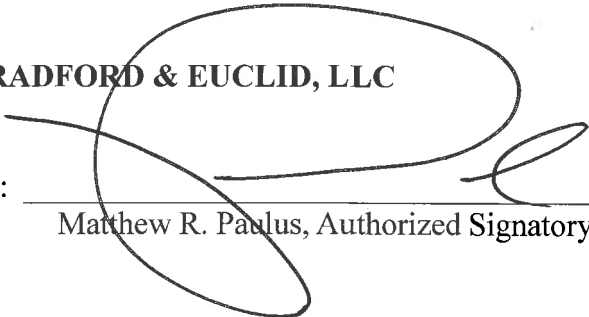
2) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder.

**4.14 AMENDMENTS, CHANGES AND MODIFICATIONS.**

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

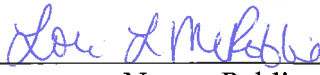
IN WITNESS WHEREOF, the Company and the Agency have duly executed this Company Lease, as of the day and year first above written.

**BRADFORD & EUCLID, LLC**

By:   
Matthew R. Paulus, Authorized Signatory

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

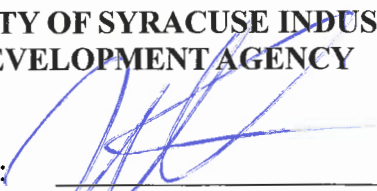
On the 20<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared **Matthew R. Paulus**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed 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, 2018


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

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

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

On the 20<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

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

**ACKNOWLEDGED AND CONSENTED  
TO BY:**

PARK AVENUE LANTERN  
CORPORATION, by and through the  
undersigned, a duly authorized signatory on  
behalf of Park Avenue Lantern Corporation,  
hereby acknowledges and consents to the  
terms of this Company Lease.

**PARK AVENUE LANTERN CORPORATION**

By:

  
\_\_\_\_\_  
Matthew R. Paulus, President

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

On the 20<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared **Matthew R. Paulus**, 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, 2018

## EXHIBIT "A"

### Legal Description of the Premises

#### Parcel I:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

#### Parcel II:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

The above premises are also described as follows: ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

**5**

ONONDAGA COUNTY CLERK'S OFFICE  
 LISA DELL - COUNTY CLERK  
 401 Montgomery St - Room 200  
 Syracuse, NY 13202

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

Doc Type: LEASE  
 Grantor: BRADFORD & EUCLID LLC  
 Grantee: PARK AVENUE LANTERN CORP  
 BRADFORD & EUCLID LLC  
 Legal Desc: SYR L7-11&24-27 B429 N W & BLK ALSO  
 Prop Address: 225-303 WILSON ST & LEAVENWORTH AVE

Receipt: 1314261 RS  
 Book/Page: 05397/0101 Inst: 37870  
 Date Filed: 10/25/2016 at 11:43AM  
 Updated: 10/26/2016 AD  
 Record and Return To:  
 Submitted by: FITCH

BARCLAY DAMON  
 ATTORNEY PICK UP BOX

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

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:		Consideration	\$0.00
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	3115
Net Add:	\$0.00	Map #:	105-07-06
Misc:	\$0.00		=====
=====		Total Paid	\$ 75.50
<b>TOTAL</b>	<b>\$0.00</b>	Control no	3675

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

LISA DELL  
 Onondaga County Clerk

Book/Page 05397 / 0101 Instrument no.: 37870



D053970101



**MEMORANDUM OF  
COMPANY LEASE AGREEMENT**

***NAME AND ADDRESS OF LESSOR:*** Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204

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

***NAME AND ADDRESS OF GROUND  
LESSOR:*** Park Avenue Lantern Corporation  
225 Wilkinson Street  
Syracuse, New York 13204

27526

***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 October 1, 2016.

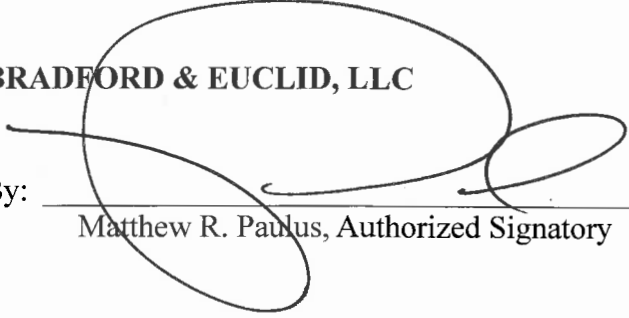
***TERM OF COMPANY LEASE AGREEMENT:***

The Project is leased for a term which shall commence as of October 1, 2016, and shall end on the earlier of: (i) October 31, 2017; or (ii) the early termination of the Agency Lease (as defined in the Company Lease); unless the parties enter or cause to be entered, a payment in lieu of taxes agreement for the benefit of the Project, in which case the term of the Company Lease shall run concurrently with the PILOT Agreement unless terminated early in accordance with the terms of the Agency Lease.

11/14/16 10/25/16 3797016 RS DB-5297P-101

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of October, 2016.

**BRADFORD & EUCLID, LLC**

By:   
Matthew R. Paulus, Authorized Signatory

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

On the 20<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared **Matthew R. Paulus**, 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.

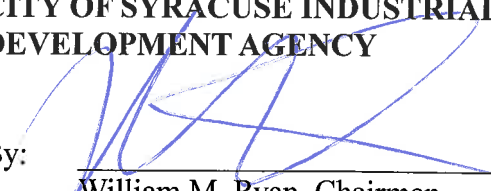


Notary Public

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

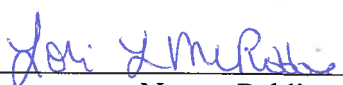
IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of October, 2016.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

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

On the 20<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

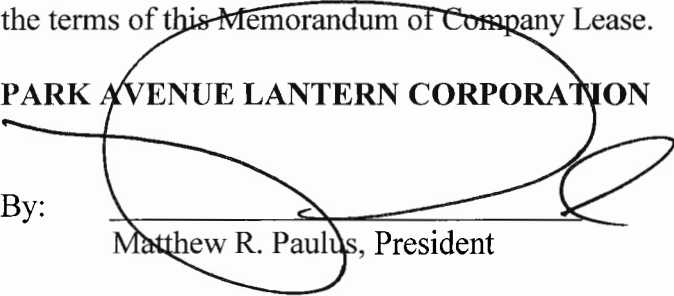
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MC5055591  
Commission Expires on Feb. 12, 20 18

**ACKNOWLEDGED AND CONSENTED TO  
BY:**

PARK AVENUE LANTERN CORPORATION,  
by and through the undersigned, a duly authorized  
signatory on behalf of Park Avenue Lantern  
Corporation, hereby acknowledges and consents to  
the terms of this Memorandum of Company Lease.

**PARK AVENUE LANTERN CORPORATION**

By:

  
Matthew R. Paulus, President

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

On this 20<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared, **Matthew R. Paulus**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

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

## EXHIBIT "A"

### Legal Description of the Premises

#### Parcel I:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

#### Parcel II:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

The above premises are also described as follows: ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.



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

See Form TP-584-1, instructions for Form TP-584, before completing this form. Print or type.

**Schedule A – Information relating to conveyance**

<b>Grantor/Transferor</b> <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor ) Bradford & Euclid, LLC Mailing address 225 Wilkinson Street City State ZIP code Syracuse NY 13204 Single member's name if grantor is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 42-5292277 Single member EIN or SSN
<b>Grantee/Transferee</b> <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee ) City of Syracuse Industrial Development Agency Mailing address 333 West Washington Street, Suite 130 City State ZIP code Syracuse NY 13202 Single member's name if grantee is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 52-1380308 Single member EIN or SSN

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
105.-07-06.0	311500	225-303 Wilkinson Street & Leavenworth Ave	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table style="border: 1px solid black; width: 100px; text-align: center;"> <tr> <td style="width: 33%;">10</td> <td style="width: 33%;"> </td> <td style="width: 33%;">2016</td> </tr> <tr> <td>month</td> <td>day</td> <td>year</td> </tr> </table>	10		2016	month	day	year	Percentage of real property conveyed which is residential real property _____ 0 % (see instructions)
10		2016							
month	day	year							

Condition of conveyance (check all that apply)

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

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

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

**Part I – Computation of tax due**

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

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

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

**Part III – Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d
- e. Conveyance is given in connection with a tax sale ..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F..... f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) ..... k

\*The total tax (from Part I, line 6 and Part II, line 3 above) is due within 15 days from the date conveyance. Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

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

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

I (we) certify that: (check the appropriate box)

1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

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

- Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
    - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
    - A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
  4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the **NYC Department of Finance**.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

<p>Bradford &amp; Euclid, LLC</p> <p>_____ Grantor signature Matthew R. Paulus</p>	<p>Authorized Signatory</p> <p>_____ Title</p>	<p>City of Syracuse Industrial Development Agency</p> <p>_____ Grantee signature William M. Ryan</p>	<p>Chairman</p> <p>_____ Title</p>
Grantor signature	Title	Grantee signature	Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.



**Schedule D - Certification of exemption from the payment of estimated personal income tax** (Tax Law, Article 22, section 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part II, and check the second box under Exemptions for nonresident transferor(s)/seller(s) and sign at bottom.

**Part I - New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, each resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

**Part II - Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

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

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

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**CORPORATE BILL OF SALE TO AGENCY**

**PARK AVENUE LANTERN CORPORATION**, a corporation organized under the laws of the State of New York with an office to conduct business at 225 Wilkinson Street, Syracuse, New York 13204 (the "**Corporation**"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Corporation from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "**Agency**"), having its office at 333 West Washington Street, Suite 130, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Corporation, 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 Corporation in connection with the Project Facility, as described in that certain certificate executed by the Corporation in favor of the Agency dated as of October 1, 2016 (the "**Corporation Certificate**"), and as listed on "**Exhibit A**" attached hereto.

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

The Corporation 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 Corporation has the right to sell the same as aforesaid; and the Corporation 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 Corporation 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 October, 2016.

**PARK AVENUE LANTERN CORPORATION**

By:

  
Matthew R. Paulus, President

## 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 **PARK AVENUE LANTERN CORPORATION** (the "**Corporation**") 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, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

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**COMPANY BILL OF SALE TO AGENCY**

**BRADFORD & EUCLID, LLC** , a limited liability company organized under the laws of the State of Delaware with an office to conduct business at 225 Wilkinson Street, Syracuse, New York 13204 (the "**Company**"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Company from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "**Agency**"), having its office at 333 West Washington Street, Suite 130, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of October 1, 2016 (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 October, 2016.

**BRADFORD & EUCLID, LLC**

By:

  
\_\_\_\_\_  
Matthew R. Paulus, Authorized Signatory

## 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 **BRADFORD & EUCLID, 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, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**BRADFORD & EUCLID, LLC**

**AS ACKNOWLEDGED AND CONSENTED TO BY:**

**PARK AVENUE LANTERN CORPORATION**

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**AGENCY LEASE AGREEMENT**

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**DATED AS OF OCTOBER 1, 2016**

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## AGENCY LEASE AGREEMENT

**THIS AGENCY LEASE AGREEMENT**, dated as of October 1, 2016 (the "**Agency Lease**"), by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a body corporate and politic and a public instrumentality of the State of New York, having its office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "**Agency**"), and **BRADFORD & EUCLID, LLC**, a Delaware limited liability company, authorized to do business in the State of New York, having its office at 225 Wilkinson Street, Syracuse, New York 13204 (the "**Company**") as acknowledged and consented to by **PARK AVENUE LANTERN CORPORATION**, a business corporation organized under the laws of the State of New York with an office to conduct business at 225 Wilkinson Street Syracuse, New York 13204 (the "**Corporation**").

### 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 January 26, 2016, agreed, at the request of the Company to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "**Existing Building**") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "**Land**"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in

the form of exemptions from real property taxes, State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; 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 completing the Project; (2) accepting a sub-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 each the Company and the Corporation; and (2) (sub)subleasing the Project Facility to the Company pursuant to this Agency Lease; and

**WHEREAS**, the Corporation is the current owner of the Land and the Facility and has leased the Land and the Facility to the Company pursuant to a forty-nine (49) year ground lease dated January 1, 2016 (the “*Ground Lease*”) between Syracuse Business Center, Inc. (“SBCI”) and the Company as assigned to the Corporation pursuant to an Assignment and Assumption Agreement between SCBI and the Corporation dated as of August 9, 2016; and

**WHEREAS**, the financing of the Project includes the infusion of capital by RE Dietz Building Master Tenant, LLC, a New York limited liability company, as the tax credit investor (“*TCI*”). To accommodate such structure, the Company must transfer certain of its membership interests in the Company to the TCI and transfer certain of its leasehold interests in the Project Facility to an entity controlled by the TCI (the “*Title and Membership Transfers*”); and

**WHEREAS**, the Company will enter into an approximately twenty-two (22) year master sublease of the Project Facility (the “*Master Lease*”) with the TCI as the master tenant (the “*Master Tenant*”). Chase Community Equity, LLC (“*Chase*”) holds ninety-nine (99%) percent of the membership interests in the Master Tenant and RE Dietz Building Master Tenant, LLC holds the remaining one (1%) percent of the membership interests in the Master Tenant. The Company will grant a ten (10%) percent of its membership interests to the Master Tenant as the TCI; and

**WHEREAS**, the Company, with the consent of Corporation, subleased the Land and Facility to the Agency pursuant to that certain Company Lease Agreement dated as of October 1, 2016 between the Company and the Agency (the “*Company Lease*”); and

**WHEREAS**, the Company and the Corporation have conveyed their respective interests, including fee title, if any, to the Equipment to the Agency pursuant to the Bill of Sale; and

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

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

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

## **ARTICLE I**

### **RECITALS AND DEFINITIONS**

#### **1.0 RECITALS.**

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

#### **1.1 DEFINITIONS.**

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

#### **1.2 INTERPRETATION.**

In this Agency Lease, unless the context otherwise requires:

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

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

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

**ARTICLE II**  
**REPRESENTATIONS AND COVENANTS**

**2.1 REPRESENTATIONS OF THE AGENCY.**

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

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

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

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

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

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

(a) The Company is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of 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 has a valid leasehold interest in the Project Facility and shall retain such interest in the Project Facility for the term of this Agency Lease unless otherwise consented to in writing by the Agency.

(d) The Project will not primarily be used for retail sales.

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

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

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

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

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

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

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

(3) Will preserve or increase the overall number of permanent, private sector jobs in the State and the City.

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

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

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

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

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

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

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

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

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

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

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

(p) 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.

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

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

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

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

(r) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed **\$990,000**. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount.

### ARTICLE III

#### CONVEYANCE OF SUBLEASEHOLD INTEREST IN PROJECT FACILITY

##### 3.1 AGREEMENT TO CONVEY (SUB) SUBLEASEHOLD INTEREST TO COMPANY.

The Company has conveyed to the Agency, pursuant to the Company Lease, a subleasehold interest in the Land and Facility, as more fully described in **Exhibit "A"** attached hereto, any improvements now or hereafter constructed and installed thereon, subject to Permitted Encumbrances; and the Company and the Corporation have each transferred all of their respective rights, title and interests in the Equipment pursuant to the Company Bills of Sale and the Corporate Bill of Sale, respectively, as more fully described in **Exhibit "B"** attached hereto. Under this Agency Lease, the Agency will convey, or will cause to be conveyed, to the Company, a (sub) subleasehold interest in the Project Facility subject to Permitted Encumbrances and exclusive of the Agency's Unassigned Rights.

##### 3.2 USE OF PROJECT FACILITY.

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

### ARTICLE IV

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

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

(a) The Company shall promptly construct and equip the Project Facility, all in accordance with the Plans and Specifications. Unless a written waiver is first obtained from the Agency, 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 and equipping of the Project Facility. For purposes of this Agency Lease, and in particular this Section 4.1, the term "**local**" shall mean Onondaga, Oswego, Madison, Cayuga and Cortland Counties. Failure to comply with the local labor requirements of this Section 4.1 (collectively, "**Local Labor Requirements**") may result in the revocation or recapture of all benefits provided/approved to the Project by the Agency. The Company further agrees to complete and supply the Agency, quarterly, starting the first quarter following the date

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, reconstruct, renovate, equip and complete the Project Facility. 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, 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, the Ground 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.

hereof, the "Contract Status Report" the form of which is attached hereto at **Exhibit "D"**. Failure to comply with any portion of Article 4 may result in the loss of all benefits provided to or for the benefit of the Project in the Agency's sole discretion.

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

(1) To 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

#### **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 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, if any, 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, if any.

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

- (i) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Project Facility is destroyed or damaged;
- (ii) unconditional obligation to keep the Project Facility in good condition and repair;
- (iii) unconditional and exclusive right to the possession of the Project Facility, and shall have sole control of and responsibility for the Project Facility;
- (iv) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Project Facility as may be required by the Company, the Agency and the Mortgagee with respect to the Project;
- (v) unconditional obligation to pay all taxes levied on, or payments in lieu thereof, and assessments made with respect to, the Project Facility;
- (vi) subject to the Unassigned Rights, unconditional and exclusive right to receive rental and any other income and other benefits of the Project Facility and from the operation of the Project;



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

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

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

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

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until the earlier of: (i) October 31, 2017; or (ii) the early termination of this Agency Lease as provided herein; unless the parties enter or cause to be entered, a payment in lieu of taxes agreement (a "**PILOT Agreement**") for the benefit of the Project, in which case the term of this Agency Lease shall run concurrently with the PILOT Agreement unless terminated earlier in accordance with the terms of this Agency Lease.

(b) The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of the Agency Lease, the Company Lease, preparing a bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project.

(c) The Company shall have the option, at any time during the term of this Agency Lease, to terminate this Agency Lease. In the event that the Company shall exercise its option to terminate this Agency Lease pursuant to this Section 5.2(b), the Company shall file with the Agency a certificate stating the Company's intention to do so pursuant to this Section 5.2(b) and to comply with the requirements set forth in Section 5.2(c) 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, if any (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(b), setting forth the provision thereof permitting early termination of this Agency Lease shall also specify the date upon which the payments pursuant to subdivision (c) 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 all of 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, if any, shall terminate.

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

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

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

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

(b) The Company shall pay to the Agency, as additional rent, within ten (10) days after the receipt of a demand therefor from the Agency, any annual administrative fees of the Agency, the sum of the reasonable fees, costs and expenses of the Agency and the officers, members, agents, and employees thereof incurred by the reason of the Agency's lease or sublease of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Agency Lease, the Company Lease or any of the other Agency Documents and any other fee or expense of the Agency with respect to the Project Facility, or any of the other Agency Documents, the payment of which is not otherwise provided for under this Agency

Lease, including, without limitation, reasonable fees and disbursements of Agency counsel, including fees and expenses incurred in connection with the Agency's enforcement of any rights hereunder or incurred after the occurrence and during the continuance of an Event of Default, in connection with any waiver, consent, modification or amendment to this Agency Lease or any other Agency Document that may be requested by the Company, or, in connection with any action by the Agency at the request of or on behalf of the Company hereunder or under any other Agency Document. Any additional rent not received within ten (10) business days after demand shall accrue interest after the expiration of such ten days at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

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

(d) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event that the Company shall fail to make or cause to be made any of the payments required under this Agency Lease, the item or installment not so paid shall continue as an obligation of the Company until such item or installment is paid in full.

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

(a) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein are general obligations of the Company and are absolute and unconditional irrespective of any defense or any rights of set-off, recoupment, or counterclaim it may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue, or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the 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 pro-forma statements Company previously provided to the Agency.

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

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

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

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

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

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

(b) Subject to the terms of the PILOT Agreement, if any, 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.

(c) The Company and/or the Corporation intend to request from the Agency additional financial assistance in the form of a PILOT Agreement. To date, no PILOT Agreement has been approved and/or executed. Therefore, notwithstanding anything herein to the contrary, or the Agency's interest in the Project Facility, the Company shall pay real property taxes as if privately owned, unless and until the Agency and the Company execute and deliver an approved PILOT Agreement at which time the Company and/or the Corporation shall be obligated to pay real property taxes in accordance with the terms of the PILOT Agreement and this Agency Lease.

### **6.3 INSURANCE REQUIRED.**

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

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

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

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

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

All insurance required by Section 6.3 shall be with insurance companies of recognized financial standing selected by the Company and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to

those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the Company are engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and shall provide for coverage with respect to the Agency be primary and non-contributory and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof. Certificates satisfactory in form and substance evidencing all insurance required hereby shall be delivered to the Agency before the Closing Date. The Company shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter a certificate dated not earlier than the immediately preceding January 1 reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the term of this Agency Lease.

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

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

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

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

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

#### **6.6 RESERVED.**

### **ARTICLE VII**

#### **DAMAGE, DESTRUCTION, AND CONDEMNATION**

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

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and the Project Facility shall be damaged or destroyed, in whole or in part, then insurance proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such insurance proceeds, provided that there shall be no abatement

or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and the Project Facility shall be damaged or destroyed, in whole or in part:

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

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

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

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

(c) The Company and the Mortgagee with the prior written consent of the Agency (which consent shall not be unreasonably withheld), shall have sole control of any



Condemnation proceeding with respect to the Project Facility, or any part thereof, and may negotiate the settlement of any such proceeding.

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

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

## **ARTICLE VIII**

### **SPECIAL COVENANTS**

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

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

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

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

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

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

arising as a result of the Agency's obligations under this Agency Lease, the Company Lease, the Mortgage or any other documents executed by the Agency at the direction of the Company in conjunction with the Project Facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Company agrees that it will, during any period in which the amounts due under this Agency Lease remain unpaid, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses,

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

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 each such appointed Additional Agent to execute and deliver a sub-agent agreement, in the form attached hereto at **Exhibit "F"**, and provide a fully executed copy to the Agency; and (ii) submit a completed Form ST-60 to the Agency for execution and filing with the New York State Department of Taxation and Finance.

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

(d) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause each Additional Agent or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, and provide the Agency with a copy of same, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "***Annual Sales Tax Report***"), a statement of the value of all sales and use tax exemptions claimed by the Company and all other Additional

Agents under the authority granted to the Company pursuant to Section 4.1(b) of this Agency Lease. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Therefore, if the Company shall fail to comply with the requirements of this subsection (d), irrespective of any notice and cure period afforded, the Company and each Additional Agent shall immediately cease to be the agent of the Agency in connection with the Project. The Company is responsible for obtaining from the New York State Department of Taxation and Finance the current version of such Annual Sales Tax Report.

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

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

(g) Pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the “*Recapture Amount*”) consisting of that portion of the State and local sales and use tax exemption in accordance with the Agency’s recapture policy 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 and/or the Master Tenant under the Master Lease may enter into leases for individual residential and commercial 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 affect a release of the Company from its obligations hereunder or under the PILOT Agreement, if any. Notwithstanding anything herein to the contrary, the Company may lease the Project Facility to the Master Tenant for the purposes of securing an equity investment from a tax credit investor for the benefit of the Project.

## **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. Notwithstanding anything herein to the contrary, the Company may grant ten (10%) percent of its non-managing limited membership interests to the Master Tenant provided that the general management and control of the Company does not change as a result of such admission.

## **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 Ground Lease, the Mortgage, the Assignment, the PILOT Agreement, if any, the Company Lease, the Project Agreement or any of the other Company Documents which is not timely cured as provided therein; or

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

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

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



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

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

## **10.2 REMEDIES ON DEFAULT.**

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

- 1) Terminate this Agency Lease;
- 2) Terminate the Company Lease; or
- 3) Terminate the PILOT Agreement, if any;

4) Take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder or under the Company Lease, the Project Agreement, or the PILOT Agreement, if any, 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

5) Seek to recover the recapture amount set forth in Article 8 hereof as well as any and all other components of Financial Assistance provided to the Company.

(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, if any, 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, if any, 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  
333 West Washington Street, Suite 130

Syracuse, New York 13202  
Attn: Chairman

With a copy to:

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

(b) If to the Company, to:

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Matthew R. Paulus

With a copy to:

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

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

## **11.2 BINDING EFFECT.**

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

## **11.3 SEVERABILITY.**

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

**11.4 AMENDMENTS, CHANGES AND MODIFICATIONS.**

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

**11.5 EXECUTION OF COUNTERPARTS.**

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

**11.6 APPLICABLE LAW.**

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

**11.7 WAIVER OF TRIAL BY JURY.**

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

**11.8 SUBORDINATION.**

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

**11.9 SURVIVAL OF OBLIGATIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Contemporaneously with the termination of this Agency Lease in accordance with Section 5.2 hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and interest in and to all of the Equipment for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums 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.

(d) The Company agrees to accept title to all Equipment, and hereby represents and warrants that it has the authority to so, regardless of whether the Agency received its interest in the Equipment pursuant to the Company Bill of Sale, the Corporate Bill of Sale or otherwise.

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

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

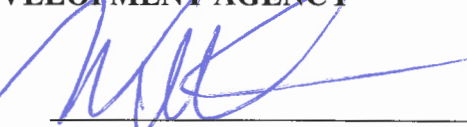
#### **11.14 DISCLOSURE.**

**Section 875(7) of the New York General Municipal Law ("GML") requires that the Agency post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the**

**Company feels that there are elements of the Project or information about the Company in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company's competitive position, the Company must identify such elements in writing, supply same to the Agency on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.**


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

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

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

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

On the 20<sup>th</sup> day of October in the year 2016 before me, the undersigned, personally appeared **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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

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



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.

**BRADFORD & EUCLID, LLC**

By: \_\_\_\_\_  
Matthew R. Paulus, Authorized Signatory

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

On the 20<sup>th</sup> day of October in the year 2016 before me, the undersigned, personally appeared **Matthew R. Paulus**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

*Lois J. McRobbie*

Notary Public

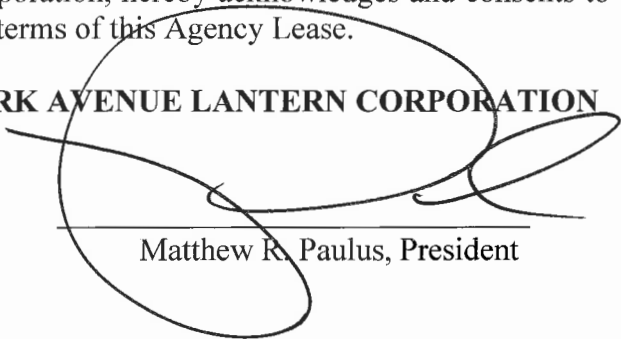
LOUIS McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01406795501  
Commission Expires on Feb. 12, 2018

**ACKNOWLEDGED AND CONSENTED TO  
BY:**

PARK AVENUE LANTERN CORPORATION,  
by and through the undersigned, a duly authorized  
signatory on behalf of Park Avenue Lantern  
Corporation, hereby acknowledges and consents to  
the terms of this Agency Lease.

**PARK AVENUE LANTERN CORPORATION**

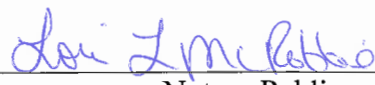
By:



Matthew R. Paulus, President

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

On the 20<sup>th</sup> day of October in the year 2016 before me, the undersigned, personally  
appeared **Matthew R. Paulus**, personally known to me or proved to me on the basis of  
satisfactory evidence to be the individual whose name is subscribed to the within instrument and  
acknowledged to me that he/she executed the same in his/her capacity, and that by his/her  
signature on the instrument, the individual or the person upon behalf of which the individual  
acted, executed the instrument.



Notary Public

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

## EXHIBIT "A"

### Legal Description of the Premises

#### Parcel I:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

#### Parcel II:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

The above premises are also described as follows: ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

## EXHIBIT "B"

### DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **BRADFORD & EUCLID, LLC** (the "*Company*") and or **PARK AVENUE LANTERN CORPORATION** (the "*Corporation*") 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, restaurant supplies and equipment, shelving, racks, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus aid materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

## EXHIBIT "C"

### TABLE OF DEFINITIONS

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

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

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

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

**Agency Documents:** means the Agency Lease, the Company Lease, the Mortgage, the Assignment, the PILOT Agreement, if any, 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 October 1, 2016, 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 December 1, 2015, requesting the Agency undertake the Project, as same may be amended or supplemented from time to time.

**Assignment:** means that certain Assignment of Leases and Rents dated as of October 20, 2016 by and between the Agency, the Company and the Mortgagee, as the same may be modified or supplemented from time to time.

**Assignment and Assumption of Ground Lease:** means that certain Assignment and Assumption (Ground Lease) dated August 9, 2016 by and between Syracuse Business Center, Inc. and the Corporation, as the same may be modified or supplemented from time to time.

**Authorized Representative:** means for the Agency, the Chairman or Vice Chairman of the Agency; for the Company, its Member or Managing Member or any officer designated in a

certificate signed by an Authorized Representative of such Company and, for either the Agency or the Company, any additional persons designated to act on behalf of the Agency or the Company by written certificate furnished by the designating party containing the specimen signature of each designated person.

**Bill of Sale:** means collectively, the Company Bill of Sale and the Corporate Bill of Sale.

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

**Closing Date:** means October 20, 2016.

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

**Company:** means Bradford & Euclid, LLC, a limited liability company organized and existing under the laws of the State of New York having an address at 225 Wilkinson Street, Syracuse, New York 13204, and its permitted successors and assigns.

**Company Bill of Sale:** means that certain bill of sale dated as of October 1, 2016 from the Company to the Agency in connection with the Equipment.

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

**Company Lease:** means the Company Lease Agreement dated as of October 1, 2016 from the Company to the Agency, pursuant to which the Company leased the Project Facility to the Agency, as the same may be amended or supplemented from time to time.

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

**Corporate Bill of Sale:** means that certain bill of sale dated as of October 1, 2016 from the Corporation to the Agency in connection with the Equipment.

**Corporation:** means Park Avenue Lantern Corporation., a business corporation organized and existing under the laws of the State of New York having an address at 225 Wilkinson Street, Syracuse, New York 13204, and its permitted successors and assigns.

**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 October 1, 2016 by the Company and the Corporation to the Agency.

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

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

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

***Ground Lease:*** means that certain forty-nine (49) year ground lease dated January 1, 2016 between Syracuse Business Center, Inc. (“**SBCF**”) and the Company as assigned to the Corporation pursuant to an Assignment and Assumption Agreement between SCBI and the Corporation dated as of August 9, 2016 with respect to the Land and the Facility, including the Assignment and Assumption of Ground Lease.

***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 225-303 Wilkinson Street & Leavenworth Avenue, 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 one or more lender(s), including but not limited to, CPC Funding SPE 1, LLC, its successors and assigns, which is 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 a Payment in Lieu of Taxes Agreement to be entered on or after the Closing Date among the City, the Agency and the Company and/or Corporation with respect to the Project Facility, as amended or supplemented from time to time.

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

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



**Project Agreement:** means that certain Project Agreement between the Agency and the Company dated as of October 1, 2016, as 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.

**Resolution or Resolutions:** means the Agency's resolutions adopted on January 26, 2016 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

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

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

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

**Unassigned Rights:** means:

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

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

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

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

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

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

**EXHIBIT "D"**

**FORM OF CONTRACT STATUS REPORT**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

**Appendix II – Contract Status Report**

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

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

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

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

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

**EXHIBIT "E"**

**FORM OF ANNUAL REPORTING REQUIREMENTS**

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
333 West Washington Street, Suite 130, Syracuse, New York 13202

Date

COMPANY  
COMPANY ADDRESS

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

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

Sale - Leaseback Financing

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

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

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

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

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

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

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

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

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

From:

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

Re:

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

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

# of Current FTE Employees as of [closing date]

# of FTE Jobs Created during [year]

# of FTE Jobs Retained during [year]

# of FTE Construction Jobs Created during [year]

Comments:

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\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## EXHIBIT "F"

### FORM OF SUB-AGENT AGREEMENT

THIS SUB-AGENT APPOINTMENT AGREEMENT (the "**Agreement**"), dated as of \_\_\_\_\_, 20\_\_, is by and between **BRADFORD & EUCLID, LLC**, a Delaware limited liability company with a mailing address of 225 Wilkinson Street, 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 January 26, 2016 (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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "**Existing Building**") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "**Land**"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

WHEREAS, under the Resolution and in the Agency Lease Agreement by and between the Company and the Agency dated as of October 1, 2016 (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 an Agency Agreement dated as of June 2, 2015 (the “*Agency Agreement*”),

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

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

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

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

b. to be bound by and comply with the terms and conditions of the Agency’s policies, the Resolution, the Agency Lease and Section 875(3) of the Act (as if such section were fully set forth herein) (collectively the “*Agency Documents*”). Without limiting the scope of the foregoing, the Sub-Agent acknowledges that pursuant to Section 875(3) of the Act and the Agency policies, the Agency shall recover, recapture, receive or otherwise obtain from the Sub-Agent the portion of the Financial Assistance (the “*Recapture Amount*”) consisting of: (1) (a) that portion of the State and local sales and use tax exemption claimed by the Sub-Agent to which the Sub-Agent was not entitled, which is in excess of the amount of the State and local sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency and/or unrelated to the Project Facility; or (b) the full amount of such State and local sales and use tax exemption claimed by the Sub-Agent, if the Sub-Agent fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in the Company’s application to the Agency in regard to the Project or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise.

c. that the failure of the Sub-Agent to promptly pay such Recapture Amount to the Agency will be grounds for the Agency, the State Commissioner of Taxation and Finance or such other entity, to collect sales and use taxes from the Sub-Agent under Article 28 of the



Tax Law, or other applicable law, policy or contract, together with interest and penalties. In addition to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from State sales and use taxation, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

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

e. that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following Agency project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: [FILL IN THE NAME OF THE PROJECT, THE STREET ADDRESS OF THE PROJECT SITE, AND IDA PROJECT NUMBER].

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

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

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

by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

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

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

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

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

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

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

m. that if the Sub-Agent is the general contractor for the Project, then at all times following the execution of this Agreement, and during the term thereof, the Sub-Agent shall: (A) maintain or cause to be maintained the following insurance policies with an insurance company licensed in the State that has an A.M. Best rating of not less than A-: (i) "All Risk" (excluding terrorism coverage if unavailable at commercially reasonable rates as determined by the Sub-Agent) builder's risk insurance, including collapse coverage and coverage for material in storage and while in transit, for one hundred percent (100%) of the insurable replacement value of the Project on a replacement cost basis on all materials, equipment and supplies which are to become a permanent part of the Project, while awaiting erection and until completion; (ii) worker's compensation insurance including employer's liability to provide statutory benefits as required by applicable Legal Requirements; (iii) commercial general liability insurance for hazard of operation, independent contractors, products and completed operations, such liability insurance to include broad form property damage and afford coverage for explosion, collapse and underground hazards and personal injury liability insurance, and contractual liability coverage for the Sub-Agent's indemnification obligations hereunder, all with limits of not less than Five Million Dollars (\$5,000,000) per occurrence on an "occurrence" basis and Ten Million Dollars (\$10,000,000) in the aggregate; and (iv) comprehensive automobile liability covering owned, non-owned and hired vehicles used in connection with the construction of the Project with limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage. The Sub-Agent shall deliver to the Agency any policies (or certificates thereof) with respect to insurance required hereunder prior to the commencement of construction or related work on the Project, and shall deliver renewal policies (or certificates thereof) at least thirty (30) days before the expiration date of any policy maintained in connection with the Project. All policies evidencing such insurance except the Workers' Compensation policy shall name the Sub-Agent as insured and the Agency as an additional insured, as its interests may appear, and all policies shall provide that the coverage with respect to the Agency be primary and non-contributory and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof; and (B) to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute), it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

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

3. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Company's State and

local sales and use tax exemption with respect to the Project at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

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

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

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

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

**BRADFORD & EUCLID, LLC**

By: \_\_\_\_\_  
Matthew R. Paulus, Authorized Signatory

[NAME OF SUB-AGENT]

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

**EXHIBIT "A"**  
**to Form of Sub-Agent Appointment 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 (use OSC number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yyyy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yyyy)	/	/

**Exempt purchases**

(Mark an 'X' in boxes that apply)

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

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

Signature of purchaser or purchaser's representative (include title and 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 entities, corporations under General Municipal Law Article 15-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 the tax law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint business enterprises 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 building and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases materials 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 for the project, as agent for the IDA. Contractor X is to be incorporated into the project, as agent for the IDA. Contractor X purchases a bulldozer and a building. Since the contractor and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, materials and machinery will actually be incorporated into the project, so contractor X to make such items as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present a copy of Form ST-123, Contractor Exempt Purchase Certificate, when making purchases that are ordinarily exempt from tax in accordance with tax law sections 1116(a)(15) and 1116(a)(16). For more information, see Form ST-123.

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 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 exemption from tax.

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.
- Original return procedure, 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 Encourage the Tax Department's Enforcement. For more information, Department's Enforcement.

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 credited from liability for the tax. 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 exercised 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 the 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 general 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 84, Privacy Notification. See [www.tax.ny.gov](http://www.tax.ny.gov) 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) 485-2839
- To order forms and publications:  
(518) 487-5431
- Text Telephone (TTY) Hotline  
(for persons with hearing and speech disabilities using a TTY):  
(518) 485-5082



9

ONONDAGA COUNTY CLERK'S OFFICE  
 LISA DELL - COUNTY CLERK  
 401 Montgomery St - Room 200  
 Syracuse, NY 13202

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

Doc Type: LEASE  
 Grantor: CITY OF SYRACUSE INDUSTRIAL , BRADFORD & EUCLID LLC  
 Grantee: PARK AVENUE LANTERN CORP BRADFORD & EUCLID LLC  
 Legal Desc: SYR L7-11&24-27 B429 N W & BLK ALSO  
 Prop Address: 225-303 WILKINSON ST & LEAVENWORTH AVE

Receipt: 1314261 RS  
 Book/Page: 05397/0113 Inst: 37872  
 Date Filed: 10/25/2016 at 11:44AM  
 Updated: 10/26/2016 AD  
 Record and Return To:

BARCLAY DAMON  
 ATTORNEY PICK UP BOX

Submitted by: FITCH

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

MORTGAGE TAX		DEED TRANSFER TAX	
Mortgage:		Consideration	\$0.00
Basic:	\$0.00	Transfer Tax:	\$0.00
Ins Fund:	\$0.00	SWIS:	3115
Net Add:	\$0.00	Map #:	105-07-06
Misc:	\$0.00		=====
=====		Total Paid	\$ 75.50
<b>TOTAL</b>	<b>\$0.00</b>	Control no	3677

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

LISA DELL  
 Onondaga County Clerk

Book/Page 05397 / 0113 Instrument no.: 37872



MEMORANDUM OF  
AGENCY LEASE AGREEMENT

CITY OF SYRACUSE  
3115

*NAME AND ADDRESS OF LESSOR:*

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

*NAME AND ADDRESS OF LESSEE:*

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204

*NAME AND ADDRESS OF GROUND  
LESSOR:*

Park Avenue Lantern Corporation  
225 Wilkinson Street  
Syracuse, New York 13204

*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 October 1, 2016

*TERM OF AGENCY LEASE AGREEMENT:*

The Agency Lease Agreement shall be in effect for a term commencing as of October 1, 2016 and terminate on the earlier of: (i) October 31, 2017; or (ii) the early termination of the Agency Lease as provided herein; unless the parties enter or cause to be entered, a payment in lieu of taxes agreement for the benefit of the Project, in which case the term of the Agency Lease shall run concurrently with the PILOT Agreement unless terminated early in accordance with the terms of the Agency Lease.

27526

11:04 10/25/16 8787216 R5 DR-5877P-110

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

By: 

William M. Ryan, Chairman

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

On this 20<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared, **William M. Ryan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

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

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1<sup>st</sup> day of October, 2016.

**BRADFORD & EUCLID, LLC**

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

Matthew R. Paulus, Authorized Signatory

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

On this 20<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared, **Matthew R. Paulus**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Lori L. McRobbie

Notary Public

LORI L. McROBBIE

Notary Public, State of New York

Qualified in Onondaga Co. No. 01MC5055591

Commission Expires on Feb. 12, 20 18

**ACKNOWLEDGED AND CONSENTED TO  
BY:**

PARK AVENUE LANTERN CORPORATION,  
by and through the undersigned, a duly authorized  
signatory on behalf of Park Avenue Lantern  
Corporation, hereby acknowledges and consents to  
the terms of this Memorandum of Agency Lease.

**PARK AVENUE LANTERN CORPORATION**

By:

  
\_\_\_\_\_  
Matthew R. Paulus, President

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

On this 20<sup>th</sup> day of October, 2016, before me, the undersigned, personally appeared, **Matthew R. Paulus**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



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

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

EXHIBIT A  
DESCRIPTION OF LAND

Parcel I:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

Parcel II:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

The above premises are also described as follows: ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.



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

Recording office time stamp

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

**Schedule A – Information relating to conveyance**

Grantor/Transferor <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor) City of Syracuse Industrial Development Agency Mailing address 333 West Washington Street, Suite 130 City: Syracuse State: NY ZIP code: 13204 Single member's name if grantor is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 52-1380308 Single member EIN or SSN
Grantee/Transferee <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input checked="" type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee) Bradford & Euclid, LLC Mailing address 225 Wilkinson Street City: Syracuse State: NY ZIP code: 13204 Single member's name if grantee is a single member LLC (see instructions)	Social security number  Social security number  Federal EIN 42-5292277 Single member EIN or SSN

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County
105.-07-06.0	311500	225-303 Wilkinson Street & Leavenworth Ave	Syracuse	Onondaga

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One- to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input checked="" type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <table style="border: 1px solid black; width: 100%;"> <tr> <td style="width: 33%; text-align: center;">10</td> <td style="width: 33%; text-align: center;"> </td> <td style="width: 33%; text-align: center;">2016</td> </tr> <tr> <td style="font-size: small; text-align: center;">month</td> <td style="font-size: small; text-align: center;">day</td> <td style="font-size: small; text-align: center;">year</td> </tr> </table>	10		2016	month	day	year	Percentage of real property conveyed which is residential real property _____ 0 % (see instructions)
10		2016							
month	day	year							

Condition of conveyance (check all that apply)

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



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

**Part I – Computation of tax due**

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

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

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

**Part III – Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada)..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F..... f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor’s personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) ..... k

\*The total tax (from Part I, line 6 and Part II, line 3 above) is due within 15 days from the date conveyance. Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

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

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

I (we) certify that: (check the appropriate box)

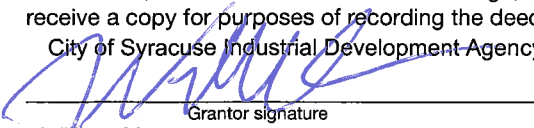
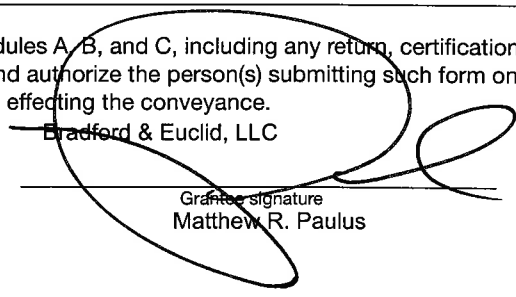
1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

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

  - Other (attach detailed explanation).
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
  - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
  - A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the **NYC Department of Finance**.)

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

City of Syracuse Industrial Development Agency  _____ Grantor signature William M. Ryan	Bradford & Euclid, LLC  _____ Grantee signature Matthew R. Paulus	_____ Authorized Signatory Title
Chairman	Title	
_____	_____	_____
Grantor signature	Title	Grantee signature
		Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule D - Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, section 663)**

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part II, and check the second box under *Exemptions for nonresident transferor(s)/seller(s)* and sign at bottom.

**Part I - New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

**Part II - Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

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

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

## **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.

**10**

**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 October 1, 2016.

The undersigned, Matthew R. Paulus, Member and authorized signatory of Bradford & Euclid, LLC (the “**Company**”), does hereby certify and confirm:

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

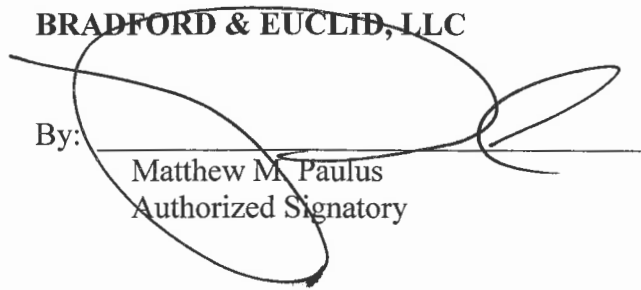
The Company understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation and equipping of the Project unless a written waiver is first received in accordance with the terms of the Policy. Failure to comply may result in the revocation or recapture of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

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

(2) that the Company has complied, and will, for so long as the Agency has an interest in the Project, continue to comply with, the Agency’s Local Labor Policy.

Dated: October 20, 2016

**BRADFORD & EUCLID, LLC**

By:  \_\_\_\_\_  
Matthew M. Paulus  
Authorized Signatory

**11**



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
10/20/2016

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 500 Plum Street, Ste. 200 Syracuse NY 13204		PHONE (A/C, No, Ext): 315-474-3374	COMPANY NAME AND ADDRESS *Great American Ins Companies 301 E. Fourth Street Cincinnati OH 45202		NAIC NO: 16691
FAX (A/C, No): 315-474-7039		E-MAIL ADDRESS: mbishop@bbempirestate.com		IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODE:	SUB CODE:		POLICY TYPE Builders Risk		
AGENCY CUSTOMER ID #:		LOAN NUMBER		POLICY NUMBER IMP1402340	
NAMED INSURED AND ADDRESS Bradford & Euclid, LLC Attn: Matthew Paulus 225-303 Wilkinson Street Syracuse, NY 13204		EFFECTIVE DATE 09/14/2016	EXPIRATION DATE 09/14/2017	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
ADDITIONAL NAMED INSURED(S)		THIS REPLACES PRIOR EVIDENCE DATED: 9/26/2016			

**PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTY**LOCATION/DESCRIPTION  
Builders Risk for property at 225-303 Wilkinson Street, Syracuse, NY 13204

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.

**COVERAGE INFORMATION** PERILS INSURED BASIC BROAD  SPECIAL

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ See Remarks		DED: \$10,000	
<input type="checkbox"/> BUSINESS INCOME <input checked="" type="checkbox"/> RENTAL VALUE	YES	NO	N/A
BLANKET COVERAGE	<input checked="" type="checkbox"/>		
TERRORISM COVERAGE	<input checked="" type="checkbox"/>		
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"/>		
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"/>	
EQUIPMENT BREAKDOWN (if Applicable)	<input checked="" type="checkbox"/>		
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg	<input checked="" type="checkbox"/>		
- Demolition Costs	<input checked="" type="checkbox"/>		
- Incr. Cost of Construction	<input checked="" type="checkbox"/>		
EARTH MOVEMENT (if Applicable)	<input checked="" type="checkbox"/>		
FLOOD (if Applicable)	<input checked="" type="checkbox"/>		
WIND / HAIL (if Subject to Different Provisions)		<input checked="" type="checkbox"/>	
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.

**ADDITIONAL INTEREST**

<input checked="" type="checkbox"/> MORTGAGEE	CONTRACT OF SALE	LENDER SERVICING AGENT NAME AND ADDRESS
LENDERS LOSS PAYABLE <input checked="" type="checkbox"/>	Loss Payee	
NAME AND ADDRESS The State of New York Mortgage Agency ATIMA 641 Lexington Ave. New York NY 10022		AUTHORIZED REPRESENTATIVE 



**EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS - Including Special Conditions (Use only if more space is required)**

Amount of Insurance:  \$31,000,000 Any One Loss  
  \$18,000,000 New Construction  
  \$13,000,000 Existing Structure  
  \$ 100,000 Temporary Location  
  \$ 250,000 Transit  
  \$ 2,000,000 Soft Costs  
  \$ 1,600,000 Rental Value

Coinsurance:  Agreed Value

Perils:   Special Causes including Equipment Breakdown  
   Subject to specific policy exclusions.

Valuation:   Replacement Cost

Deductible:   \$10,000  
   5 days Soft Costs  
   5 days Rental Income  
   \$ 1,000 Equipment Breakdown

Syracuse Industrial Development Agency is provided as Additional Insured per endorsement.

Thirty (30) days notice of cancellation applies except for non-payment which is (Ten) 10 days notice per form No. IL7135.



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
10/20/2016

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PRODUCER NAME, CONTACT PERSON AND ADDRESS Brown & Brown - Empire State 500 Plum Street, Ste. 200 Syracuse NY 13204	PHONE (A/C, No, Ext): 315-474-3374	COMPANY NAME AND ADDRESS *Great American Ins Companies 301 E. Fourth Street Cincinnati OH 45202	NAIC NO: 16691
FAX (A/C, No): 315-474-7039	E-MAIL ADDRESS: mbishop@bbempirestate.com	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODE:	SUB CODE:	POLICY TYPE Builders Risk	
AGENCY CUSTOMER ID #:	NAMED INSURED AND ADDRESS Bradford & Euclid, LLC Attn: Matthew Paulus 225-303 Wilkinson Street Syracuse, NY 13204	LOAN NUMBER	POLICY NUMBER IMP1402340
ADDITIONAL NAMED INSURED(S)	EFFECTIVE DATE 09/14/2016	EXPIRATION DATE 09/14/2017	CONTINUED UNTIL TERMINATED IF CHECKED <input type="checkbox"/>
	THIS REPLACES PRIOR EVIDENCE DATED: 9/26/2016		

**PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTY**LOCATION/DESCRIPTION  
Builders Risk for property at 225-303 Wilkinson Street, Syracuse, NY 13204

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**COVERAGE INFORMATION**

PERILS INSURED	BASIC	BROAD	SPECIAL
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ See Remarks			DED: \$10,000
<input type="checkbox"/> BUSINESS INCOME <input checked="" type="checkbox"/> RENTAL VALUE	X		If YES, LIMIT: See Remarks Actual Loss Sustained; # of months:
BLANKET COVERAGE		X	If YES, indicate value(s) reported on property identified above: \$
TERRORISM COVERAGE	X		Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?		X	
IS DOMESTIC TERRORISM EXCLUDED?		X	
LIMITED FUNGUS COVERAGE		X	If YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)		X	
REPLACEMENT COST	X		
AGREED VALUE	X		
COINSURANCE		X	If YES, %
EQUIPMENT BREAKDOWN (If Applicable)	X		If YES, LIMIT: DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg	X		If YES, LIMIT: DED:
- Demolition Costs	X		If YES, LIMIT: 500,000 DED: 10,000
- Incr. Cost of Construction	X		If YES, LIMIT: 500,000 DED: 10,000
EARTH MOVEMENT (If Applicable)		X	If YES, LIMIT: DED:
FLOOD (If Applicable)		X	If YES, LIMIT: DED:
WIND / HAIL (If Subject to Different Provisions)			X If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS		X	

**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.

**ADDITIONAL INTEREST**

<input checked="" type="checkbox"/> MORTGAGEE	CONTRACT OF SALE	LENDER SERVICING AGENT NAME AND ADDRESS
<input type="checkbox"/> LENDERS LOSS PAYABLE	<input checked="" type="checkbox"/> Loss Payee	
NAME AND ADDRESS CPC Funding SPE1 LLC c/o The Community Preservation Corporation ISAOA 28 East 28th Street, 9th Floor New York NY 10015-7943		AUTHORIZED REPRESENTATIVE 

**EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS - Including Special Conditions (Use only if more space is required)**

Amount of Insurance: \$31,000,000 Any One Loss  
\$18,000,000 New Construction  
\$13,000,000 Existing Structure  
\$ 100,000 Temporary Location  
\$ 250,000 Transit  
\$ 2,000,000 Soft Costs  
\$ 1,600,000 Rental Value

Coinsurance: Agreed Value

Perils: Special Causes including Equipment Breakdown  
Subject to specific policy exclusions.

Valuation: Replacement Cost

Deductible: \$10,000  
5 days Soft Costs  
5 days Rental Income  
\$ 1,000 Equipment Breakdown

Syracuse Industrial Development Agency is provided as Additional Insured per endorsement.

Thirty (30) days notice of cancellation applies except for non-payment which is (Ten) 10 days notice per form No. IL7135.



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
10/20/2016

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 500 Plum Street, Ste. 200 Syracuse NY 13204		PHONE (A/C, No, Ext): 315-474-3374	COMPANY NAME AND ADDRESS *Great American Ins Companies 301 E. Fourth Street Cincinnati OH 45202		NAIC NO: 16691
FAX (A/C, No): 315-474-7039	E-MAIL ADDRESS: mbishop@bbempirestate.com		IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH		
CODE:	SUB CODE:	POLICY TYPE Builders Risk			
AGENCY CUSTOMER ID #:	NAMED INSURED AND ADDRESS Bradford & Euclid, LLC Attn: Matthew Paulus 225-303 Wilkinson Street Syracuse, NY 13204		LOAN NUMBER	POLICY NUMBER IMP1402340	
ADDITIONAL NAMED INSURED(S)		EFFECTIVE DATE 09/14/2016	EXPIRATION DATE 09/14/2017	CONTINUED UNTIL TERMINATED IF CHECKED	
		THIS REPLACES PRIOR EVIDENCE DATED: 9/21/2016			

**PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTY**LOCATION/DESCRIPTION  
Builders Risk for property at 225-303 Wilkinson Street, Syracuse, NY 13204

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.

**COVERAGE INFORMATION**

PERILS INSURED	BASIC	BROAD	<input checked="" type="checkbox"/> SPECIAL	
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ See Remarks		DED: \$10,000		
<input type="checkbox"/> BUSINESS INCOME	<input checked="" type="checkbox"/> RENTAL VALUE	YES	NO	N/A
BLANKET COVERAGE		If YES, LIMIT: See Remarks		
TERRORISM COVERAGE		Attach Disclosure Notice / DEC		
IS THERE A TERRORISM-SPECIFIC EXCLUSION?		X		
IS DOMESTIC TERRORISM EXCLUDED?		X		
LIMITED FUNGUS COVERAGE		If YES, LIMIT: DED:		
FUNGUS EXCLUSION (If "YES", specify organization's form used)		X		
REPLACEMENT COST		X		
AGREED VALUE		X		
COINSURANCE		X %		
EQUIPMENT BREAKDOWN (If Applicable)		X If YES, LIMIT: DED:		
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg		X If YES, LIMIT: DED:		
- Demolition Costs		X If YES, LIMIT: 500,000 DED: 10,000		
- Incr. Cost of Construction		X If YES, LIMIT: 500,000 DED: 10,000		
EARTH MOVEMENT (If Applicable)		X If YES, LIMIT: DED:		
FLOOD (If Applicable)		X If YES, LIMIT: DED:		
WIND / HAIL (If Subject to Different Provisions)		X If YES, LIMIT: DED:		
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS		X		

**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.

**ADDITIONAL INTEREST**

<input checked="" type="checkbox"/> MORTGAGEE	<input type="checkbox"/> CONTRACT OF SALE	LENDER SERVICING AGENT NAME AND ADDRESS
<input type="checkbox"/> LENDERS LOSS PAYABLE	<input checked="" type="checkbox"/> Loss Payee	
NAME AND ADDRESS The Comptroller of The State of New York As Trustee of The Common Retirement Fund ISAOA c/o The Community Preservation Corporation ISAOA 28 East 28th Street, 9th Floor New York NY 10016-7943		AUTHORIZED REPRESENTATIVE 

**EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS - Including Special Conditions (Use only if more space is required)**

Amount of Insurance: \$31,000,000 Any One Loss  
\$18,000,000 New Construction  
\$13,000,000 Existing Structure  
\$ 100,000 Temporary Location  
\$ 250,000 Transit  
\$ 2,000,000 Soft Costs  
\$ 1,600,000 Rental Value

Coinsurance: Agreed Value

Perils: Special Causes including Equipment Breakdown  
Subject to specific policy exclusions.

Valuation: Replacement Cost

Deductible: \$10,000  
5 days Soft Costs  
5 days Rental Income  
\$ 1,000 Equipment Breakdown

Syracuse Industrial Development Agency is provided as Additional Insured per endorsement.



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
10/20/2016

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 500 Plum Street, Ste. 200 Syracuse NY 13204	PHONE (A/C. No. Ext): 315-474-3374	COMPANY NAME AND ADDRESS *Great American Ins Companies 301 E. Fourth Street Cincinnati OH 45202	NAIC NO: 16691
FAX (A/C. No): 315-474-7039	E-MAIL ADDRESS: mbishop@bbempirestate.com	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODE: AGENCY CUSTOMER ID #:	SUB CODE:	POLICY TYPE Builders Risk	
NAMED INSURED AND ADDRESS Bradford & Euclid, LLC Attn: Matthew Paulus 225-303 Wilkinson Street Syracuse, NY 13204	LOAN NUMBER	POLICY NUMBER IMP1402340	
ADDITIONAL NAMED INSURED(S)	EFFECTIVE DATE 09/14/2016	EXPIRATION DATE 09/14/2017	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
	THIS REPLACES PRIOR EVIDENCE DATED: 9/21/2016		

**PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTY**

LOCATION/DESCRIPTION  
Builders Risk for property at 225-303 Wilkinson Street, Syracuse, NY 13204

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.

**COVERAGE INFORMATION**

PERILS INSURED	BASIC	BROAD	<input checked="" type="checkbox"/>	SPECIAL	
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ See Remarks	DED: \$10,000				
<input type="checkbox"/> BUSINESS INCOME <input checked="" type="checkbox"/> RENTAL VALUE	YES	NO	N/A	If YES, LIMIT: See Remarks 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: 500,000	DED: 10,000
- Incr. Cost of Construction	<input checked="" type="checkbox"/>			If YES, LIMIT: 500,000	DED: 10,000
EARTH MOVEMENT (If Applicable)		<input checked="" type="checkbox"/>		If YES, LIMIT:	DED:
FLOOD (If Applicable)		<input checked="" type="checkbox"/>		If YES, LIMIT:	DED:
WIND / HAIL (If 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.

**ADDITIONAL INTEREST**

<input checked="" type="checkbox"/> MORTGAGEE	CONTRACT OF SALE	LENDER SERVICING AGENT NAME AND ADDRESS
<input type="checkbox"/> LENDERS LOSS PAYABLE <input checked="" type="checkbox"/> Loss Payee		
NAME AND ADDRESS The Comptroller of The State of New York As Trustee of The Common Retirement Fund ISAOA c/o The Community Preservation Corporation ISAOA 28 East 28th Street, 9th Floor New York NY 10016-7943		AUTHORIZED REPRESENTATIVE 

**EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS - Including Special Conditions (Use only if more space is required)**

Amount of Insurance: \$31,000,000 Any One Loss  
\$18,000,000 New Construction  
\$13,000,000 Existing Structure  
\$ 100,000 Temporary Location  
\$ 250,000 Transit  
\$ 2,000,000 Soft Costs  
\$ 1,600,000 Rental Value

Coinsurance: Agreed Value

Perils: Special Causes including Equipment Breakdown  
Subject to specific policy exclusions.

Valuation: Replacement Cost

Deductible: \$10,000  
5 days Soft Costs  
5 days Rental Income  
\$ 1,000 Equipment Breakdown

Syracuse Industrial Development Agency is provided as Additional Insured per endorsement.



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
10/20/2016

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PRODUCER NAME, CONTACT PERSON AND ADDRESS Brown & Brown - Empire State 500 Plum Street, Ste. 200 Syracuse NY 13204		PHONE (A/C, No, Ext): 315-474-3374	COMPANY NAME AND ADDRESS *Great American Ins Companies 301 E. Fourth Street Cincinnati OH 45202		NAIC NO: 16691
FAX (A/C, No): 315-474-7039	E-MAIL ADDRESS: mbishop@bbempirestate.com		IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH		
CODE:	SUB CODE:		POLICY TYPE Builders Risk		
AGENCY CUSTOMER ID #:		LOAN NUMBER		POLICY NUMBER IMP1402340	
NAMED INSURED AND ADDRESS Bradford & Euclid, LLC & RE Dietz Building Master Tenant, LLC. 225-303 Wilkinson Street Syracuse, NY 13204		EFFECTIVE DATE 09/14/2016		EXPIRATION DATE 09/14/2017	CONTINUED UNTIL TERMINATED IF CHECKED <input type="checkbox"/>
ADDITIONAL NAMED INSURED(S)		THIS REPLACES PRIOR EVIDENCE DATED: 9/26/2016			

**PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required)     BUILDING    OR     BUSINESS PERSONAL PROPERTY**

LOCATION/DESCRIPTION  
Builders Risk for property at 225-303 Wilkinson Street, Syracuse, NY 13204

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: \$ See Remarks						DED: \$10,000
<input type="checkbox"/> BUSINESS INCOME	<input checked="" type="checkbox"/> RENTAL VALUE	YES	NO	N/A		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: 10,000
- Demolition Costs			<input checked="" type="checkbox"/>			If YES, LIMIT: 500,000 DED: 10,000
- Incr. Cost of Construction			<input checked="" type="checkbox"/>			If YES, LIMIT: 500,000 DED: 10,000
EARTH MOVEMENT (If Applicable)			<input checked="" type="checkbox"/>			If YES, LIMIT: DED:
FLOOD (If Applicable)			<input checked="" type="checkbox"/>			If YES, LIMIT: DED:
WIND / HAIL (If 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>		LENDER SERVICING AGENT NAME AND ADDRESS	
<input type="checkbox"/> MORTGAGEE	<input type="checkbox"/> CONTRACT OF SALE		
<input type="checkbox"/> LENDERS LOSS PAYABLE			
NAME AND ADDRESS RE Dietz Building Master Tenant, LLC. c/o Bradford & Euclid, LLC Attn: Matthew Palus 225-303 Wilkinson Street Syracuse NY 13204		AUTHORIZED REPRESENTATIVE 	



**EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS - Including Special Conditions (Use only if more space is required)**

Amount of Insurance: \$31,000,000 Any One Loss  
\$18,000,000 New Construction  
\$13,000,000 Existing Structure  
\$ 100,000 Temporary Location  
\$ 250,000 Transit  
\$ 2,000,000 Soft Costs  
\$ 1,600,000 Rental Value

Coinsurance: Agreed Value

Perils: Special Causes including Equipment Breakdown  
Subject to specific policy exclusions.

Valuation: Replacement Cost

Deductible: \$10,000  
5 days Soft Costs  
5 days Rental Income  
\$ 1,000 Equipment Breakdown

Syracuse Industrial Development Agency is provided as Additional Insured per endorsement.

Thirty (30) days notice of cancellation applies except for non-payment which is (Ten) 10 days notice per pending form.



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
10/20/2016

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PRODUCER NAME, CONTACT PERSON AND ADDRESS Brown & Brown - Empire State 500 Plum Street, Ste. 200 Syracuse NY 13204		PHONE (A/C, No, Ext): 315-474-3374	COMPANY NAME AND ADDRESS *Great American Ins Companies 301 E. Fourth Street Cincinnati OH 45202		NAIC NO: 16691
FAX (A/C, No): 315-474-7039	E-MAIL ADDRESS: mbishop@bbempirestate.com		IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH		
CODE:	SUB CODE:		POLICY TYPE Builders Risk		
AGENCY CUSTOMER ID #:	NAMED INSURED AND ADDRESS Bradford & Euclid, LLC & RE Dietz Building Master Tenant, LLC. 225-303 Wilkinson Street Syracuse, NY 13204		LOAN NUMBER	POLICY NUMBER IMP1402340	
ADDITIONAL NAMED INSURED(S)		EFFECTIVE DATE 09/14/2016		EXPIRATION DATE 09/14/2017	CONTINUED UNTIL TERMINATED IF CHECKED <input type="checkbox"/>
		THIS REPLACES PRIOR EVIDENCE DATED: 9/26/2016			

**PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required)  BUILDING OR  BUSINESS PERSONAL PROPERTY**LOCATION/DESCRIPTION  
Builders Risk for property at 225-303 Wilkinson Street, Syracuse, NY 13204

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.

**COVERAGE INFORMATION**

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE:	\$ See Remarks	DED: \$10,000
<input type="checkbox"/> BUSINESS INCOME <input checked="" type="checkbox"/> RENTAL VALUE	YES NO N/A	If YES, LIMIT: See Remarks Actual Loss Sustained; # of months:
BLANKET COVERAGE	X	If YES, indicate value(s) reported on property identified above: \$
TERRORISM COVERAGE	X	Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?	X	
IS DOMESTIC TERRORISM EXCLUDED?	X	
LIMITED FUNGUS COVERAGE	X	If YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)	X	
REPLACEMENT COST	X	
AGREED VALUE	X	
COINSURANCE	X	If YES, %
EQUIPMENT BREAKDOWN (If Applicable)	X	If YES, LIMIT: DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg	X	If YES, LIMIT: DED: 10,000
- Demolition Costs	X	If YES, LIMIT: 500,000 DED: 10,000
- Incr. Cost of Construction	X	If YES, LIMIT: 500,000 DED: 10,000
EARTH MOVEMENT (If Applicable)	X	If YES, LIMIT: DED:
FLOOD (If Applicable)	X	If YES, LIMIT: DED:
WIND / HAIL (If Subject to Different Provisions)	X	If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS	X	

**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.

**ADDITIONAL INTEREST**

MORTGAGEE	CONTRACT OF SALE	LENDER SERVICING AGENT NAME AND ADDRESS
LENDERS LOSS PAYABLE <input checked="" type="checkbox"/> Loss Payee		
NAME AND ADDRESS Chase Community Equity, LLC. ISAOA c/o JPMorgan Chase Bank, NA. 700 North Pearl Street, 13th Floor Dallas TX 75201-7424		AUTHORIZED REPRESENTATIVE 

**EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS - Including Special Conditions (Use only if more space is required)**

Amount of Insurance: \$31,000,000 Any One Loss  
\$18,000,000 New Construction  
\$13,000,000 Existing Structure  
\$ 100,000 Temporary Location  
\$ 250,000 Transit  
\$ 2,000,000 Soft Costs  
\$ 1,600,000 Rental Value

Coinsurance: Agreed Value

Perils: Special Causes including Equipment Breakdown  
Subject to specific policy exclusions.

Valuation: Replacement Cost

Deductible: \$10,000  
5 days Soft Costs  
5 days Rental Income  
\$ 1,000 Equipment Breakdown

Syracuse Industrial Development Agency is provided as Additional Insured per endorsement.

Thirty (30) days notice of cancellation applies except for non-payment which is (Ten) 10 days notice per form No. IL7135



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/20/2016

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

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

<b>PRODUCER</b> Brown & Brown - Empire State 500 Plum Street, Ste. 200 Syracuse NY 13204	<b>CONTACT NAME:</b> Margaret Bishop <b>PHONE (A/C, No, Ext):</b> 315-474-3374 <b>E-MAIL ADDRESS:</b> mbishop@bbempirestate.com	<b>FAX (A/C, No):</b> 315-703-9528
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> BRADF-4 Bradford & Euclid, LLC Attn: Matthew Paulus 225-303 Wilkinson Street Syracuse NY 13204	<b>INSURER A:</b> Cincinnati Insurance Company <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	<b>NAIC #</b> 10677

**COVERAGES** **CERTIFICATE NUMBER: 1505951615** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N	ENP0403267	9/14/2016	9/14/2017	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$500,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
								\$
A	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	N	N	ENP0403267	9/14/2016	9/14/2017	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000	N	N	ENP0403267	9/14/2016	9/14/2017	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$5,000,000
								\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE	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)  
  
See Attached...

<b>CERTIFICATE HOLDER</b>  The State of New York Mortgage Agency ATIMA 641 Lexington Ave. New York NY 10022	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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ACORD 25 (2014/01)

The ACORD name and logo are registered marks of ACORD

THIS CERTIFICATE SUPERSEDES PREVIOUSLY ISSUED CERTIFICATE



**ADDITIONAL REMARKS SCHEDULE**

<b>AGENCY</b> Brown & Brown - Empire State		<b>NAMED INSURED</b> Bradford & Euclid, LLC Attn: Matthew Paulus 225-303 Wilkinson Street Syracuse NY 13204	
<b>POLICY NUMBER</b> .		<b>EFFECTIVE DATE:</b>	
<b>CARRIER</b>	<b>NAIC CODE</b>		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 25      FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

General Liability Additional insured status applies per form No. CG2018.

Syracuse Industrial Development Agency is provided as Additional Insured under General Liability per endorsement.

Thirty (30) days notice of cancellation applies except for non-payment which is (Ten) 10 days notice per form No. CG2867.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/20/2016

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

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

<b>PRODUCER</b> Brown & Brown - Empire State 500 Plum Street, Ste. 200 Syracuse NY 13204	<b>CONTACT NAME:</b> Margaret Bishop <b>PHONE (A/C, No., Ext):</b> 315-474-3374 <b>E-MAIL ADDRESS:</b> mbishop@bbempirestate.com	<b>FAX (A/C, No):</b> 315-703-9528
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> BRADF-4 Bradford & Euclid, LLC Attn: Matthew Paulus 225-303 Wilkinson Street Syracuse NY 13204	<b>INSURER A :</b> Cincinnati Insurance Company	<b>NAIC #</b> 10677
	<b>INSURER B :</b>	
	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	
	<b>INSURER F :</b>	

**COVERAGES** **CERTIFICATE NUMBER: 393989760** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	N	ENP0403267	9/14/2016	9/14/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	N	N	ENP0403267	9/14/2016	9/14/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000	N	N	ENP0403267	9/14/2016	9/14/2017	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> 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)  
  
See Attached...

<b>CERTIFICATE HOLDER</b> The Comptroller of The State of New York As Trustee of The Common Retirement Fund ISAOA c/o The Community Preservation Corporation ISAOA 28 East 28th Street, 9th Floor New York NY 10016-7943	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. <b>AUTHORIZED REPRESENTATIVE</b> 
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**ADDITIONAL REMARKS SCHEDULE**

<b>AGENCY</b> Brown & Brown - Empire State		<b>NAMED INSURED</b> Bradford & Euclid, LLC Attn: Matthew Paulus 225-303 Wilkinson Street Syracuse NY 13204	
<b>POLICY NUMBER</b>		<b>EFFECTIVE DATE:</b>	
<b>CARRIER</b>	<b>NAIC CODE</b>		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 25      FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

General Liability Additional insured status applies per form No. CG2018.

Syracuse Industrial Development Agency is provided as Additional Insured under General Liability per endorsement.

Thirty (30) days notice of cancellation applies except for non-payment which is (Ten) 10 days notice per form No. CG2867.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/20/2016

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<b>PRODUCER</b> Brown & Brown - Empire State 500 Plum Street, Ste. 200 Syracuse NY 13204	<b>CONTACT NAME:</b> Margaret Bishop	
	<b>PHONE (A/C, No, Ext):</b> 315-474-3374	<b>FAX (A/C, No):</b> 315-703-9528
<b>E-MAIL ADDRESS:</b> mbishop@bbempirestate.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Cincinnati Insurance Company		10677
<b>INSURER B:</b>		
<b>INSURER C:</b>		
<b>INSURER D:</b>		
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**INSURED** BRADF-4  
 Bradford & Euclid, LLC  
 Attn: Matthew Paulus  
 225-303 Wilkinson Street  
 Syracuse NY 13204


**COVERAGES** **CERTIFICATE NUMBER:** 1887102335 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	N	ENP0403267	9/14/2016	9/14/2017	EACH OCCURRENCE	\$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$500,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$1,000,000
							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
								\$
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	N	N	ENP0403267	9/14/2016	9/14/2017	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000 <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	N	N	ENP0403267	9/14/2016	9/14/2017	EACH OCCURRENCE	\$5,000,000
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	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE	OTHER
							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)

See Attached...

<b>CERTIFICATE HOLDER</b> CPC Funding SPE1 LLC c/o The Community Preservation Corporation ISAOA 28 East 28th Street, 9th Floor New York NY 10015-7943	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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**ADDITIONAL REMARKS SCHEDULE**

<b>AGENCY</b> Brown & Brown - Empire State		<b>NAMED INSURED</b> Bradford & Euclid, LLC Attn: Matthew Paulus 225-303 Wilkinson Street Syracuse NY 13204	
<b>POLICY NUMBER</b>		<b>EFFECTIVE DATE:</b>	
<b>CARRIER</b>	<b>NAIC CODE</b>		

**ADDITIONAL REMARKS**

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**FORM NUMBER: 25      FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

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Syracuse Industrial Development Agency is provided as Additional Insured under General Liability per endorsement.

Thirty (30) days notice of cancellation applies except for non-payment which is (Ten) 10 days notice per form No. CG2867.

**12**

## ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT (the "*Agreement*") is made as of the 1<sup>st</sup> day of October, 2016, between BRADFORD & EUCLID, LLC and PARK AVENUE LANTERN CORPORATION (collectively, the "*Indemnitor*" or the "*Company*"), for the benefit of the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY (the "*Agency*").

### RECITALS

WHEREAS, Park Avenue Lantern Corporation (the "*Corporation*") is the current owner of the Land and the Facility and has leased the Land and the Facility to the Company pursuant to a ground lease dated August 9, 2016 (the "*Ground Lease*"); and

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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "*Existing Building*") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York, as more fully described on Schedule A (the "*Land*"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "*Facility*"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from real property taxes, State and local sales and use tax and mortgage recording tax (the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

NOW, THEREFORE, in consideration of the premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **Recitals; Definitions.**

(a) The foregoing recitals are incorporated into this Agreement by this reference.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Schedule of Definitions attached 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 current, 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, lessor, lessee, mortgagee, as mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

(1) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility whether or not the same originates or emanates from the Project Facility or any contiguous real estate including any loss of value of the Project Facility as a result of any of the foregoing;

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

(3) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Project Facility; and/or

(4) any other environmental matter affecting the Project Facility within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local agency.

The obligations of Indemnitor under this Agreement shall arise whether or not the Environmental Protection Agency, any other federal agency or any state or local agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(b) In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility, whether or not the same originates or emanates from the Project Facility or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Agency may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Project Facility and/or take any and all other actions as Agency shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure the noncompliance of Indemnitor.

(c) Indemnitor acknowledges that Agency has relied upon the representations, warranties, covenants and indemnities of Indemnitor in this Agreement. All of the representations, warranties, covenants and indemnities of this Agreement shall survive the repayment of Indemnitor's obligations under the Agency Lease or other Company Documents.

5. **Attorney's Fees.** If Agency retains the services of any attorney in connection with the subject of the indemnity herein, Indemnitor shall pay Agency's costs and reasonable attorneys' fees thereby incurred. Agency may employ an attorney of its own choice.

6. **Interest.** In the event that Agency incurs any obligations, costs or expenses under this Agreement, Indemnitor shall pay such Person immediately on demand, and if such payment is not received within ten (10) days, interest on such amount shall, after the expiration of the ten-day period, accrue at the interest rate set forth in the Agency Lease until such amount, plus interest, is paid in full.

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

8. **Waiver by Indemnitor.** Indemnitor waives any right or claim of right to cause a marshalling of Indemnitor's assets or to cause Agency to proceed against any of the security for the Agency Lease before proceeding under this Agreement against Indemnitor or to proceed against Indemnitor in any particular order; Indemnitor agrees that any payments required to be made hereunder shall become due on demand; Indemnitor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

9. **Releases.** Any one or more of Indemnitor and any other party liable upon or in respect of this Agreement or the Agency Lease may be released without affecting the liability of any party not so released.

10. **Amendments.** No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Joint and Several Liability.** In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each Indemnitor, whether or not an

action is brought against any other person or whether or not any other person is joined in such action or actions.

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

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

(a) If to the Agency, to:

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

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

(b) To the Company:

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Matthew R. Paulus

With a copy to:

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

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

14. **Waivers.** The parties waive trial by jury in any action brought on, under or by virtue of this Agreement. Indemnitor waives any right to require Agency at any time to pursue any remedy in such Person's power whatsoever. The failure of Agency to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such terms, nor shall it prevent Agency from insisting upon strict compliance with this Agreement or any other Company Document at any time thereafter.

15. **Severability.** If any clause or provisions herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision shall be held for naught as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

16. **Inconsistencies Among the Company Documents.** Nothing contained herein is intended to modify in any way the obligations of Indemnitor under the Agency Lease or any other Company Document. Any inconsistencies among the Company Documents shall be construed, interpreted and resolved so as to benefit Agency.

17. **Successors and Assigns.** This Agreement shall be binding upon Indemnitor's successors, assigns, heirs, personal representatives and estate and shall inure to the benefit of Agency and its successors and assigns.

18. **Controlling Laws.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Remainder of page intentionally left blank]



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

**BRADFORD & EUCLID, LLC**

By: \_\_\_\_\_  
Matthew R. Paulus, Authorized Signatory

**PARK AVENUE LANTERN CORPORATION**

By: \_\_\_\_\_  
Matthew R. Paulus, President

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

On the 20<sup>th</sup> day of October, in the year 2016 before me, the undersigned, a notary public in and for said state, personally appeared Matthew R. Paulus, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Lori L. McRobbie  
Notary Public

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

## SCHEDULE "A"

### Legal Description of the Premises

#### Parcel I:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

#### Parcel II:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

The above premises are also described as follows: ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

## **SCHEDULE "B"**

### **EXCEPTIONS**

Matters set forth in the following:

1. Limited Environmental Site Investigation for The Dietz Building prepared by C&S Engineers, Inc. and dated September 2016.
2. ASTM E1527-13 Phase I Environmental Site Assessment for the property identified as 225-303 Wilkinson Street, Syracuse, NY 13204, prepared by LCS Inc. dated May 25, 2016.

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**CORPORATION CERTIFICATION**

The undersigned, Matthew R. Paulus, President and authorized signatory of Park Avenue Lantern Corporation (the “**Corporation**”), does hereby acknowledge, consent and confirm:

(1) that the Corporation entered into that certain ground lease dated January 1, 2016 between the Corporation, as fee owner, and Bradford & Euclid, LLC (the “**Company**”), as lessee, with respect to the Land and the Facility (as those terms are defined hereinbelow) (the “**Ground Lease**”); and that the Ground Lease is in full force and effect and no event exists, which would, but for the passage of time or the giving of notice, or both, constitute an event of default thereunder;

(2) that the Company has entered into a (sub)sublease agreement(s) with the City of Syracuse Industrial Development Agency (the “**Agency**”) to undertake a project consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “**Existing Building**”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “**Land**”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”);

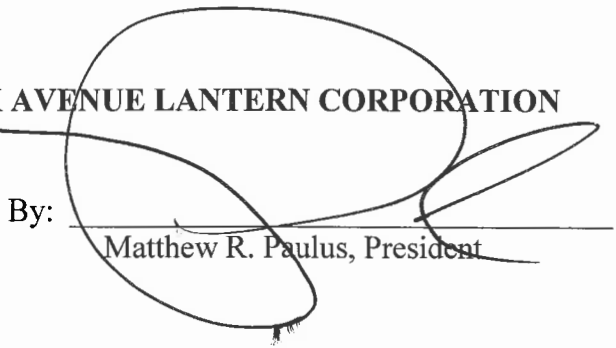
(3) that the execution and delivery of any and all documents by the Company and/or the Agency in connection with the Project Facility, and in particular, the subleasing of the Land and Facility, do not violate the Ground Lease;

(4) in furtherance of the Project Facility, the Corporation has executed and delivered a Bill of Sale dated as of October 1, 2016 transferring all of the Corporation’s interests, if any, in the Equipment (either currently existing at or on the Project Facility or to be acquired and installed thereon) to the Agency; and said Bill of Sale was duly authorized and delivered by the Corporation; and

(3) that upon the termination of the (sub)leases between the Agency and the Company, the Corporation acknowledges and agrees that all Equipment will be transferred back to the Company.

Dated: October 20, 2016

**PARK AVENUE LANTERN CORPORATION**

By:   
Matthew R. Paulus, President

**14**

## CLOSING RECEIPT

### CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION BRADFORD & EUCLID, LLC

**CLOSING RECEIPT** executed October 20, 2016 by the City of Syracuse Industrial Development Agency (the “*Agency*”) and **BRADFORD & EUCLID, LLC** (the “*Company*”) in connection with a certain project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “*Existing Building*”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “*Land*”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property taxes, State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

#### WITNESSETH:

(1) The Agency has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party, and acknowledges receipt from the Company of its administrative fee.

(2) The Company has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party.

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: 

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



(Signature page to Closing Receipt)

**BRADFORD & EUCLID, LLC**

By: \_\_\_\_\_  
Matthew R. Paulus, Authorized Signatory

**15**

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**City of Syracuse**  
**Industrial Development Agency**  
333 West Washington Street, Suite 130  
Syracuse, NY 13202  
Tel (315) 473-3275 Fax (315) 435-3669

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October 1, 2016

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Matthew R. Paulus

Re: City of Syracuse Industrial Development Agency  
Bradford & Euclid, LLC  
Sales Tax Appointment Letter

Dear Mr. Paulus:

Pursuant to a resolution duly adopted on January 26, 2016, the City of Syracuse Industrial Development Agency (the “**Agency**”) Bradford & Euclid, 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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “**Existing Building**”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “**Land**”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)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 \$990,000.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any renovation, improvement and equipping of any

of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with renovation, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

This 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 and the Project Agreement. 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 whether appointed or not, to provide and certify, or cause to be certified, such information regarding use of local labor, job creation, exemptions from State and local sales and use tax, real property taxes and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation, including but not limited to those required by §875 of the Act.

The Company acknowledges and agrees that pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall, and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "***Recapture Amount***") consisting of that portion of the State and local sales and use tax exemption in accordance with the Agency's Recapture Policy and the Project Agreement.

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).

October 1, 2016

Page 3

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance (“*NYSDTF*”) on “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions you, your Additional Agents have claimed pursuant to the agency we have conferred on you with respect to this project. The penalty for failure to file such statement is the removal of your authority to act as our agent. In addition, you must provide a copy of the completed Form ST-340 to the Agency within ten (10) days of the date it is due to be filed with the NYSDTF.

The agency created by this letter is limited to the Project Facility, and will expire on the earlier of: (i) **October 31, 2017**, (ii) the issuance of a certificate of occupancy by the City; or (iii) the termination of the Agency Lease. You may apply to extend this agency authority by showing good cause.

This letter is provided for the sole purpose of evidencing, in part, the exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

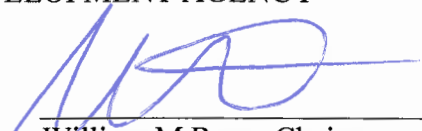
The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance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

[Remainder of page intentionally left blank]

Very truly yours

CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY

By:



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William M Ryan, Chairman

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# IDA Appointment of Project Operator or Agent For Sales Tax Purposes

# ST-60

(4/13)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA City of Syracuse Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998) 31021607	
Street address 333 West Washington Street, Suite 130		Telephone number (315) 473-3275	
City Syracuse		State NY	ZIP code 13202
Name of IDA project operator or agent Bradford & Euclid, LLC	Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or social security number 42-5292277	
Street address 225 Wilkinson Street		Telephone number (315) 422-1076	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
City Syracuse		State NY	ZIP code 13204
Name of project Bradford & Euclid, LLC Project		Purpose of project (see instructions) other - commercial	
Street address of project site 225-303 Wilkinson Street & Leavenworth Avenue			
City Syracuse		State NY	ZIP code
Description of goods and services intended to be exempted from New York State and local sales and use taxes building materials, equipment, fixtures and furnishings installed in the Project Facility			

Date project operator or agent appointed (mm/dd/yy) 10/20/16	Date project operator or agent status ends (mm/dd/yy) 10/31/17	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: \$12,375,000	Estimated value of New York State and local sales and use tax exemption provided: \$990,000	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA William M. Ryan	Print title Chairman
Signature 	Date 10/20/16
	Telephone number (315) 473-3275

## Instructions

### Filing requirements

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 days, send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

### Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

### Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1086, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



Internet access: [www.tax.ny.gov](http://www.tax.ny.gov)  
(for information, forms, and publications)



Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline  
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082



BARCLAY DAMON<sup>LLP</sup>

Susan R. Katzoff  
*Partner*

October 24, 2016

VIA CERTIFIED MAIL  
7008 1300 0000 1722 4012

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  
Bradford & Euclid, LLC (Bradford & Euclid, LLC Project)  
IDA Project No. 31021607

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency, please find form ST-60 in connection with the appointment by the IDA of Bradford & Euclid, LLC as its agent for sales tax purposes in connection with the IDA project identified therein.

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

Very truly yours,  
**COPY**

Susan R. Katzoff

SRK:llm  
Enclosure

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

New York State Tax Department  
 IDA Unit  
 Building 8, Room 798  
 W.A. Harriman Campus  
 Albany, New York 12227



9590 9402 2129 6132 4537 89

**2. Article Number (Transfer from service label)**

7008 1300 0000 1722 4012

**COMPLETE THIS SECTION ON DELIVERY**

**A. Signature**  
 X  Agent  
 Addressee

**B. Received by (Printed Name)** **C. Date of Delivery**

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

**ALBANY, NY**  
**OCT 26 2016**

- 3. Service Type**
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Return Receipt for Merchandise
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

7008 1300 0000 1722 4012

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*  
**OFFICIAL USE**  
 For delivery information visit our website at [www.usps.com](http://www.usps.com)

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

Postmark Here

Sent to \_\_\_\_\_  
 Street Apt. No. or PO Box No. \_\_\_\_\_  
 City, State, ZIP+4 \_\_\_\_\_  
 PS Form 3800, August 2006 See Reverse for Instructions

**17**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT  
AGENCY**

**and**

**BRADFORD & EUCLID, LLC**

**and**

**PARK AVENUE LANTERN CORPORATION**

**PAYMENT IN LIEU OF TAX AGREEMENT**

**Dated as of: October 1, 2016**

Bradford & Euclid, LLC

**Federal Tax ID #: 47-5292277**

Park Avenue Lantern Corporation

**Federal Tax ID #: 81-1084314**

**THIS PAYMENT IN LIEU OF TAX AGREEMENT**, (this *“Agreement”*) dated as of October 1, 2016 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 City Hall Commons, 201 East Washington Street, 7<sup>th</sup> Floor, Syracuse, New York 13202, and **BRADFORD & EUCLID, LLC**, a foreign limited liability company organized under the laws of the State of Delaware duly authorized to do business in the State of New York, with offices at 225 Wilkinson Street, Syracuse, New York 13204 (hereinafter referred to as the *“LLC”*), and **PARK AVENUE LANTERN CORPORATION**, a business corporation organized under the laws of the State of New York with an office to conduct business at 225 Wilkinson Street, Syracuse, New York 13204 (the *“Corporation”*) (the Corporation and together with the LLC hereinafter being collectively referred to as the *“Company”*).

**WITNESSETH:**

**WHEREAS**, the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the *“Enabling Act”*) authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among other things, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease and to sell its projects, to charge and collect rent therefor, to issue its bonds or notes for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds or notes, to mortgage any or all of its facilities and to

pledge the revenues and receipts therefrom to the payment of such bonds or notes; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 641 of the 1979 Laws of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”) created the Agency for the benefit of the City of Syracuse (hereinafter referred to as the “*Municipality*”) and the inhabitants thereof; and

**WHEREAS**, the Agency, by Resolutions adopted on January 26, 2016, July 19, 2016 and October 18, 2016, (together, the “*Resolution*”), resolved to undertake the “*Project*” (as hereinafter defined); and

**WHEREAS**, the Project will consist of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximate 208,082 square foot building (the “*Existing Building*”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “*Land*”); (ii) the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and one-site parking, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”) ; (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, the Corporation is the current owner of the Land and the Facility and has leased the Land and the Facility to the Company pursuant to a forty-nine (49) year ground lease dated January 1, 2016 between Syracuse Business Center, Inc. (“SBCI”) and the Company as

assigned to the Corporation pursuant to an Assignment and Assumption Agreement between SCBI and the Corporation dated as of August 9, 2016; and

**WHEREAS**, the Agency, with the consent of the Corporation, will sublease the Project Facility from the LLC pursuant to that certain Company Lease Agreement dated as of October 1, 2016 (the “*Company Lease Agreement*”), between the LLC and the Agency, and acknowledged and consented to by the Corporation and (sub)sublease the Project Facility back to the LLC pursuant to that certain Agency Lease Agreement dated as of October 1, 2016 (the “*Agency Lease Agreement*”), between the Agency and the LLC, and acknowledged and consented to by the Corporation, (collectively the Company Lease Agreement and the Agency Lease Agreement are hereinafter referred to as the (“*Lease Agreement*”)); and

**WHEREAS**, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

**NOW, THEREFORE**, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## **ARTICLE I**

### **REPRESENTATIONS AND WARRANTIES**

#### **Section 1.01. Representations and Warranties by Agency**

The Agency does hereby represent and warrant as follows:

(a) Existence and Power. The Agency has been duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) Intentions. The Agency intends to acquire a leasehold interest in the Project Facility from the Company and to sublease the Project Facility back to the Company, all pursuant to the provisions of the Lease Agreement.

(c) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State of New York to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be

performed under and pursuant to this Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated.

(d) Validity. The Agency is not prohibited from entering into this Agreement and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of the Act, any other law, any order of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound, and this Agreement is a legal, valid and binding obligation of the Agency enforceable in accordance with its terms.

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

The Company does hereby represent and warrant as follows:

(a) Existence. The LLC is a foreign limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in the State of New York and the Corporation is a domestic corporation organized and validly existing under the laws of the State of New York.

(b) Authorization. Both the LLC and the Corporation are authorized and have the power to enter into this Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement. Both the LLC and the Corporation have duly authorized the execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated. The LLC and the Corporation are not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by (and the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization, Operating Agreement or any other restriction or any law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust,



mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the LLC or the Corporation is a party or by which it or any of its property is bound, and the LLC's and the Corporation'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 LLC or the Corporation under the terms of any of the foregoing, and this Agreement is a legal, valid and binding obligation of the LLC and the Corporation and enforceable in accordance with its terms.

(c) Governmental Consent. No further consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Agreement by the Company or as a condition to the validity of this Agreement.

## ARTICLE II

### COVENANTS AND AGREEMENTS

#### Section 2.01. Tax-Exempt Status of the Project Facility

(a) Assessment of the Project Facility. Pursuant to the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of ownership or control of the Project Facility by the Agency, and for so long thereafter as the Agency shall own or control the Project Facility, the Project Facility shall be entitled to an exemption upon the first available assessment roll of the Municipality prepared subsequent to the acquisition by the Agency of ownership or control of the Project Facility. The time of commencement of the Agency's exemption shall be controlled by the Municipality's taxable status date, in conformity with Section 412-a of the Real Property Tax Law. The Company will be required to pay to the Municipality all taxes and assessments lawfully levied and/or assessed against the Project Facility, in spite of the Agency's actual ownership or control of the Project Facility, until the Project Facility shall be entitled to exempt status on the tax roll of the Municipality.

(b) Special Assessments. The parties hereto understand that the tax exemption

extended to the Agency by the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

**Section 2.02. Payments in Lieu of Taxes**

(a) Agreement to Make Payments. The Company agrees that it shall make periodic payments in lieu of real property taxes in the amounts hereinafter provided. The said payments due to the Agency hereunder shall be paid by the Company, to the Municipality, by check made payable to "*Commissioner of Finance*". Upon receipt of the Company's payment, it shall be the Municipality's obligation to appropriately disburse any portion of the said payment to the County of Onondaga, or such other taxing jurisdiction, pursuant to the Act. This Company obligation shall exist for so long as the Agency retains an interest in the Project Facility. Notwithstanding the appearance of the Agency's exemption on the Municipality's tax roll for the 2017/2018 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, 2017. 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, 2018. Without regard to the Agency exemption, the Company shall continue paying real property tax through June 30, 2017 with respect to the City and School portion of the real property tax and through December 31, 2017 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. Unless this waiver is determined to be unenforceable by a Court of competent jurisdiction, 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 (unless the forgoing waiver is determined to be unenforceable by a Court of competent jurisdiction).

(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 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 affected 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. Obligation of Municipality**

The Municipality shall submit to the Company written semi-annual statements specifying the amount and due date or dates of any payments due to the Agency hereunder. Each said semi-annual statement shall be submitted to the Company at the same time that tax bills are mailed by the Municipality to the owners of privately owned property.

### **Section 2.04. Obligations of Agency**

(a) Requirement that any Project Facility Agreements Require Payments in Lieu of Taxes. So long as the Project Facility shall be entitled to exemption from real property taxes as provided in Section 2.01(a) hereof, the Agency agrees, to the extent permitted by law, that it shall not make any agreement regarding the leasing or sale of the Project Facility which does not require that payments in lieu of taxes shall be paid to the Municipality in at least the amounts set forth in Article II hereof.

(b) Requirement that Mortgagees subordinate to Payments. The Agency and the Company agree that any mortgages on the Project Facility, given by either of them, shall provide

that the rights of the mortgagees thereunder shall be subordinate to this Agreement and to the right of the Municipality to receive payments in lieu of taxes pursuant to Article II hereof.

**Section 2.05. Company to Furnish Information**

The Company agrees to promptly comply with the reporting and information requirements of the Agency and the Act, and to promptly furnish the applicable information required or requested by the Agency and/or the State of New York in accordance with applicable law. 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: (i) this Agreement within ten (10) days after written notice to the Company that it is due; or (ii) the Lease Agreement.

(b) Commencement by the Company of a Legal Challenge, as defined in Section 2.02(b), to those payments or the basis for those payments due pursuant to Exhibit “A” (subject to the terms of Section 2.02(b)).

(c) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed under this Agreement (other than as referred to in paragraph (a) above) or the Lease Agreement, and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied.

(d) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Lease Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement or the Lease Agreement.

(e) The Company violates any federal, state or local environmental law or allows or

causes any Hazardous Materials (as Hazardous Materials is defined and described in any federal, state or local law) to be released at, on, to, into or from the Project Facility, except as permitted by the Lease Agreement or within the terms and conditions of a permit, certificate, license or other written approval of an authorized governmental body, and fails to remedy such violation within thirty (30) days after receipt of written notice; or if such failure cannot be cured within thirty (30) days, fails to commence a cure within thirty (30) days after receipt of written notice and thereafter diligently prosecute the cure thereof.

(f) The occurrence of any Event of Default or Default under this Agreement, the Lease Agreement or any other Project documents entered into between the Company and the Agency.

(g) Failure of the Company to commence renovation of the Project Facility within six (6) months of the date of this Agreement.

The payment schedule contained in Exhibit "A" is for the benefit of the Company and its Project Facility. In the event a Company Default occurs hereunder, and the Lease Agreement cannot be terminated, and/or the Agency's participation in the Project and this Agreement is not or cannot be terminated, the Company, or any assignee, or successor shall no longer be entitled to make payments under this Agreement pursuant to Exhibit "A". In such an event, payments shall be made hereunder, for any remaining term of the Project, as if the Project Facility was privately owned and assessed and without any further regard to Exhibit "A".

#### **Section 4.02. Remedies on Company Default**

Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e), 4.01 (f) or 4.01(g) shall have occurred and be continuing with respect to this Agreement, and/or the Company shall be in default under the Lease Agreement, the Agency may take whatever action at law or in equity, following applicable notice, as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement and/or the Lease Agreement.

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

(a) Whenever any Event of Default under Sections 4.01(a), 4.01(b), 4.01(c), 4.01(d), 4.01(e) 4.01 (f) or 4.01(g) shall have occurred and be continuing with respect to this Agreement or



the Lease Agreement, the Agency may, upon notice to the Company provided for in this Agreement or the Lease Agreement, terminate the Lease Agreement and record such termination or other necessary documents in the Onondaga County Clerk's Office, terminating the Agency's interest in the Project Facility and terminating this Agreement.

(b) The recording of such a termination and any other documentation shall constitute delivery to, and acceptance of such, by the Company. In order to facilitate such a termination, the Company hereby appoints the Chairman or the Vice Chairman of the Agency as its agent for the purpose of executing and delivering all documents reasonably necessary to allow such termination by the Agency.

(c) In the event that the Lease Agreement, for any reason, is extended by its terms, or for any reason this Agreement expires or terminates, but the Agency retains an interest or remains in title to the Project Facility, the Company shall continue to make payments in lieu of taxes to the Municipality for as long as the Agency retains an interest in, or remains in title to, the Project Facility. Those payments shall be the equivalent of the real property taxes that would be due on the Project Facility if it were owned by the Company and not the Agency. It is the intention of the parties hereto, that for so long as the Agency shall possess title to, or an interest in, the Property, the Company, or any permitted successors or assigns, shall make payments in lieu of taxes to the Municipality that are either based upon Exhibit "A", or if Exhibit "A" is no longer applicable for any reason, are the equivalent of the real property taxes that would be due and owing if the Project Facility were privately owned.

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

(a) If the Company should default in performing any of its obligations, covenants and agreements under this Agreement and the Agency or the Municipality should employ attorneys (whether in-house or outside counsel) or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency and/or the Municipality the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

(b) Furthermore, should the Company bring a Legal Challenge on the Project Facility and/or Additional Property during the term of this Agreement, and the Agency and/or the Municipality waives its right to declare a default under this Agreement in regard to such Legal Challenge, or such Legal Challenge is determined not to be a default of this Agreement by any Court of competent jurisdiction, the Company agrees that in the event that the Company is unsuccessful in its Legal Challenge, it will, on demand, pay to the Agency and/or the Municipality the reasonable fees and disbursements of any attorneys employed (whether in-house or outside counsel) for the defense of such Legal Challenge as well as such other reasonable expenses so incurred.

**Section 4.05. Remedies; Waiver and Notice**

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(b) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(d) No Waiver. In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

**ARTICLE V**  
**MISCELLANEOUS**

**Section 5.01. Term of Agreement**

(a) General. This Agreement shall become effective and the obligations of the Agency and the Company shall arise absolutely and unconditionally upon the execution and delivery of this Agreement. This Agreement shall terminate on the earliest to occur of (i) the same date that the Agency Lease Agreement terminates; (ii) on any earlier date permitted under the Agency Lease Agreement; or (iii) on June 30, 2032 (which is the expiration of the applicability 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 tax bill based upon the Agency's transfer of ownership or control of the Project Facility to the Company, and the loss of the Agency's tax exemption on the said Project Facility.

(b) Conflict. In the event of a conflict between this Agreement or any of its terms on the one hand, and the Lease Agreement or any other Project documents on the other hand, the provisions most favorable to the Agency shall govern. The Agency and the Company agree that the Agency's participation in the Project is for the benefit of the Company and that the Municipality must receive payments from the Company hereunder, during the entire term of this Agreement and/or the Agency's ownership or control of the Project Facility.

**Section 5.02. Company Acts**

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

**Section 5.03. Amendment of Agreement**

This Agreement may not be amended, changed, modified or altered unless such amendment, change, modification or alteration is in writing and signed by the 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 or by overnight courier, and actually received by the intended recipient, or by 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  
City Hall Commons  
201 East Washington Street, 7<sup>th</sup> Floor  
Syracuse, New York 13202  
Attention: Chairman

With a copy to:

Barclay Damon, LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: Susan R. Katzoff, Esq.

And to:

Corporation Counsel  
City of Syracuse  
233 East Washington Street, Room 300  
Syracuse, New York 13202

- (b) To the Company:  
Bradford & Euclid, LLC and  
Park Avenue Lantern Corporation  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Matthew R. Paulus

With a copy to:

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

The Agency and Company may, by notice given hereunder to each of the others, designate any further or different addresses to which the subsequent notices, certificates or other communications to them shall be sent.

**Section 5.05. Binding Effect**

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

**Section 5.06. Severability**

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

**Section 5.07. Counterparts**

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

**Section 5.08. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Venue of any action or proceeding brought hereunder shall be in the State or Federal Courts located in Onondaga County, New York.

**Section 5.09. Assignment**


This Agreement may not be assigned by the Company without the prior written consent of

the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.

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

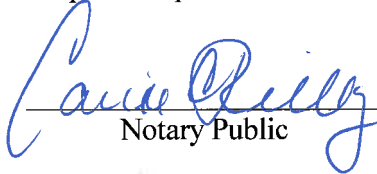
IN WITNESS WHEREOF, the Agency and Company have caused this Agreement to be executed in their respective names on the date first above written.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA       ) ss:

On the 29<sup>th</sup> day of December, 2016, before me the undersigned, a Notary Public in and for said state, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

Carrie C. Reilly  
Notary Public - State of New York  
No. 01RE6309065  
Qualified in Onondaga County  
Commission Expires August 4, 2018

**BRADFORD & EUCLID, LLC**

By: \_\_\_\_\_  
Matthew R. Paulus,  
Authorized Signatory

**PARK AVENUE LANTERN CORPORATION**

By: \_\_\_\_\_  
Matthew R. Paulus,  
Authorized Signatory

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA       ) ss:

On the 30th day of December, in the year 2016, before me the undersigned, a notary public in and for said state, personally appeared Matthew R. Paulus, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

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

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



**ACKNOWLEDGEMENT BY  
BRADFORD & EUCLID, LLC and  
PARK AVENUE LANTERN CORPORATION**

Bradford & Euclid, LLC and Park Avenue Lantern Corporation, (collectively the “Company”) hereby acknowledges receipt and review of this Agreement, and consents to, and approves of, the terms and provisions contained herein.

**IN WITNESS WHEREOF**, the Company has caused this Acknowledgment to be executed in its name by its duly authorized representative, dated as of October 1, 2016.

BRADFORD & EUCLID, LLC

BY: \_\_\_\_\_  
Matthew R. Paulus,  
Authorized Signatory

PARK AVENUE LANTERN CORPORATION

BY: \_\_\_\_\_  
Matthew R. Paulus,  
Authorized Signatory

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA       ) ss:

On the 30th day of December, in the year 2016, before me the undersigned, a notary public in and for said state, personally appeared Matthew R. Paulus, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or he person upon behalf of which the individual acted, executed the instrument.

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

STEPHEN G. ETOLL  
Notary Public, State of New York  
No. 02ET15024331  
Qualified in Onondaga County  
Commission Expires March 7, 2017

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

<b>Year</b>	<b>Total</b>
1	\$21,898
2	\$22,117
3	\$22,338
4	\$22,561
5	\$22,787
6	\$23,015
7	\$23,245
8	\$23,477
9	\$23,712
10	\$23,949
11	\$74,640
12	\$126,342
13	\$179,070
14	\$232,841
15	\$287,668
<b>TOTAL</b>	<b>\$1,129,660</b>

## EXHIBIT "B"

### LEGAL DESCRIPTION

#### Parcel I:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

#### Parcel II:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

The above premises are also described as follows:

ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

**18**



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 242)

RECEIVED  
DEC 30 2016  
DEPT. OF ASSESSMENT

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name City of Syracuse Industrial Development Ag.  
Street 201 E. Washington Street, 7th Floor  
City Syracuse  
Telephone no. Day (315) 473-3275  
Evening ( ) N/A  
Contact Honora Spillane  
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name Bradford & Euclid, LLC/Park Ave. Lantern  
Street 225 Wilkinson Street  
City Syracuse  
Telephone no. Day ( 315) 416-9566  
Evening ( ) N/A  
Contact Matthew R. Paulus  
Title Authorized Signatory

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 105.-07-06.0/2016/17
- b. Street address 225-303 Wilkinson Street & Leavenworth Avenue
- c. City, Town or Village Syracuse
- d. School District Syracuse
- e. County Onondaga
- f. Current assessment \$560,000
- g. Deed to IDA (date recorded; liber and page) N/A lease leaseback agreement

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

- a. Brief description (include property use) Reconstruction and renovation of existing building for mixed-use consisting of approx. 92 apartments and 36,000 sq. ft. of commercial space.
- b. Type of construction Brick
- c. Square footage 208,082
- d. Total cost \$27,700,000
- e. Date construction commenced Fall 2016
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) June 30, 2032

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, 2032

c. Municipal corporations to which payments will be made

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

d. Person or entity responsible for payment

Name Bradford & Euclid, LLC  
 Title \_\_\_\_\_  
 Address 225 Wilkinson Street,  
Syracuse, NY 13204

e. Is the IDA the owner of the property?  Yes  No (check one)

If "No" identify owner and explain IDA rights or interest Telephone 315 416 9566  
 in an attached statement. Owner: Park Avenue Lantern Corporation  
SIDA: Leasehold

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one)  Yes  No

If yes, list the statutory exemption reference and assessment roll year on which granted:  
 exemption \_\_\_\_\_ assessment roll year \_\_\_\_\_

7. A copy of this application, including all attachments, has been mailed or delivered on 12/30/2016 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

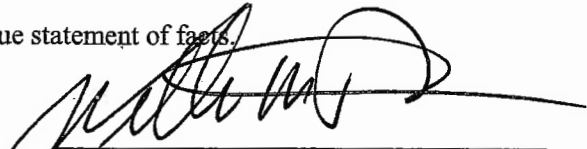
**CERTIFICATION**

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

Name \_\_\_\_\_ Title \_\_\_\_\_  
City of Syracuse Industrial Development Agency hereby certify that the information  
 Organization \_\_\_\_\_

on this application and accompanying papers constitutes a true statement of facts.

12-30-2016  
 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

19

ONONDAGA COUNTY CLERK

401 MONTGOMERY ST.

SYRACUSE NY 13202

PHONE: 435-2227

RECEIPT #: 1314261 DATE: 10/25/16 12:03

From: FITCH RS

Instrument #: 3786916

NAME: PARK AVENUE LANTERN CORPORAT

CD#	DESCRIPTION	AMOUNT
16	RETT	5.00
24	RMI	20.00
01	TAX TRANSFER	0.00
11	RECORD DEEDS	50.50
Total		\$75.50

Instrument #: 3787016

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
16	RETT	5.00
24	RMI	20.00
01	TAX TRANSFER	0.00
11	RECORD DEEDS	50.50
Total		\$75.50

Instrument #: 3787216

NAME: CITY OF SYRACUSE INDUSTRIAL

CD#	DESCRIPTION	AMOUNT
16	RETT	5.00



24 RMI  
 01 TAX TRANSFER 0.00  
 11 RECORD DEEDS 50.50  
 Total \$75.50

Instrument #: 3787516  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD <u>MTG</u>	405.50
17	AFFIDAVIT	5.00
24	RMI	20.00
Total		\$430.50

Instrument #: 3787616  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD <u>MTG</u>	405.50
17	AFFIDAVIT	5.00
24	RMI	20.00
Total		\$430.50

Instrument #: 2016LB122  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
16	BRADFORD & EUCLID	25.00
Total		\$25.00

Instrument #: 3787716  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD <u>MTG</u>	405.50

*Acquisition  
 BK 18140 pg. 553*

*Construction Loan  
 BK 18140 pg. 670*

*Project Loan  
 BK 18140 pg. 707*

12 RECORD MTG 405.50

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$430.50

Instrument #: 3787916

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

12 RECORD MTG 107.00

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$132.00

Instrument #: 2016LN96

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

16 BRADFORD & EUCL 15.00

Total \$15.00

Instrument #: 84216

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Instrument #: 84316

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Acquisition  
2016-842

Construction Loan  
2016-843

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

18	UCC	40.00
----	-----	-------

Total \$40.00

Instrument #: 3788316

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
----	------	------

24	RMI	20.00
----	-----	-------

01	TAX TRANSFER	0.00
----	--------------	------

11	RECORD DEEDS	51.00
----	--------------	-------

Total \$76.00

Instrument #: 3788716

NAME: RE DIETZ BUILDING MASTER TEN

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

12	RECORD MTB	106.00
----	------------	--------

24	RMI	20.00
----	-----	-------

Total \$126.00

Instrument #: 00

NAME:

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

17	PROCESS FEE	12.00
----	-------------	-------

Total \$12.00

Receipt Total \$2024.00

CHECK 2039.00

Total Paid 2039.00

2016-844  
Project Loan

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CANNON HEYMAN & WEISS, LLP  
726 EXCHANGE STREET, SUITE 500  
BUFFALO, NEW YORK 14210  
ATTENTION: STEVEN J. WEISS, ESQ.

CPC #70527

**FEE AND LEASEHOLD MULTIFAMILY ACQUISITION LOAN MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

**LOCATION OF PREMISES:**

225-303 Wilkinson Street  
Syracuse, New York

SBL No: 105.-07-06.0 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
EXHIBIT B	Modifications to Instrument
EXHIBIT C	Financing Statement Information
EXHIBIT D	Description of Ground Lease

**FEE AND LEASEHOLD MULTIFAMILY ACQUISITION LOAN MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

This **FEE AND LEASEHOLD MULTIFAMILY ACQUISITION LOAN MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Instrument") is dated for reference purposes only as of the 20th day of October, 2016, but will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), by **BRADFORD & EUCLID, LLC**, a Delaware limited liability company, whose address is 225 Wilkinson Street, Syracuse, New York 13204 (the "Borrower") **PARK AVENUE LANTERN CORPORATION**, a New York business corporation, whose address is 225 Wilkinson Street, Syracuse, New York 13204 (the "Fee Owner") and the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices at 333 West Washington Street, Suite 130, 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, 28 East 28th Street, 9th Floor, New York, New York 10016-7943, 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 **SIX HUNDRED FORTY THOUSAND AND 00/100 DOLLARS (\$640,000)**, maturing on November 1, 2018 (the "Maturity Date") and secured by this Instrument.

NOW THEREFORE:

Granting Clause. Borrower, Fee Owner and Agency, as security for the repayment of the Indebtedness (as hereafter defined) hereby irrevocably mortgage, grant, convey and assign, and solely with respect to Borrower and Fee Owner, warrant their respective interests in the Mortgaged Property to the Lender, including Leasehold Estate and the Fee Estate in 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 previously, or contemporaneously with the date hereof has, entered into (i) a certain Ground Lease agreement dated as of January 1, 2016 with Fee Owner's predecessor-in-interest, Syracuse Business Center Inc., which was subsequently assigned to and assumed by Fee Owner pursuant to a certain Assignment and Assumption Agreement between Syracuse Business Center Inc. and Fee Owner dated as of August 9, 2016 (together, the "**Ground Lease**"); (ii) a certain Company Lease Agreement dated as of October 1, 2016, wherein the Mortgaged Property

was subleased by the Borrower to the Agency (the "**Lease Agreement**"); (iii) a certain Agency Lease Agreement, also dated as of October 1, 2016, wherein the Mortgaged Property was subleased by the Agency back to the Borrower (the "**Leaseback Agreement**" and, together with the Lease Agreement, the "**Agency Leases**").

Borrower represents and warrants that Borrower is lawfully seized of the leasehold and sub-leasehold estate in the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, the Agency is the lawful owner of a sub-leasehold interest in the Mortgaged Property pursuant to the Lease Agreement and has the right, power and authority to mortgage, grant, convey and assign the sub-leasehold interest in the Mortgaged Property and that the Mortgaged Property is unencumbered except for the Permitted Encumbrances. 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:

2. **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) "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.

(c) “Beneficiary Parties” means Lender, Servicer and their respective successors and assigns, together with any lawful owner, holder or pledgee of the Note.

(d) “Borrower” means all persons or entities identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

(e) “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 April 2, 2015, as the same may be amended and/or restated from time to time; (ii) the application for authority to do business file with the Office of the Secretary of State of New York on October 15, 2015 and (iii) the Second Amended and Restated Operating Agreement of Borrower dated as of October 20, 2016, as the same may be amended and/or restated from time to time.

(f) “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.

(g) “Closing Date” has the meaning ascribed thereto in the Loan Agreement.

(h) “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.

(i) “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, (iv) the Assignment of Management Agreement dated as of the date hereof by Borrower and the Manager (as defined therein) to Lender, (v) the Assignment of Equity Investor Capital Contributions, Pledge and Security Agreement dated as of the date hereof by Borrower to Lender, (vi) the Assignment of Equity Interests, Pledge and

Security Agreement dated as of the date hereof by the Members of the Borrower to the Lender and (vii) the Assignment and Subordination of Developer Fees, Pledge and Security Agreement dated as of the date hereof by the Assignor (as defined therein) and Borrower to Lender.

(j) "Commitment" has the meaning ascribed thereto in the Loan Agreement.

(k) "Construction Loan Mortgage" means that certain Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, in the amount of the Construction Loan Note, made by Borrower for the benefit of Lender.

(l) "Construction Loan Note" means that certain 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 \$18,353,308, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(m) "Controlling Interest" means (i) greater than 50% of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of 50% or less if the owner(s) of that interest actually direct(s) the business and affairs of the entity without requirement of consent of any other party.

(n) "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.

(o) "Environmental Agreement" means that certain Agreement of Environmental Indemnification dated as of the date hereof by Borrower for the benefit of Beneficiary Parties.

(p) "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.

(q) "Event of Default" means the occurrence of any event listed in Section 22.

(r) "Fee Estate" means the fee estate of the Fee Owner in the Land.

(s) "Fee Owner" means all persons or entities identified as "Fee Owner" in the first paragraph of this Instrument, together with their successors and assigns.

(t) "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.

(u) "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.

(v) "Ground Lease" means the lease described in the recitals above, pursuant to which Borrower leases the Land, as such lease may from time to time be amended, modified, supplemented, renewed and extended.

(w) "Guarantor" means, individually and collectively, Matthew R. Paulus, Lawrence V. Losty, Jr. and Braxton Capital, LLC, 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) "Impositions" and "Imposition Deposits" shall have the meanings ascribed thereto in Section 7.

(aa) "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.

(bb) "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;

(cc) "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.

(dd) "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.

(ee) "Land" means the land described in Exhibit A.

(ff) "Leasehold Estate" means Borrower's interest in the Land and any other real property leased by Borrower pursuant to the Ground Lease, if applicable, including all of the following:

(i) All rights of Borrower to renew or extend the term of the Ground Lease.

(ii) All amounts deposited by Borrower with Fee Owner under the Ground Lease.

(iii) Borrower's right or privilege to terminate, cancel, surrender, modify or amend the Ground Lease.

(iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances with respect to the Ground Lease.

(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 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 Construction Loan Note, the Project Loan Note, this Instrument, the Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, the Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing the Commitment, the Environmental Agreement, all guaranties, all indemnity agreements, all Collateral Agreements, all Collateral Assignments, all O&M Programs, 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) any agreement regarding the payment in lieu of taxes ("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 present and future right, title and interest in and to all of the following (excepting from each of the below items the Agency's Unassigned Rights as set forth in the Leaseback Agreement):

- (i) the Land or, if Borrower's interest in the Land is pursuant to a Ground Lease, the Ground Lease and the Leasehold Estate;
- (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 or the Fee Owner 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 or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower or Fee Owner now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (ix) all Rents and Leases (including the Ground Lease);
- (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 Multifamily Acquisition 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) "Permitted Encumbrances" means any easements, encumbrances or restrictions, liens or other matters 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 Construction Loan Mortgage and Project Loan Mortgage, and such other matters approved by Lender, including a master lease by and between Borrower and RE Dietz Building Master Tenant, LLC, the Agency Leases, all commercial leases for which subordination, non-disturbance and attornment agreements have been delivered and accepted by Lender in writing and all residential leases which are subordinated to, and comply with, the terms of this Instrument.

(uu) "Permitted Transfer" has the meaning ascribed thereto in Section 21(b).

(vv) "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.

(ww) "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.

(xx) "Project" means the gut rehabilitation and adaptive re-use of a historic four-story building which will consist of 92 residential apartments, approximately 37,500 square feet of commercial space and approximately 108 underground parking spaces known as the Dietz Building and located in the City of Syracuse, Onondaga County, New York.

(yy) "Project Loan Mortgage" means that certain Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, in the amount of the Project Loan Note, made by Borrower for the benefit of Lender.

(zz) "Project Loan Note" means that certain 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 \$249,650, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(aaa) "Property Jurisdiction" means the State of New York.

(bbb) "Rental Achievement Requirement" means legally collectible rents at least equal to (i) \$1,668,960 annually in respect of residential units and (ii) \$358,096 annually in respect of commercial units or such higher amount as shall be sufficient to provide coverage of not less than one and twenty-five hundredths percent (1.25%) of the Loan and the loans secured by the Construction Loan Mortgage and 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 of Borrower's rights to 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.

(ddd) "Servicer" means the servicing party that is designated by Lender to service the Loan, together with its successors in such capacity.

(eee) "SONYMA" means the State of New York Mortgage Agency or any successor agency or entity.

(fff) "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.

(ggg) "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.

(hhh) "United States Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

### 3. **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.

#### **4. 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.

## **5. 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 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 six (6) months and not more than three (3) 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 the Permitted Encumbrances and 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) Intentionally Omitted.
- (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.

6. **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. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

7. **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.

8. **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 following an Event of Default, 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").

9. **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.



10. **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.

11. **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.

12. **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.

13. **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.

#### 14. 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 or commercial 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 any MMP for the Mortgaged Property, if required. If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

#### 15. **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 quarterly 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;
- (vii) intentionally omitted; and
- (viii) intentionally omitted.

(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.

#### 16. 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 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.

17. **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.

18. **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, or cause Master Tenant to 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. Lender hereby acknowledges that, as of the Closing Date, an MMP is not required until closing of the Permanent Loan.

#### 19. 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 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 or commercial 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.

(r) Notwithstanding anything herein to the contrary, (i) Borrower shall have no obligation hereunder to indemnify any Indemnitee for any liability under this Section 18 to the extent that the Prohibited Activity or Condition giving rise to such liability resulted solely from the gross negligence or willful misconduct of such Indemnitee, and (ii) Borrower's liability under this Section 18 shall not extend to cover the violation of any Hazardous Materials Laws or Prohibited Conditions that first arise, commence or occur as a result of actions of Lender, its successors, assigns or designees, after the satisfaction, discharge, release, assignment, termination or cancellation of this Instrument following the payment in full of the Note and all other sums payable under the Loan Documents or after the actual dispossession from the entire Mortgaged Property of Borrower and all entities which control, are controlled by, or are under common control with Borrower following foreclosure of this Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

## 20. 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 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).

## 21. 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.

**22. 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 a Controlling Interest in Borrower;
- (iii) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling 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 (other than a Transfer of an aggregate beneficial ownership interest in Borrower of 49% or less of such Guarantor's original ownership interest in Borrower and which does not otherwise result in a Transfer of the Guarantor's Controlling Interest in such intermediate entities or in Borrower);
- (v) if Guarantor is an entity, (A) a Transfer of a Controlling Interest in Guarantor, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling 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, a Controlling 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 or Borrower pursuant to the Loan Documents;

- (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 or which is contested by Borrower pursuant to the terms of the Loan Agreement;
- (vii) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument;
- (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 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 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) For purposes of this Section, the following terms shall have the meanings set forth below:

(i) A Transfer of a “**Controlling Interest**” shall mean:

(A) with respect to any entity, the following:

(1) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;

(2) if such entity is a limited partnership, (A) a Transfer of any general partnership interest, or (B) a Transfer of any partnership interests which would cause the Initial Owners to own less than 51% of all limited partnership interests in such entity;

(3) if such entity is a limited liability company or a limited liability partnership, (A) a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity, (B) a Transfer of any membership, or other interest of a manager, in such entity that results in a change of manager, or (C) a change of the non-member manager;

(4) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;

(5) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

(6) if such entity is a trust (other than a Publicly-Held Trust), the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment, or substitution is a trustee identified in the trust agreement approved by Lender; and/or

(B) any agreement (including provisions contained in the organizational and/or governing documents of Borrower or Guarantor) or Transfer not specified in clause (A), the effect of

which, either immediately or after the passage of time or occurrence of a specified event or condition, including the failure of a specified event or condition to occur or be satisfied, would (i) cause a change in or replacement of the Person that controls the management and operations of the Borrower or Guarantor or (ii) limit or otherwise modify the extent of such Person's control over the management and operations of Borrower or Guarantor.

- (ii) **"Publicly-Held Corporation"** shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.
- (iii) **"Publicly-Held Trust"** shall mean a real estate investment trust the outstanding voting shares or beneficial interests of which are registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

(e) 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.

23. **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 or the provision of historic tax credits to the Mortgaged Property to which Borrower is a party, which continues beyond the expiration of any applicable cure period thereunder;
- (n) any failure by Borrower or the Project to qualify for historic tax credits pursuant to the provisions of Section 47 of the Internal Revenue Code;
- (o) 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;

(p) 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;

(q) (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 Section [21] of the Borrower's Certificate and Agreement;

(r) 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);

(s) 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);

(t) if an "Event of Default", as therein defined, shall occur under the Construction Loan Mortgage, Project Loan Mortgage, Agency Leases, Ground Lease or any of the same are terminated prior to expiration, amended or modified without the Borrower first obtaining the written consent of the Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

24. **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.

25. **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.

26. **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.

27. **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.

28. **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. Notwithstanding the foregoing sentence, in no event shall Borrower be required to execute and deliver any document or perform any act otherwise required pursuant to the foregoing sentence to the extent such document or act imposes a material additional obligation or liability on Borrower or materially adversely affects the rights of Borrower under any Loan Document.

29. **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.

30. **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 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.

31. 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 #70527.” 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: BRADFORD & EUCLID, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attention: Matthew Paulus

and with a copy to: BARCLAY DAMON LLP  
One Park Place  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: James J. Canfield, Esq.  
Facsimile: (315) 703-7378

If to Lender: c/o The Community Preservation Corporation  
28 East 28<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10016-7943  
Attention: Director of Portfolio Services  
Loan No.: 70527  
Facsimile: (212) 683-0738

With a copy to: c/o The Community Preservation Corporation  
28 East 28<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10016-7943  
Attention: General Counsel  
Loan No.: 11513  
Facsimile: (212) 683-2909

If to the Agency: City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Chairman

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

(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.

32. **CHANGE IN SERVICER.** If there is a change of the Servicer, Borrower will be given notice of the change.

33. **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.

34. **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.

35. **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. For the avoidance of doubt, the Agency shall not be deemed a Borrower hereunder.

36. **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.

37. **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 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.

38. **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."

39. **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.

40. **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.

41. **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.

42. **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.

43. **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.

44. **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.

45. **SATISFACTION OF DEBT.** Upon the payment in full of the Indebtedness and termination of the Loan Agreement, Lender shall promptly discharge this Instrument.

46. **LIEN LAW.** Borrower will receive advances under this Instrument subject to the trust fund provisions of Section 13 of the Lien Law.

47. **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 \$640,000, 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).

48. **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.

49. **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.

50. **NONRESIDENTIAL.** 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.

51. **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.

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.

This Instrument may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

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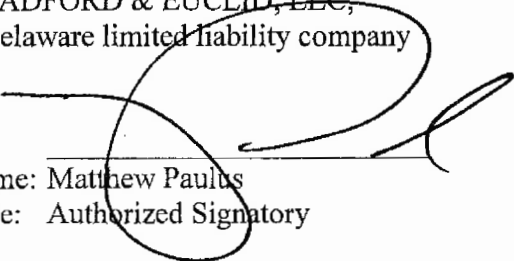
52. WAIVER OF TRIAL BY JURY.

**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.**

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.

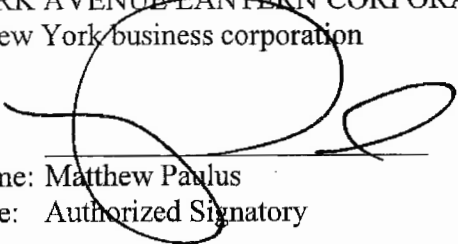
**BORROWER:**

BRADFORD & EUCLID, LLC,  
a Delaware limited liability company

By:   
Name: Matthew Paulus  
Title: Authorized Signatory

**FEE OWNER:**

PARK AVENUE LANTERN CORPORATION,  
a New York business corporation

By:   
Name: Matthew Paulus  
Title: Authorized Signatory

**AGENCY:**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name: William M. Ryan  
Title: Chairman

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:**

BRADFORD & EUCLID, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Matthew Paulus  
Title: Authorized Signatory


**FEE OWNER:**

PARK AVENUE LANTERN CORPORATION,  
a New York business corporation

By: \_\_\_\_\_  
Name: Matthew Paulus  
Title: Authorized Signatory

**AGENCY:**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

By:   
Name: William M. Ryan  
Title: Chairman

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

On October 13, 2016, before me, the undersigned, personally appeared Matthew Paulus, 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

**LAUREN ANNE PISTELL**  
NOTARY PUBLIC-STATE OF NEW YORK  
NO.01PI6178961  
QUALIFIED IN ONONDAGA COUNTY  
MY COMMISSION EXPIRES 12-17-2019

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

On \_\_\_\_\_, 2016, before me, the undersigned, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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



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

On \_\_\_\_\_, 2016, before me, the undersigned, personally appeared Matthew Paulus, 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

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

On October 20, 2016, before me, the undersigned, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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.

Lori L. McRobbie  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Oranget Co. No. 011625055591  
Commission Expires on Feb. 12, 2018

## EXHIBIT A

### DESCRIPTION OF THE LAND

ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence  $S.01^{\circ}15'40''W.$  along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence  $S.71^{\circ}11'30''W.$  along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence  $N.19^{\circ}00'00''W.$  along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence  $N.01^{\circ}22'40''E.$  along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence  $S.88^{\circ}45'20''E.$  along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

The hereinbefore described parcel of land is subject to any and all easements and or rights of way of record.

## EXHIBIT B

### MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. The following new Sections are added to the Instrument after the last numbered Section:

52. **INTENTIONALLY OMITTED.**

53. **INTENTIONALLY OMITTED.**

54. **CROSS-DEFAULT.** Borrower acknowledges and agrees that (a) any failure by Borrower or the Project to qualify for Federal and New York State historic tax credits pursuant to the provisions of Section 47 of the Internal Revenue Code and (b) any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the historic tax credit program shall be an Event of Default under this Instrument and that any costs, damages or other amounts, including reasonable attorney's fees incurred by Lender as a result of such an Event of Default by Borrower under the historic tax credit program, including amounts paid to cure any default or event of default under the historic tax credit program shall be an obligation of Borrower and become a part of the Indebtedness secured by this Instrument.

55. **INTENTIONALLY OMITTED.**

56. **TAX EXEMPTION OR ABATEMENT.**

(a) Borrower represents, warrants and covenants to Lender that the Mortgaged Property is expected to receive a 485a property tax exemption or abatement (the "Tax Abatement") (the "Program").

(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 all of the Program requirements 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 Program or that the Mortgaged Property is not being maintained as required by the Program.

(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 administering the Tax Abatement would result in the termination of the Tax Abatement.

(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.

**57. 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.

**58. INTENTIONALLY OMITTED.**

**59. INTENTIONALLY OMITTED.**

**60. INTENTIONALLY OMITTED.**

**61. INTENTIONALLY OMITTED.**

**62. 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.

**63. 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.

**64. 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.

**65. 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 Permanent Lender (as defined in the Loan Agreement) and the Borrower and the Permanent Lender shall enter into a modification and extension agreement, which shall modify and extend the terms of this Instrument.

**66. 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 \$162,500.00. 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 October 14, 2018 (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.

**67. CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY SPECIAL PROVISIONS.**

(a) The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his/her 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 Mortgagee will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the Indebtedness evidenced by this Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the Mortgaged Property and/or the Borrower for the payment of the Indebtedness secured by this Mortgage and for the performance of the provisions hereof.

(b) 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 City of Syracuse, New York, and neither the State of New York nor City of Syracuse, New York shall be liable hereon or thereon, and 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 sale or other disposition of the Mortgaged Property (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Leaseback Agreement).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) 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, (ii) 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 place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) 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 agree to indemnify and hold harmless 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) The Borrower agrees that the Agency, its directors, members, officers, agents and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Mortgaged Property or arising by reason of or in connection with the use thereof or under this Mortgage or (ii) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, owning and leasing of the Mortgaged Property, including without limiting the generality of the foregoing, all claims arising from the breach by the Borrower of any of its covenants contained herein and all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any

claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law.

(e) Notwithstanding any other provisions of this Mortgage, the obligations of the Borrower pursuant to this Section shall remain in full force and effect after the termination of this Mortgage 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 payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(f) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Borrower 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 Borrower hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

(g) "Unassigned Rights". Notwithstanding anything else contained herein to the contrary, it is agreed and understood that the Agency has not granted, pledged or assigned its interest in its Unassigned Rights as defined in the Leaseback Agreement.

(h) Recordation of Mortgage. The Borrower will record or cause this Mortgage to be recorded in the office of the Onondaga County Clerk and will pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Mortgage.

(i) Borrower's Obligations to Comply with the Lease Agreement and the Leaseback Agreement. Borrower shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Lease Agreement and the Leaseback Agreement as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Lease Agreement and the Leaseback Agreement, as applicable, 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 Lease Agreement and the Leaseback Agreement to be performed, observed or complied with by Borrower as lessor under the Lease Agreement and lessee under the Leaseback Agreement. If the Lease Agreement and/or the Leaseback 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.

(j) Agency Executing at the Direction of Borrower. The Borrower directs the Agency to execute and deliver this Mortgage 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 Mortgage, including but not limited to reasonable attorney's fees.

(k) Recourse as to Agency. Lender by accepting this Mortgage acknowledges that notwithstanding any other provision contained in this Mortgage, it is agreed that the execution of this Mortgage by the Agency shall impose no personal liability on the Agency or any members or officers thereof for payment of the indebtedness under the Note. This Mortgage 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 Mortgage shall look, only with respect to the Agency, solely to the Mortgaged Property described in this Mortgage 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.

(l) Subordination. 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 any and all payments in lieu of taxes made pursuant to any payment in lieu of taxes agreement entered between the Agency and the Borrower, whether now in existence or executed subsequent to the date hereof, with respect to the Mortgaged Property, and that such payments in lieu of taxes to be made by Borrower to the Agency, if any, shall have the same force, priority and effect as a real property tax lien under State law against the Mortgaged Property.

(m) Hold Harmless Provision. The Borrower hereby acknowledges that the terms of the Leaseback Agreement, 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.

#### **68. NO MERGER OF ESTATES.**

(a) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all Persons, including Lender, having an interest in the Ground Lease consent in writing to the merger.

(b) Simultaneously with Borrower's acquisition of the Fee Estate, the Lien of this Instrument will automatically, without the necessity of any further conveyance, continue to cover the Fee Estate and will be and remain prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of this Instrument. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's Attorneys' Fees and Costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject or further subject the Fee Estate to the Lien of this Instrument or to confirm and ratify such Lien, and must provide to Lender a title



insurance policy insuring the Lien of this Instrument as a first Lien on the Fee Estate and the Leasehold Estate, as applicable.

(c) If Lender acquires the Fee Estate and the Leasehold Estate (whether pursuant to the provisions of the Ground Lease, by foreclosure of this Instrument or otherwise), the Fee Estate and the Leasehold Estate will not merge as a result of such acquisition and will remain separate and distinct for all purposes after such acquisition unless and until Lender elects to merge the Fee Estate and the Leasehold Estate.

**69. Fee Owner Joinder.**

- (a) By its execution and delivery of this Instrument, Fee Owner joins in this Instrument with the same intent and consequence as if Fee Owner were originally a party to this Instrument, for the purpose of imposing the lien of this Instrument on the Fee Estate, and acknowledging the agreements, covenants and obligations set forth in this Instrument are applicable to Fee Owner. All leasehold mortgagee protection provisions set forth in the Ground Lease, and all other provisions inuring to the benefit of leasehold mortgagees or their successors or assigns contained in the Ground Lease, and any representations, warranties and certifications set forth in the Estoppel Certificate delivered by Fee Owner in connection with the Loan, are incorporated into this Instrument by reference and are restated and confirmed by Fee Owner for the benefit of Lender.
- (b) Fee Owner represents to Lender that it has the power, authority and right to execute this Instrument as an accommodation grantor, and to deed, grant, convey and assign to Lender in trust, a security interest in Fee Owner's right, title and interest in the Mortgaged Property pursuant to the terms of this Instrument and to keep and observe all of the terms of this Instrument to be performed by Fee Owner under this Instrument. Fee Owner further represents that Fee Owner possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land and, to the extent not owned in fee by Borrower, the Improvements, free and clear of all liens, encumbrances and charges except for those otherwise approved by Lender. Fee Owner will forever warrant, defend and preserve the title, validity and priority of the lien of this Instrument and defend the same to Lender against the claims of all persons. Fee Owner agrees that Fee Owner will not, without the prior written consent of Lender, cause or agree to a transfer of or all or any part of the Mortgaged Property or any interest in the Mortgaged Property, or permit a transfer of all or any portion of the Mortgaged Property.
- (c) Fee Owner acknowledges all of the following:

- (i) Lender has not made any representations or warranties to Fee Owner with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
  - (ii) Fee Owner assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Fee Owner wishes to do so.
  - (iii) Lender will have no duty to disclose or report to Fee Owner any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (d) At any time after Fee Owner receives notice of an Event of Default under any of the Loan Documents from Lender, Fee Owner has the right (but will not be obligated) to make any payment, perform any obligation and take any other action that Borrower would have the right to pay, perform or take under this Instrument which Fee Owner deems necessary or desirable to cure the Event of Default.
- (e) Fee Owner acknowledges and agrees that, upon the occurrence of an Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower, Fee Owner, and in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of this Instrument, the Loan Agreement, and the other Loan Documents.
- (f) Any indebtedness of Borrower to Fee Owner now or later existing (including claims under the Ground Lease or any rights to subrogation Fee Owner may have as a result of this Instrument or any action taken by Lender under this Instrument), together with any interest thereon, will be, and such indebtedness is, hereby deferred, postponed and subordinated to the prior payment in full of the Indebtedness.
- (g) Fee Owner acknowledges that Lender may provide to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, ownership, purchase, participation or Securitization of the Loan, including any of the Rating Agencies, any entity maintaining databases on the underwriting and performance of commercial mortgage loans, as well as governmental regulatory agencies having regulatory authority over Lender, any and all information which Lender now has or may hereafter acquire relating to the Loan and the Mortgaged Property, including the Fee Owner, as Lender determines necessary or desirable, and that such information may be included in any Disclosure Document and also may be included in any filing with the Securities and Exchange Commission pursuant to the Securities Act or the Securities Exchange


Act. To the fullest extent permitted under applicable law, Fee Owner irrevocably waives all rights, if any, to prohibit such disclosure, including any right of privacy.

- (h) Fee Owner has no personal liability for the repayment of the Indebtedness or for the performance of any of Borrower's or Fee Owner's obligations under the Loan Documents, and Fee Owner's liability under the Loan Documents is expressly limited to the Mortgaged Property. However, nothing in this Rider limits the liability or obligations of Fee Owner as Landlord under the Ground Lease.

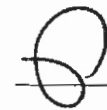
70. Exhibit D (Ground Lease Description) is attached to this Instrument and made a part of this Instrument by this reference.

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:

Handwritten initials, possibly 'B' and 'O', written over a horizontal line.

FEE OWNER'S INITIALS:

Handwritten initials, possibly 'B' and 'O', written over a horizontal line.

AGENCY'S INITIALS:

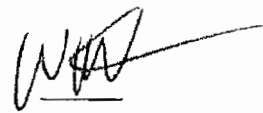
\_\_\_\_\_

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: \_\_\_\_\_

FEE OWNER'S INITIALS: \_\_\_\_\_

AGENCY'S INITIALS: \_\_\_\_\_

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right, positioned above the line for the Agency's Initials.

LENDER'S INITIALS:

NVP



**20**



ONONDAGA COUNTY CLERK

401 MONTGOMERY ST.

SYRACUSE NY 13202

PHONE: 435-2227

RECEIPT #: 1314261 DATE: 10/25/16 12:03

From: FITCH RS

Instrument #: 3786916

NAME: PARK AVENUE LANTERN CORPORAT

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
----	------	------

24	RMI	20.00
----	-----	-------

01	TAX TRANSFER	0.00
----	--------------	------

11	RECORD DEEDS	50.50
----	--------------	-------

Total \$75.50

Instrument #: 3787016

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
----	------	------

24	RMI	20.00
----	-----	-------

01	TAX TRANSFER	0.00
----	--------------	------

11	RECORD DEEDS	50.50
----	--------------	-------

Total \$75.50

Instrument #: 3787216

NAME: CITY OF SYRACUSE INDUSTRIAL

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
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24	RMI	
01	TAX TRANSFER	0.00
11	RECORD DEEDS	50.50
Total		\$75.50

Instrument #: 3787516  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD <u>MTG</u>	405.50
17	AFFIDAVIT	5.00
24	RMI	20.00
Total		\$430.50

Instrument #: 3787616  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD <u>MTG</u>	405.50
17	AFFIDAVIT	5.00
24	RMI	20.00
Total		\$430.50

Instrument #: 2016LB12E  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
16	BRADFORD & EUCLID	25.00
Total		\$25.00

Instrument #: 3787716  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD <u>MTG</u>	405.50

*Acquisition*  
 BK 18140 pg. 553

*Construction Loan*  
 BK 18140 pg. 630

*Project Loan*  
 BK 18140 pg. 707

12 RECORD MTG 405.50

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$430.50

Instrument #: 3787916

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

12 RECORD MTG 107.00

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$132.00

Instrument #: 2016LN96

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

16 BRADFORD & EUCL 15.00

Total \$15.00

Instrument #: 84216

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Instrument #: 84916

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Acquisition  
2016-842

Construction Loan  
2016-843

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Instrument #: 3788316

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

16 RETT 5.00

24 RMI 20.00

01 TAX TRANSFER 0.00

11 RECORD DEEDS 51.00

Total \$76.00

Instrument #: 3788716

NAME: RE DIETZ BUILDING MASTER TEN

CD# DESCRIPTION AMOUNT

12 RECORD MTB 106.00

24 RMI 20.00

Total \$126.00

Instrument #: 00

NAME:

CD# DESCRIPTION AMOUNT

17 PROCESS FEE 12.00

Total \$12.00

Receipt Total \$2024.00

CHECK 2039.00

Total Paid 2039.00

2016-844  
project wan

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CANNON HEYMAN & WEISS, LLP  
726 EXCHANGE STREET, SUITE 500  
BUFFALO, NEW YORK 14210  
ATTENTION: STEVEN J. WEISS, ESQ.

CPC #70527

**FEE AND LEASEHOLD MULTIFAMILY CONSTRUCTION LOAN MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

**LOCATION OF PREMISES:**

225-303 Wilkinson Street  
Syracuse, New York

SBL No: 105.-07-06.0 of the  
Tax Map of the City of Syracuse, Onondaga County, State of New York

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**FEE AND LEASEHOLD MULTIFAMILY CONSTRUCTION LOAN MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

This **FEE AND LEASEHOLD MULTIFAMILY CONSTRUCTION LOAN MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Instrument") is dated for reference purposes only as of the 20th day of October, 2016, but will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), by **BRADFORD & EUCLID, LLC**, a Delaware limited liability company, whose address is 225 Wilkinson Street, Syracuse, New York 13204 (the "Borrower") **PARK AVENUE LANTERN CORPORATION**, a New York business corporation, whose address is 225 Wilkinson Street, Syracuse, New York 13204 (the "Fee Owner") and the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices at 333 West Washington Street, Suite 130, 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, 28 East 28th Street, 9th Floor, New York, New York 10016-7943, 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 EIGHTEEN MILLION THREE HUNDRED FIFTY THREE THOUSAND THREE HUNDRED EIGHT AND 00/100 DOLLARS (\$18,353,308), maturing on November 1, 2018 (the "Maturity Date") and secured by this Instrument.

**NOW THEREFORE:**

Granting Clause. Borrower, Fee Owner and Agency, as security for the repayment of the Indebtedness (as hereafter defined) hereby irrevocably mortgage, grant, convey and assign, and solely with respect to Borrower and Fee Owner, warrant their respective interests in the Mortgaged Property to the Lender, including Leasehold Estate and the Fee Estate in 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 previously, or contemporaneously with the date hereof has, entered into (i) a certain Ground Lease agreement dated as of January 1, 2016 with Fee Owner's predecessor-in-interest, Syracuse Business Center Inc., which was subsequently assigned to and assumed by Fee Owner pursuant to a certain Assignment and Assumption Agreement between Syracuse Business Center Inc. and Fee Owner dated as of August 9, 2016 (together, the "Ground Lease"); (ii) a certain Company Lease Agreement dated as of October 1, 2016, wherein the Mortgaged Property



was subleased by the Borrower to the Agency (the “**Lease Agreement**”); (iii) a certain Agency Lease Agreement, also dated as of October 1, 2016, wherein the Mortgaged Property was subleased by the Agency back to the Borrower (the “**Leaseback Agreement**” and, together with the Lease Agreement, the “**Agency Leases**”).

Borrower represents and warrants that Borrower is lawfully seized of the leasehold and sub-leasehold estate in the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, the Agency is the lawful owner of a sub-leasehold interest in the Mortgaged Property pursuant to the Lease Agreement and has the right, power and authority to mortgage, grant, convey and assign the sub-leasehold interest in the Mortgaged Property and that the Mortgaged Property is unencumbered except for the Permitted Encumbrances. 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:

2. **DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) “Acquisition Loan Mortgage” means that certain Multifamily Acquisition Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, in the amount of the Acquisition Loan Note, made by Borrower for the benefit of Lender.

(b) “Acquisition Loan Note” means that certain Multifamily Acquisition 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 \$640,000, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(c) “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.

(d) “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.

(e) “Beneficiary Parties” means Lender, Servicer and their respective successors and assigns, together with any lawful owner, holder or pledgee of the Note.

(f) “Borrower” means all persons or entities identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

(g) “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 April 2, 2015, as the same may be amended and/or restated from time to time; (ii) the application for authority to do business file with the Office of the Secretary of State of New York on October 15, 2015 and (iii) the Second Amended and Restated Operating Agreement of Borrower dated as of October 20, 2016, as the same may be amended and/or restated from time to time.

(h) “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.

(i) “Closing Date” has the meaning ascribed thereto in the Loan Agreement.

(j) "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.

(k) "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, (iv) the Assignment of Management Agreement dated as of the date hereof by Borrower and the Manager (as defined therein) to Lender, (v) the Assignment of Equity Investor Capital Contributions, Pledge and Security Agreement dated as of the date hereof by Borrower to Lender, (vi) the Assignment of Equity Interests, Pledge and Security Agreement dated as of the date hereof by the Members of the Borrower to the Lender and (vii) the Assignment and Subordination of Developer Fees, Pledge and Security Agreement dated as of the date hereof by the Assignor (as defined therein) and Borrower to Lender.

(l) "Commitment" has the meaning ascribed thereto in the Loan Agreement.

(m) "Controlling Interest" means (i) greater than 50% of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of 50% or less if the owner(s) of that interest actually direct(s) the business and affairs of the entity without requirement of consent of any other party.

(n) "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.

(o) "Environmental Agreement" means that certain Agreement of Environmental Indemnification dated as of the date hereof by Borrower for the benefit of Beneficiary Parties.

(p) "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.

(q) "Event of Default" means the occurrence of any event listed in Section 22.

(r) "Fee Estate" means the fee estate of the Fee Owner in the Land.

(s) "Fee Owner" means all persons or entities identified as "Fee Owner" in the first paragraph of this Instrument, together with their successors and assigns.

(t) "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.

(u) "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.

(v) "Ground Lease" means the lease described in the recitals above, pursuant to which Borrower leases the Land, as such lease may from time to time be amended, modified, supplemented, renewed and extended.

(w) "Guarantor" means, individually and collectively, Matthew R. Paulus, Lawrence V. Losty, Jr. and Braxton Capital, LLC, 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) "Impositions" and "Imposition Deposits" shall have the meanings ascribed thereto in Section 7.

(aa) "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.

(bb) "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;

(cc) "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.

(dd) "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.

(ee) "Land" means the land described in Exhibit A.

(ff) "Leasehold Estate" means Borrower's interest in the Land and any other real property leased by Borrower pursuant to the Ground Lease, if applicable, including all of the following:

(i) All rights of Borrower to renew or extend the term of the Ground Lease.

(ii) All amounts deposited by Borrower with Fee Owner under the Ground Lease.

(iii) Borrower's right or privilege to terminate, cancel, surrender, modify or amend the Ground Lease.

(iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances with respect to the Ground Lease.

(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 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 Acquisition Loan Note, the Project Loan Note, this Instrument, the Acquisition Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, the Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing the Commitment, the Environmental Agreement, all guaranties, all indemnity agreements, all Collateral Agreements, all Collateral Assignments, all O&M Programs, 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) any agreement regarding the payment in lieu of taxes ("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 present and future right, title and interest in and to all of the following (excepting from each of the below items the Agency's Unassigned Rights as set forth in the Leaseback Agreement):

- (i) the Land or, if Borrower's interest in the Land is pursuant to a Ground Lease, the Ground Lease and the Leasehold Estate;
- (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 or the Fee Owner 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 or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower or Fee Owner now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (ix) all Rents and Leases (including the Ground Lease);
- (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 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) "Permitted Encumbrances" means any easements, encumbrances or restrictions, liens or other matters 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 Acquisition Loan Mortgage and Project Loan Mortgage, and such other matters approved by Lender, including a master lease by and between Borrower and RE Dietz Building Master Tenant, LLC, the Agency Leases, all commercial leases for which subordination, non-disturbance and attornment agreements have been delivered and accepted by Lender in writing and all residential leases which are subordinated to, and comply with, the terms of this Instrument.

(uu) "Permitted Transfer" has the meaning ascribed thereto in Section 21(b).

(vv) "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.

(ww) "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.

(xx) "Project" means the gut rehabilitation and adaptive re-use of a historic four-story building which will consist of 92 residential apartments, approximately 37,500 square feet of commercial space and approximately 108 underground parking spaces known as the Dietz Building and located in the City of Syracuse, Onondaga County, New York.

(yy) "Project Loan Mortgage" means that certain Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, in the amount of the Project Loan Note, made by Borrower for the benefit of Lender.

(zz) "Project Loan Note" means that certain 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 \$249,650, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(aaa) "Property Jurisdiction" means the State of New York.

(bbb) "Rental Achievement Requirement" means legally collectible rents at least equal to (i) \$1,668,960 annually in respect of residential units and (ii) \$358,096 annually in respect of commercial units or such higher amount as shall be sufficient to provide coverage of not less than one and twenty-five hundredths percent (1.25%) of the Loan and the loans secured by the Acquisition Loan Mortgage and 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 of Borrower's rights to 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.

(ddd) "Servicer" means the servicing party that is designated by Lender to service the Loan, together with its successors in such capacity.

(eee) "SONYMA" means the State of New York Mortgage Agency or any successor agency or entity.

(fff) "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.

(ggg) "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.

(hhh) "United States Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

### **3. 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.

#### **4. 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.

**5. 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 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 six (6) months and not more than three (3) 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 the Permitted Encumbrances and 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) Intentionally Omitted.

(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.

**6. 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. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

**7. 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.

**8. 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 following an Event of Default, 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").

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

#### 14. 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 or commercial 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 any MMP for the Mortgaged Property, if required. If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

#### **15. 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 quarterly 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;
- (vii) intentionally omitted; and
- (viii) intentionally omitted.

(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.

#### 16. 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 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.

17. **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.

18. **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, or cause Master Tenant to 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. Lender hereby acknowledges that, as of the Closing Date, an MMP is not required until closing of the Permanent Loan.

## 19. 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 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 or commercial 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.



(r) Notwithstanding anything herein to the contrary, (i) Borrower shall have no obligation hereunder to indemnify any Indemnitee for any liability under this Section 18 to the extent that the Prohibited Activity or Condition giving rise to such liability resulted solely from the gross negligence or willful misconduct of such Indemnitee, and (ii) Borrower's liability under this Section 18 shall not extend to cover the violation of any Hazardous Materials Laws or Prohibited Conditions that first arise, commence or occur as a result of actions of Lender, its successors, assigns or designees, after the satisfaction, discharge, release, assignment, termination or cancellation of this Instrument following the payment in full of the Note and all other sums payable under the Loan Documents or after the actual dispossession from the entire Mortgaged Property of Borrower and all entities which control, are controlled by, or are under common control with Borrower following foreclosure of this Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

## 20. 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 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).

## 21. 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.

**22. 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 a Controlling Interest in Borrower;
- (iii) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling 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 (other than a Transfer of an aggregate beneficial ownership interest in Borrower of 49% or less of such Guarantor's original ownership interest in Borrower and which does not otherwise result in a Transfer of the Guarantor's Controlling Interest in such intermediate entities or in Borrower);
- (v) if Guarantor is an entity, (A) a Transfer of a Controlling Interest in Guarantor, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling 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, a Controlling 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 or Borrower pursuant to the Loan Documents;

- (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 or which is contested by Borrower pursuant to the terms of the Loan Agreement;
- (vii) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument;
- (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 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 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) For purposes of this Section, the following terms shall have the meanings set forth below:

(i) A Transfer of a “**Controlling Interest**” shall mean:

(A) with respect to any entity, the following:

(1) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;

(2) if such entity is a limited partnership, (A) a Transfer of any general partnership interest, or (B) a Transfer of any partnership interests which would cause the Initial Owners to own less than 51% of all limited partnership interests in such entity;

(3) if such entity is a limited liability company or a limited liability partnership, (A) a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity, (B) a Transfer of any membership, or other interest of a manager, in such entity that results in a change of manager, or (C) a change of the non-member manager;

(4) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;

(5) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

(6) if such entity is a trust (other than a Publicly-Held Trust), the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment, or substitution is a trustee identified in the trust agreement approved by Lender; and/or

(B) any agreement (including provisions contained in the organizational and/or governing documents of Borrower or Guarantor) or Transfer not specified in clause (A), the effect of

which, either immediately or after the passage of time or occurrence of a specified event or condition, including the failure of a specified event or condition to occur or be satisfied, would (i) cause a change in or replacement of the Person that controls the management and operations of the Borrower or Guarantor or (ii) limit or otherwise modify the extent of such Person's control over the management and operations of Borrower or Guarantor.

- (ii) **"Publicly-Held Corporation"** shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.
- (iii) **"Publicly-Held Trust"** shall mean a real estate investment trust the outstanding voting shares or beneficial interests of which are registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

(e) 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.

23. **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 or the provision of historic tax credits to the Mortgaged Property to which Borrower is a party, which continues beyond the expiration of any applicable cure period thereunder;
- (n) any failure by Borrower or the Project to qualify for historic tax credits pursuant to the provisions of Section 47 of the Internal Revenue Code;
- (o) 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;

(p) 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;

(q) (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 Section [21] of the Borrower's Certificate and Agreement;

(r) 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);

(s) 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);

(t) if an "Event of Default", as therein defined, shall occur under the Acquisition Loan Mortgage, Project Loan Mortgage, Agency Leases, Ground Lease or any of the same are terminated prior to expiration, amended or modified without the Borrower first obtaining the written consent of the Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

24. **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.

**25. 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.

**26. 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.

**27. 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.

28. **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. Notwithstanding the foregoing sentence, in no event shall Borrower be required to execute and deliver any document or perform any act otherwise required pursuant to the foregoing sentence to the extent such document or act imposes a material additional obligation or liability on Borrower or materially adversely affects the rights of Borrower under any Loan Document.

29. **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.

30. **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 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.

31. 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 #70527.” 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: BRADFORD & EUCLID, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attention: Matthew Paulus

and with a copy to: BARCLAY DAMON LLP  
One Park Place  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: James J. Canfield, Esq.  
Facsimile: (315) 703-7378

If to Lender: c/o The Community Preservation Corporation  
28 East 28<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10016-7943  
Attention: Director of Portfolio Services  
Loan No.: 70527  
Facsimile: (212) 683-0738

With a copy to: c/o The Community Preservation Corporation  
28 East 28<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10016-7943  
Attention: General Counsel  
Loan No.: 11513  
Facsimile: (212) 683-2909

If to the Agency: City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Chairman



With a copy to:

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

(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.

32. **CHANGE IN SERVICER.** If there is a change of the Servicer, Borrower will be given notice of the change.

33. **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.

34. **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.

35. **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. For the avoidance of doubt, the Agency shall not be deemed a Borrower hereunder.

36. **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.

37. **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 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.

38. **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."

39. **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.

40. **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.

41. **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.

42. **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.

43. **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.

44. **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.

45. **SATISFACTION OF DEBT.** Upon the payment in full of the Indebtedness and termination of the Loan Agreement, Lender shall promptly discharge this Instrument.

46. **LIEN LAW.** Borrower will receive advances under this Instrument subject to the trust fund provisions of Section 13 of the Lien Law.

47. **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 \$18,353,308, 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).

48. **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.

49. **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.

50. **NONRESIDENTIAL.** 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.

51. **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.

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.

This Instrument may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

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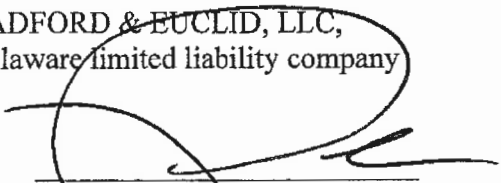
52. WAIVER OF TRIAL BY JURY.

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.

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.

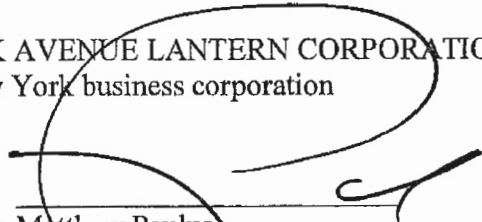
**BORROWER:**

BRADFORD & EUCLID, LLC,  
a Delaware limited liability company

By:   
Name: Matthew Paulus  
Title: Authorized Signatory

**FEE OWNER:**

PARK AVENUE LANTERN CORPORATION,  
a New York business corporation

By:   
Name: Matthew Paulus  
Title: Authorized Signatory

**AGENCY:**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name: William M. Ryan  
Title: Chairman

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:**

BRADFORD & EUCLID, LLC,  
a Delaware limited liability company

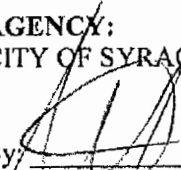
By: \_\_\_\_\_  
Name: Matthew Paulus  
Title: Authorized Signatory

**FEE OWNER:**

PARK AVENUE LANTERN CORPORATION,  
a New York business corporation

By: \_\_\_\_\_  
Name: Matthew Paulus  
Title: Authorized Signatory

**AGENCY:**  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

By:  \_\_\_\_\_  
Name: William M. Ryan  
Title: Chairman



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

On October 13, 2016, before me, the undersigned, personally appeared Matthew Paulus, 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

LAUREN ANNE PISTELL  
NOTARY PUBLIC-STATE OF NEW YORK  
NO. 01PI8178961  
QUALIFIED IN ONONDAGA COUNTY  
MY COMMISSION EXPIRES 12-17-2019

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

On \_\_\_\_\_, 2016, before me, the undersigned, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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

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

On \_\_\_\_\_, 2016, before me, the undersigned, personally appeared Matthew Paulus, 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

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

On October 20, 2016, before me, the undersigned, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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.

Lori L. McRobbie  
Notary Public  
LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Onondaga Co. No. 01MCS035591  
Commission Expires on Feb. 12, 2018

## EXHIBIT A

### DESCRIPTION OF THE LAND

ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence  $S.01^{\circ}15'40''W.$  along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence  $S.71^{\circ}11'30''W.$  along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence  $N.19^{\circ}00'00''W.$  along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence  $N.01^{\circ}22'40''E.$  along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence  $S.88^{\circ}45'20''E.$  along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

The hereinbefore described parcel of land is subject to any and all easements and or rights of way of record.

## EXHIBIT B

### MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. The following new Sections are added to the Instrument after the last numbered Section:

52. **INTENTIONALLY OMITTED.**

53. **INTENTIONALLY OMITTED.**

54. **CROSS-DEFAULT.** Borrower acknowledges and agrees that (a) any failure by Borrower or the Project to qualify for Federal and New York State historic tax credits pursuant to the provisions of Section 47 of the Internal Revenue Code and (b) any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the historic tax credit program shall be an Event of Default under this Instrument and that any costs, damages or other amounts, including reasonable attorney's fees incurred by Lender as a result of such an Event of Default by Borrower under the historic tax credit program, including amounts paid to cure any default or event of default under the historic tax credit program shall be an obligation of Borrower and become a part of the Indebtedness secured by this Instrument.

55. **INTENTIONALLY OMITTED.**

56. **TAX EXEMPTION OR ABATEMENT.**

(a) Borrower represents, warrants and covenants to Lender that the Mortgaged Property is expected to receive a 485a property tax exemption or abatement (the "Tax Abatement") (the "Program").

(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 all of the Program requirements 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 Program or that the Mortgaged Property is not being maintained as required by the Program.

(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 administering the Tax Abatement would result in the termination of the Tax Abatement.

(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.

**57. 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.

**58. INTENTIONALLY OMITTED.**

**59. INTENTIONALLY OMITTED.**

**60. INTENTIONALLY OMITTED.**

**61. INTENTIONALLY OMITTED.**

**62. 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.

**63. 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.

**64. 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.

**65. 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 Permanent Lender (as defined in the Loan Agreement) and the Borrower and the Permanent Lender shall enter into a modification and extension agreement, which shall modify and extend the terms of this Instrument.

**66. 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 \$162,500.00. 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 October 14, 2018 (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.

**67. CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY SPECIAL PROVISIONS.**

(a) The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his/her 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 Mortgagee will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the Indebtedness evidenced by this Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the Mortgaged Property and/or the Borrower for the payment of the Indebtedness secured by this Mortgage and for the performance of the provisions hereof.

(b) 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 City of Syracuse, New York, and neither the State of New York nor City of Syracuse, New York shall be liable hereon or thereon, and 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 sale or other disposition of the Mortgaged Property (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Leaseback Agreement).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) 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, (ii) 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 place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) 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 agree to indemnify and hold harmless 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) The Borrower agrees that the Agency, its directors, members, officers, agents and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Mortgaged Property or arising by reason of or in connection with the use thereof or under this Mortgage or (ii) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, owning and leasing of the Mortgaged Property, including without limiting the generality of the foregoing, all claims arising from the breach by the Borrower of any of its covenants contained herein and all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any

claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law.

(e) Notwithstanding any other provisions of this Mortgage, the obligations of the Borrower pursuant to this Section shall remain in full force and effect after the termination of this Mortgage 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 payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(f) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Borrower 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 Borrower hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

(g) "Unassigned Rights". Notwithstanding anything else contained herein to the contrary, it is agreed and understood that the Agency has not granted, pledged or assigned its interest in its Unassigned Rights as defined in the Leaseback Agreement.

(h) Recordation of Mortgage. The Borrower will record or cause this Mortgage to be recorded in the office of the Onondaga County Clerk and will pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Mortgage.

(i) Borrower's Obligations to Comply with the Lease Agreement and the Leaseback Agreement. Borrower shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Lease Agreement and the Leaseback Agreement as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Lease Agreement and the Leaseback Agreement, as applicable, 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 Lease Agreement and the Leaseback Agreement to be performed, observed or complied with by Borrower as lessor under the Lease Agreement and lessee under the Leaseback Agreement. If the Lease Agreement and/or the Leaseback 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.



(j) Agency Executing at the Direction of Borrower. The Borrower directs the Agency to execute and deliver this Mortgage 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 Mortgage, including but not limited to reasonable attorney's fees.

(k) Recourse as to Agency. Lender by accepting this Mortgage acknowledges that notwithstanding any other provision contained in this Mortgage, it is agreed that the execution of this Mortgage by the Agency shall impose no personal liability on the Agency or any members or officers thereof for payment of the indebtedness under the Note. This Mortgage 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 Mortgage shall look, only with respect to the Agency, solely to the Mortgaged Property described in this Mortgage 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.

(l) Subordination. 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 any and all payments in lieu of taxes made pursuant to any payment in lieu of taxes agreement entered between the Agency and the Borrower, whether now in existence or executed subsequent to the date hereof, with respect to the Mortgaged Property, and that such payments in lieu of taxes to be made by Borrower to the Agency, if any, shall have the same force, priority and effect as a real property tax lien under State law against the Mortgaged Property.

(m) Hold Harmless Provision. The Borrower hereby acknowledges that the terms of the Leaseback Agreement, 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.

#### **68. NO MERGER OF ESTATES.**

(a) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all Persons, including Lender, having an interest in the Ground Lease consent in writing to the merger.

(b) Simultaneously with Borrower's acquisition of the Fee Estate, the Lien of this Instrument will automatically, without the necessity of any further conveyance, continue to cover the Fee Estate and will be and remain prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of this Instrument. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's Attorneys' Fees and Costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject or further subject the Fee Estate to the Lien of this Instrument or to confirm and ratify such Lien, and must provide to Lender a title

insurance policy insuring the Lien of this Instrument as a first Lien on the Fee Estate and the Leasehold Estate, as applicable.

(c) If Lender acquires the Fee Estate and the Leasehold Estate (whether pursuant to the provisions of the Ground Lease, by foreclosure of this Instrument or otherwise), the Fee Estate and the Leasehold Estate will not merge as a result of such acquisition and will remain separate and distinct for all purposes after such acquisition unless and until Lender elects to merge the Fee Estate and the Leasehold Estate.

**69. Fee Owner Joinder.**

- (a) By its execution and delivery of this Instrument, Fee Owner joins in this Instrument with the same intent and consequence as if Fee Owner were originally a party to this Instrument, for the purpose of imposing the lien of this Instrument on the Fee Estate, and acknowledging the agreements, covenants and obligations set forth in this Instrument are applicable to Fee Owner. All leasehold mortgagee protection provisions set forth in the Ground Lease, and all other provisions inuring to the benefit of leasehold mortgagees or their successors or assigns contained in the Ground Lease, and any representations, warranties and certifications set forth in the Estoppel Certificate delivered by Fee Owner in connection with the Loan, are incorporated into this Instrument by reference and are restated and confirmed by Fee Owner for the benefit of Lender.
- (b) Fee Owner represents to Lender that it has the power, authority and right to execute this Instrument as an accommodation grantor, and to deed, grant, convey and assign to Lender in trust, a security interest in Fee Owner's right, title and interest in the Mortgaged Property pursuant to the terms of this Instrument and to keep and observe all of the terms of this Instrument to be performed by Fee Owner under this Instrument. Fee Owner further represents that Fee Owner possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land and, to the extent not owned in fee by Borrower, the Improvements, free and clear of all liens, encumbrances and charges except for those otherwise approved by Lender. Fee Owner will forever warrant, defend and preserve the title, validity and priority of the lien of this Instrument and defend the same to Lender against the claims of all persons. Fee Owner agrees that Fee Owner will not, without the prior written consent of Lender, cause or agree to a transfer of or all or any part of the Mortgaged Property or any interest in the Mortgaged Property, or permit a transfer of all or any portion of the Mortgaged Property.


- (c) Fee Owner acknowledges all of the following:
  - (i) Lender has not made any representations or warranties to Fee Owner with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
  - (ii) Fee Owner assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Fee Owner wishes to do so.
  - (iii) Lender will have no duty to disclose or report to Fee Owner any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (d) At any time after Fee Owner receives notice of an Event of Default under any of the Loan Documents from Lender, Fee Owner has the right (but will not be obligated) to make any payment, perform any obligation and take any other action that Borrower would have the right to pay, perform or take under this Instrument which Fee Owner deems necessary or desirable to cure the Event of Default.
- (e) Fee Owner acknowledges and agrees that, upon the occurrence of an Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower, Fee Owner, and in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of this Instrument, the Loan Agreement, and the other Loan Documents.
- (f) Any indebtedness of Borrower to Fee Owner now or later existing (including claims under the Ground Lease or any rights to subrogation Fee Owner may have as a result of this Instrument or any action taken by Lender under this Instrument), together with any interest thereon, will be, and such indebtedness is, hereby deferred, postponed and subordinated to the prior payment in full of the Indebtedness.
- (g) Fee Owner acknowledges that Lender may provide to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, ownership, purchase, participation or Securitization of the Loan, including any of the Rating Agencies, any entity maintaining databases on the underwriting and performance of commercial mortgage loans, as well as governmental regulatory agencies having regulatory authority over Lender, any and all information which Lender now has or may hereafter acquire relating to the Loan and the Mortgaged Property, including the Fee Owner, as Lender determines necessary or desirable, and that such information may be included in any Disclosure Document and

also may be included in any filing with the Securities and Exchange Commission pursuant to the Securities Act or the Securities Exchange Act. To the fullest extent permitted under applicable law, Fee Owner irrevocably waives all rights, if any, to prohibit such disclosure, including any right of privacy.

- (h) Fee Owner has no personal liability for the repayment of the Indebtedness or for the performance of any of Borrower's or Fee Owner's obligations under the Loan Documents, and Fee Owner's liability under the Loan Documents is expressly limited to the Mortgaged Property. However, nothing in this Rider limits the liability or obligations of Fee Owner as Landlord under the Ground Lease.

70. Exhibit D (Ground Lease Description) is attached to this Instrument and made a part of this Instrument by this reference.

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:  \_\_\_\_\_

FEE OWNER'S INITIALS:  \_\_\_\_\_

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: \_\_\_\_\_

FEE OWNER'S INITIALS: \_\_\_\_\_

AGENCY'S INITIALS:  \_\_\_\_\_

LENDER'S INITIALS:

NW





**21**

ONONDAGA COUNTY CLERK

401 MONTGOMERY ST.

SYRACUSE NY 13202

PHONE: 435-2227

RECEIPT #: 1314261 DATE: 10/25/16 12:03

From: FITCH RS

Instrument #: 3786916

NAME: PARK AVENUE LANTERN CORPORAT

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
----	------	------

24	RMI	20.00
----	-----	-------

01	TAX TRANSFER	0.00
----	--------------	------

11	RECORD DEEDS	50.50
----	--------------	-------

Total \$75.50

Instrument #: 3787016

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
----	------	------

24	RMI	20.00
----	-----	-------

01	TAX TRANSFER	0.00
----	--------------	------

11	RECORD DEEDS	50.50
----	--------------	-------

Total \$75.50

Instrument #: 3787216

NAME: CITY OF SYRACUSE INDUSTRIAL

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
----	------	------

24 RMI

01 TAX TRANSFER 0.00

11 RECORD DEEDS 50.50

Total \$75.50

Instrument #: 3787516

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

12 RECORD MTG 405.50

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$430.50

Instrument #: 3787616

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

12 RECORD MTG 405.50

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$430.50

Instrument #: 2016LB122

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

~~16 BRADFORD & EUCLID 25.00~~

Total \$25.00

Instrument #: 3787716

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

12 RECORD MTG 405.50

*Acquisition  
BK 18140 pg. 553*

*Construction Loan  
BK 18140 pg. 630*

*Project Loan  
BK 18140 pg. 707*

12 RECORD MTG 405.50

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$430.50

Instrument #: 3787916

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

12 RECORD MTG 107.00

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$132.00

Instrument #: 2016LN96

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

16 BRADFORD & EUCL 15.00

Total \$15.00

Instrument #: 84216

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Instrument #: 84316

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Acquisition  
2016-842

Construction Loan  
2016-843

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
18	UCC	40.00
Total		\$40.00

Instrument #: 3788316

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
16	RETT	5.00
24	RMI	20.00
01	TAX TRANSFER	0.00
11	RECORD DEEDS	51.00
Total		\$76.00

Instrument #: 3788716

NAME: RE DIETZ BUILDING MASTER TEN

CD#	DESCRIPTION	AMOUNT
12	RECORD MTB	106.00
24	RMI	20.00
Total		\$126.00

Instrument #: 00

NAME:

CD#	DESCRIPTION	AMOUNT
17	PROCESS FEE	12.00
Total		\$12.00

Receipt Total \$2024.00

CHECK 2039.00

Total Paid 2039.00

2016-844  
Project Wan

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CANNON HEYMAN & WEISS, LLP  
726 EXCHANGE STREET, SUITE 500  
BUFFALO, NEW YORK 14210  
ATTENTION: STEVEN J. WEISS, ESQ.

CPC #70527

**FEE AND LEASEHOLD MULTIFAMILY PROJECT LOAN MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

**LOCATION OF PREMISES:**

225-303 Wilkinson Street  
Syracuse, New York

SBL No: 105.-07-06.0 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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**FEE AND LEASEHOLD MULTIFAMILY PROJECT LOAN MORTGAGE,  
ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
(NEW YORK)**

This **FEE AND LEASEHOLD MULTIFAMILY PROJECT LOAN MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "Instrument") is dated for reference purposes only as of the 20th day of October, 2016, but will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), by **BRADFORD & EUCLID, LLC**, a Delaware limited liability company, whose address is 225 Wilkinson Street, Syracuse, New York 13204 (the "Borrower") **PARK AVENUE LANTERN CORPORATION**, a New York business corporation, whose address is 225 Wilkinson Street, Syracuse, New York 13204 (the "Fee Owner") and the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices at 333 West Washington Street, Suite 130, 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, 28 East 28th Street, 9th Floor, New York, New York 10016-7943, 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 TWO HUNDRED FORTY-NINE THOUSAND SIX HUNDRED FIFTY AND 00/100 DOLLARS (\$249,650), maturing on November 1, 2018 (the "Maturity Date") and secured by this Instrument.

**NOW THEREFORE:**

**Granting Clause.** Borrower, Fee Owner and Agency, as security for the repayment of the Indebtedness (as hereafter defined) hereby irrevocably mortgage, grant, convey and assign, and solely with respect to Borrower and Fee Owner, warrant their respective interests in the Mortgaged Property to the Lender, including Leasehold Estate and the Fee Estate in 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 previously, or contemporaneously with the date hereof has, entered into (i) a certain Ground Lease agreement dated as of January 1, 2016 with Fee Owner's predecessor-in-interest, Syracuse Business Center Inc., which was subsequently assigned to and assumed by Fee Owner pursuant to a certain Assignment and Assumption Agreement between Syracuse Business Center Inc. and Fee Owner dated as of August 9, 2016 (together, the "**Ground Lease**"); (ii) a certain Company Lease Agreement dated as of October 1, 2016, wherein the Mortgaged Property

was subleased by the Borrower to the Agency (the "**Lease Agreement**"); (iii) a certain Agency Lease Agreement, also dated as of October 1, 2016, wherein the Mortgaged Property was subleased by the Agency back to the Borrower (the "**Leaseback Agreement**" and, together with the Lease Agreement, the "**Agency Leases**").

Borrower represents and warrants that Borrower is lawfully seized of the leasehold and sub-leasehold estate in the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, the Agency is the lawful owner of a sub-leasehold interest in the Mortgaged Property pursuant to the Lease Agreement and has the right, power and authority to mortgage, grant, convey and assign the sub-leasehold interest in the Mortgaged Property and that the Mortgaged Property is unencumbered except for the Permitted Encumbrances. 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:

2. **DEFINITIONS.** The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "Acquisition Loan Mortgage" means that certain Multifamily Acquisition Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, in the amount of the Acquisition Loan Note, made by Borrower for the benefit of Lender.

(b) "Acquisition Loan Note" means that certain Multifamily Acquisition 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 \$640,000, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(c) "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.

(d) "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.

(e) “Beneficiary Parties” means Lender, Servicer and their respective successors and assigns, together with any lawful owner, holder or pledgee of the Note.

(f) “Borrower” means all persons or entities identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

(g) “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 April 2, 2015, as the same may be amended and/or restated from time to time; (ii) the application for authority to do business file with the Office of the Secretary of State of New York on October 15, 2015 and (iii) the Second Amended and Restated Operating Agreement of Borrower dated as of October 20, 2016, as the same may be amended and/or restated from time to time.

(h) “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.

(i) “Closing Date” has the meaning ascribed thereto in the Loan Agreement.

(j) “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.

(k) "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, (iv) the Assignment of Management Agreement dated as of the date hereof by Borrower and the Manager (as defined therein) to Lender, (v) the Assignment of Equity Investor Capital Contributions, Pledge and Security Agreement dated as of the date hereof by Borrower to Lender, (vi) the Assignment of Equity Interests, Pledge and Security Agreement dated as of the date hereof by the Members of the Borrower to the Lender and (vii) the Assignment and Subordination of Developer Fees, Pledge and Security Agreement dated as of the date hereof by the Assignor (as defined therein) and Borrower to Lender.

(l) "Commitment" has the meaning ascribed thereto in the Loan Agreement.

(m) "Construction Loan Mortgage" means that certain Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, in the amount of the Construction Loan Note, made by Borrower for the benefit of Lender.

(n) "Construction Loan Note" means that certain 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 \$18,353,308, including all schedules, riders, allonges and addenda, as the same may be amended, modified, or supplemented from time to time.

(o) "Controlling Interest" means (i) greater than 50% of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of 50% or less if the owner(s) of that interest actually direct(s) the business and affairs of the entity without requirement of consent of any other party.

(p) "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.

(q) "Environmental Agreement" means that certain Agreement of Environmental Indemnification dated as of the date hereof by Borrower for the benefit of Beneficiary Parties.

(r) "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.

(s) "Event of Default" means the occurrence of any event listed in Section 22.

(t) "Fee Estate" means the fee estate of the Fee Owner in the Land.

(u) "Fee Owner" means all persons or entities identified as "Fee Owner" in the first paragraph of this Instrument, together with their successors and assigns.

(v) "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.

(w) "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.

(x) "Ground Lease" means the lease described in the recitals above, pursuant to which Borrower leases the Land, as such lease may from time to time be amended, modified, supplemented, renewed and extended.

(y) "Guarantor" means, individually and collectively, Matthew R. Paulus, Lawrence V. Losty, Jr. and Braxton Capital, LLC, 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) "Impositions" and "Imposition Deposits" shall have the meanings ascribed thereto in Section 7.

(cc) "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.

(dd) "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;

(ee) "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.

(ff) "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.

(gg) "Land" means the land described in Exhibit A.

(ff) "Leasehold Estate" means Borrower's interest in the Land and any other real property leased by Borrower pursuant to the Ground Lease, if applicable, including all of the following:

(i) All rights of Borrower to renew or extend the term of the Ground Lease.

(ii) All amounts deposited by Borrower with Fee Owner under the Ground Lease.

(iii) Borrower's right or privilege to terminate, cancel, surrender, modify or amend the Ground Lease.

(iv) All other options, privileges and rights granted and demised to Borrower under the Ground Lease and all appurtenances with respect to the Ground Lease.

(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 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 Acquisition Loan Note, the Construction Loan Note, this Instrument, the Acquisition Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, the Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing the Commitment, the Environmental Agreement, all guaranties, all indemnity agreements, all Collateral Agreements, all Collateral Assignments, all O&M Programs, 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) any agreement regarding the payment in lieu of taxes ("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 present and future right, title and interest in and to all of the following (excepting from each of the below items the Agency's Unassigned Rights as set forth in the Leaseback Agreement):

- (i) the Land or, if Borrower's interest in the Land is pursuant to a Ground Lease, the Ground Lease and the Leasehold Estate;
- (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 or the Fee Owner 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 or the Leasehold Estate, as applicable, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower or Fee Owner now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (ix) all Rents and Leases (including the Ground Lease);
- (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 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) "Permitted Encumbrances" means any easements, encumbrances or restrictions, liens or other matters 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 Acquisition Loan Mortgage and Construction Loan Mortgage, and such other matters approved by Lender, including a master lease by and between Borrower and RE Dietz Building Master Tenant, LLC, the Agency Leases, all commercial leases for which subordination, non-disturbance and attornment agreements have been delivered and accepted by Lender in writing and all residential leases which are subordinated to, and comply with, the terms of this Instrument.

(uu) "Permitted Transfer" has the meaning ascribed thereto in Section 21(b).

(vv) "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.

(ww) "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.

(xx) "Project" means the gut rehabilitation and adaptive re-use of a historic four-story building which will consist of 92 residential apartments, approximately 37,500 square feet of commercial space and approximately 108 underground parking spaces known as the Dietz Building and located in the City of Syracuse, Onondaga County, New York.

(yy) "Property Jurisdiction" means the State of New York.

(zz) "Rental Achievement Requirement" means legally collectible rents at least equal to (i) \$1,668,960 annually in respect of residential units and (ii) \$358,096 annually in respect of commercial units or such higher amount as shall be sufficient to provide coverage of not less than one and twenty-five hundredths percent (1.25%) of the Loan and the loans secured by the Acquisition Loan Mortgage and 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.

(aaa) "Rents" means all of Borrower's rights to 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.

(bbb) "Servicer" means the servicing party that is designated by Lender to service the Loan, together with its successors in such capacity.

(ccc) "SONYMA" means the State of New York Mortgage Agency or any successor agency or entity.

(ddd) "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.

(eee) "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.

(fff) "United States Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

### 3. **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.

#### **4. 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.

## **5. 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 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 six (6) months and not more than three (3) 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 the Permitted Encumbrances and 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) Intentionally Omitted.

(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.

**6. 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. Borrower shall pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.

**7. 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.

**8. 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 following an Event of Default, 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").

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

#### 14. 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 or commercial 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 any MMP for the Mortgaged Property, if required. If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower's expense.

#### 15. 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 quarterly 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;
- (vii) intentionally omitted; and
- (viii) intentionally omitted.

(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.

#### 16. 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 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.

17. **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.

**18. 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, or cause Master Tenant to 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. Lender hereby acknowledges that, as of the Closing Date, an MMP is not required until closing of the Permanent Loan.

## 19. 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 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 or commercial 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.

(r) Notwithstanding anything herein to the contrary, (i) Borrower shall have no obligation hereunder to indemnify any Indemnitee for any liability under this Section 18 to the extent that the Prohibited Activity or Condition giving rise to such liability resulted solely from the gross negligence or willful misconduct of such Indemnitee, and (ii) Borrower's liability under this Section 18 shall not extend to cover the violation of any Hazardous Materials Laws or Prohibited Conditions that first arise, commence or occur as a result of actions of Lender, its successors, assigns or designees, after the satisfaction, discharge, release, assignment, termination or cancellation of this Instrument following the payment in full of the Note and all other sums payable under the Loan Documents or after the actual dispossession from the entire Mortgaged Property of Borrower and all entities which control, are controlled by, or are under common control with Borrower following foreclosure of this Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

## 20. 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 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).

## 21. 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.

**22. 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 a Controlling Interest in Borrower;
- (iii) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling 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 (other than a Transfer of an aggregate beneficial ownership interest in Borrower of 49% or less of such Guarantor's original ownership interest in Borrower and which does not otherwise result in a Transfer of the Guarantor's Controlling Interest in such intermediate entities or in Borrower);
- (v) if Guarantor is an entity, (A) a Transfer of a Controlling Interest in Guarantor, or (B) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling 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, a Controlling 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 or Borrower pursuant to the Loan Documents;



- (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 or which is contested by Borrower pursuant to the terms of the Loan Agreement;
- (vii) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument;
- (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 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 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) For purposes of this Section, the following terms shall have the meanings set forth below:
- (i) A Transfer of a "**Controlling Interest**" shall mean:
    - (A) with respect to any entity, the following:
      - (1) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less

than 51% of all general partnership or joint venture interests in such entity;

(2) if such entity is a limited partnership, (A) a Transfer of any general partnership interest, or (B) a Transfer of any partnership interests which would cause the Initial Owners to own less than 51% of all limited partnership interests in such entity;

(3) if such entity is a limited liability company or a limited liability partnership, (A) a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity, (B) a Transfer of any membership, or other interest of a manager, in such entity that results in a change of manager, or (C) a change of the non-member manager;

(4) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;

(5) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

(6) if such entity is a trust (other than a Publicly-Held Trust), the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment, or substitution is a trustee identified in the trust agreement approved by Lender; and/or

(B) any agreement (including provisions contained in the organizational and/or governing documents of Borrower or Guarantor) or Transfer not specified in clause (A), the effect of which, either immediately or after the passage of time or occurrence of a specified event or condition, including the failure of a specified event or condition to occur or be satisfied, would (i) cause a change in or replacement of the Person that controls the management and operations of the Borrower or Guarantor or (ii) limit or otherwise modify the extent of such Person's control over the management and operations of Borrower or Guarantor.

(ii) **“Publicly-Held Corporation”** shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

(iii) **“Publicly-Held Trust”** shall mean a real estate investment trust the outstanding voting shares or beneficial interests of which are registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

(e) 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.

23. **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 or the provision of historic tax credits to the Mortgaged Property to which Borrower is a party, which continues beyond the expiration of any applicable cure period thereunder;

(n) any failure by Borrower or the Project to qualify for historic tax credits pursuant to the provisions of Section 47 of the Internal Revenue Code;

(o) 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;

(p) 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;

(q) (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 Section [21] of the Borrower's Certificate and Agreement;

(r) 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);

(s) 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);

(t) if an "Event of Default", as therein defined, shall occur under the Construction Loan Mortgage, Project Loan Mortgage, Agency Leases, Ground Lease or any of the same are terminated prior to expiration, amended or modified without the Borrower first obtaining the written consent of the Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

24. **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.

25. **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.

**26. 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.

**27. 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.

**28. 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. Notwithstanding the foregoing sentence, in no event shall Borrower be required to execute and deliver any document or perform any act otherwise required pursuant to the foregoing sentence to the extent such document or act imposes a material additional obligation or liability on Borrower or materially adversely affects the rights of Borrower under any Loan Document.

29. **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.

30. **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 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.

31. **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 #70527." 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: BRADFORD & EUCLID, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attention: Matthew Paulus

and with a copy to: BARCLAY DAMON LLP  
One Park Place  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: James J. Canfield, Esq.  
Facsimile: (315) 703-7378

If to Lender: c/o The Community Preservation Corporation  
28 East 28<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10016-7943  
Attention: Director of Portfolio Services  
Loan No.: 70527  
Facsimile: (212) 683-0738

With a copy to: c/o The Community Preservation Corporation  
28 East 28<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, New York 10016-7943  
Attention: General Counsel  
Loan No.: 11513  
Facsimile: (212) 683-2909

If to the Agency: City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202  
Attention: Chairman

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

(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.

32. **CHANGE IN SERVICER.** If there is a change of the Servicer, Borrower will be given notice of the change.

33. **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.

34. **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.

35. **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. For the avoidance of doubt, the Agency shall not be deemed a Borrower hereunder.

36. **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.

37. **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 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.

38. **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."

39. **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.

40. **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.

41. **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.

42. **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.

43. **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.

44. **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.

45. **SATISFACTION OF DEBT.** Upon the payment in full of the Indebtedness and termination of the Loan Agreement, Lender shall promptly discharge this Instrument.

46. **LIEN LAW.** Borrower will receive advances under this Instrument subject to the trust fund provisions of Section 13 of the Lien Law.

47. **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 \$249,650, 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).

48. **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.

49. **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.

50. **NONRESIDENTIAL.** 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.

51. **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.

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.

This Instrument may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

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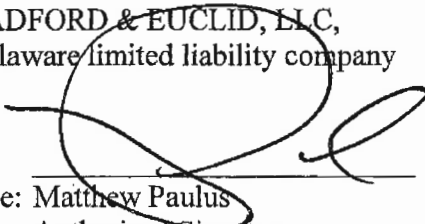
52. WAIVER OF TRIAL BY JURY.

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.

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.

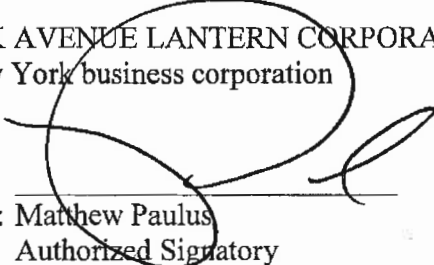
**BORROWER:**

BRADFORD & EUCLID, LLC,  
a Delaware limited liability company

By:   
Name: Matthew Paulus  
Title: Authorized Signatory

**FEE OWNER:**

PARK AVENUE LANTERN CORPORATION,  
a New York business corporation

By:   
Name: Matthew Paulus  
Title: Authorized Signatory

**AGENCY:**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name: William M. Ryan  
Title: Chairman



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:**

BRADFORD & EUCLID, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Matthew Paulus  
Title: Authorized Signatory

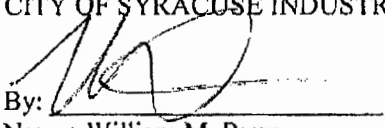
**FEE OWNER:**

PARK AVENUE LANTERN CORPORATION,  
a New York business corporation

By: \_\_\_\_\_  
Name: Matthew Paulus  
Title: Authorized Signatory

**AGENCY:**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

By:   
Name: William M. Ryan  
Title: Chairman

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

On October 13, 2016, before me, the undersigned, personally appeared Matthew Paulus, 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

LAUREN ANNE PISTELL  
NOTARY PUBLIC-STATE OF NEW YORK  
NO. 01PI6178961  
QUALIFIED IN ONONDAGA COUNTY  
MY COMMISSION EXPIRES 12-17-2019

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

On \_\_\_\_\_, 2016, before me, the undersigned, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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

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

On \_\_\_\_\_, 2016, before me, the undersigned, personally appeared Matthew Paulus, 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

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

On October 20, 2016, before me, the undersigned, personally appeared William M. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(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.

Lori L. McRobbie  
Notary Public

LORI L. McROBBIE  
Notary Public, State of New York  
Qualified in Dorchester Co. No. 01405065591  
Commission Expires on Feb. 12, 20 18

## EXHIBIT A

### DESCRIPTION OF THE LAND

ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40"W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30"W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00"W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40"E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20"E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

The hereinbefore described parcel of land is subject to any and all easements and or rights of way of record.

## EXHIBIT B

### MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. The following new Sections are added to the Instrument after the last numbered Section:

52. **INTENTIONALLY OMITTED.**

53. **INTENTIONALLY OMITTED.**

54. **CROSS-DEFAULT.** Borrower acknowledges and agrees that (a) any failure by Borrower or the Project to qualify for Federal and New York State historic tax credits pursuant to the provisions of Section 47 of the Internal Revenue Code and (b) any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the historic tax credit program shall be an Event of Default under this Instrument and that any costs, damages or other amounts, including reasonable attorney's fees incurred by Lender as a result of such an Event of Default by Borrower under the historic tax credit program, including amounts paid to cure any default or event of default under the historic tax credit program shall be an obligation of Borrower and become a part of the Indebtedness secured by this Instrument.

55. **INTENTIONALLY OMITTED.**

56. **TAX EXEMPTION OR ABATEMENT.**

(a) Borrower represents, warrants and covenants to Lender that the Mortgaged Property is expected to receive a 485a property tax exemption or abatement (the "Tax Abatement") (the "Program").

(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 all of the Program requirements 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 Program or that the Mortgaged Property is not being maintained as required by the Program.

(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 administering the Tax Abatement would result in the termination of the Tax Abatement.

(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.

**57. 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.

**58. INTENTIONALLY OMITTED.**

**59. INTENTIONALLY OMITTED.**

**60. INTENTIONALLY OMITTED.**

**61. INTENTIONALLY OMITTED.**

**62. 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.

**63. 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.

**64. 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.

**65. 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 Permanent Lender (as defined in the Loan Agreement) and the Borrower and the Permanent Lender shall enter into a modification and extension agreement, which shall modify and extend the terms of this Instrument.

**66. 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 \$162,500.00. 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 October 14, 2018 (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.

**67. CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY SPECIAL PROVISIONS.**

(a) The obligations and agreements of the Agency contained herein and in any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his/her 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 Mortgagee will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the Indebtedness evidenced by this Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the Mortgaged Property and/or the Borrower for the payment of the Indebtedness secured by this Mortgage and for the performance of the provisions hereof.

(b) 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 City of Syracuse, New York, and neither the State of New York nor City of Syracuse, New York shall be liable hereon or thereon, and 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 sale or other disposition of the Mortgaged Property (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Leaseback Agreement).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) 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, (ii) 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 place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) 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 agree to indemnify and hold harmless 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) The Borrower agrees that the Agency, its directors, members, officers, agents and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Mortgaged Property or arising by reason of or in connection with the use thereof or under this Mortgage or (ii) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, owning and leasing of the Mortgaged Property, including without limiting the generality of the foregoing, all claims arising from the breach by the Borrower of any of its covenants contained herein and all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any



claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law.

(e) Notwithstanding any other provisions of this Mortgage, the obligations of the Borrower pursuant to this Section shall remain in full force and effect after the termination of this Mortgage 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 payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(f) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Borrower 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 Borrower hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

(g) "Unassigned Rights". Notwithstanding anything else contained herein to the contrary, it is agreed and understood that the Agency has not granted, pledged or assigned its interest in its Unassigned Rights as defined in the Leaseback Agreement.

(h) Recordation of Mortgage. The Borrower will record or cause this Mortgage to be recorded in the office of the Onondaga County Clerk and will pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Mortgage.

(i) Borrower's Obligations to Comply with the Lease Agreement and the Leaseback Agreement. Borrower shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Lease Agreement and the Leaseback Agreement as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Lease Agreement and the Leaseback Agreement, as applicable, 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 Lease Agreement and the Leaseback Agreement to be performed, observed or complied with by Borrower as lessor under the Lease Agreement and lessee under the Leaseback Agreement. If the Lease Agreement and/or the Leaseback 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.

(j) Agency Executing at the Direction of Borrower. The Borrower directs the Agency to execute and deliver this Mortgage 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 Mortgage, including but not limited to reasonable attorney's fees.

(k) Recourse as to Agency. Lender by accepting this Mortgage acknowledges that notwithstanding any other provision contained in this Mortgage, it is agreed that the execution of this Mortgage by the Agency shall impose no personal liability on the Agency or any members or officers thereof for payment of the indebtedness under the Note. This Mortgage 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 Mortgage shall look, only with respect to the Agency, solely to the Mortgaged Property described in this Mortgage 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.

(l) Subordination. 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 any and all payments in lieu of taxes made pursuant to any payment in lieu of taxes agreement entered between the Agency and the Borrower, whether now in existence or executed subsequent to the date hereof, with respect to the Mortgaged Property, and that such payments in lieu of taxes to be made by Borrower to the Agency, if any, shall have the same force, priority and effect as a real property tax lien under State law against the Mortgaged Property.

(m) Hold Harmless Provision. The Borrower hereby acknowledges that the terms of the Leaseback Agreement, 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.

#### **68. NO MERGER OF ESTATES.**

(a) If Borrower acquires the Fee Estate, there will be no merger between the Fee Estate and the Leasehold Estate unless all Persons, including Lender, having an interest in the Ground Lease consent in writing to the merger.

(b) Simultaneously with Borrower's acquisition of the Fee Estate, the Lien of this Instrument will automatically, without the necessity of any further conveyance, continue to cover the Fee Estate and will be and remain prior to the Lien of any mortgage, deed of trust or other Lien placed on the Fee Estate after the date of this Instrument. Promptly after Borrower's acquisition of the Fee Estate, Borrower, at its sole cost and expense, including payment of Lender's Attorneys' Fees and Costs and out-of-pocket disbursements, will execute and deliver all documents and instruments necessary to subject or further subject the Fee Estate to the Lien of this Instrument or to confirm and ratify such Lien, and must provide to Lender a title

insurance policy insuring the Lien of this Instrument as a first Lien on the Fee Estate and the Leasehold Estate, as applicable.

(c) If Lender acquires the Fee Estate and the Leasehold Estate (whether pursuant to the provisions of the Ground Lease, by foreclosure of this Instrument or otherwise), the Fee Estate and the Leasehold Estate will not merge as a result of such acquisition and will remain separate and distinct for all purposes after such acquisition unless and until Lender elects to merge the Fee Estate and the Leasehold Estate.

**69. Fee Owner Joinder.**

- (a) By its execution and delivery of this Instrument, Fee Owner joins in this Instrument with the same intent and consequence as if Fee Owner were originally a party to this Instrument, for the purpose of imposing the lien of this Instrument on the Fee Estate, and acknowledging the agreements, covenants and obligations set forth in this Instrument are applicable to Fee Owner. All leasehold mortgagee protection provisions set forth in the Ground Lease, and all other provisions inuring to the benefit of leasehold mortgagees or their successors or assigns contained in the Ground Lease, and any representations, warranties and certifications set forth in the Estoppel Certificate delivered by Fee Owner in connection with the Loan, are incorporated into this Instrument by reference and are restated and confirmed by Fee Owner for the benefit of Lender.
- (b) Fee Owner represents to Lender that it has the power, authority and right to execute this Instrument as an accommodation grantor, and to deed, grant, convey and assign to Lender in trust, a security interest in Fee Owner's right, title and interest in the Mortgaged Property pursuant to the terms of this Instrument and to keep and observe all of the terms of this Instrument to be performed by Fee Owner under this Instrument. Fee Owner further represents that Fee Owner possesses an unencumbered fee simple absolute estate in the Land and that it owns the Land and, to the extent not owned in fee by Borrower, the Improvements, free and clear of all liens, encumbrances and charges except for those otherwise approved by Lender. Fee Owner will forever warrant, defend and preserve the title, validity and priority of the lien of this Instrument and defend the same to Lender against the claims of all persons. Fee Owner agrees that Fee Owner will not, without the prior written consent of Lender, cause or agree to a transfer of or all or any part of the Mortgaged Property or any interest in the Mortgaged Property, or permit a transfer of all or any portion of the Mortgaged Property.
- (c) Fee Owner acknowledges all of the following:

- (i) Lender has not made any representations or warranties to Fee Owner with respect to the creditworthiness of Borrower or the prospects of repayment of the Indebtedness.
  - (ii) Fee Owner assumes full responsibility for keeping informed with respect to Borrower's business operations, if any, and financial condition to the extent Fee Owner wishes to do so.
  - (iii) Lender will have no duty to disclose or report to Fee Owner any information now or later known to Lender with respect to Borrower, including any information relating to any of Borrower's business operations or financial condition.
- (d) At any time after Fee Owner receives notice of an Event of Default under any of the Loan Documents from Lender, Fee Owner has the right (but will not be obligated) to make any payment, perform any obligation and take any other action that Borrower would have the right to pay, perform or take under this Instrument which Fee Owner deems necessary or desirable to cure the Event of Default.
- (e) Fee Owner acknowledges and agrees that, upon the occurrence of an Event of Default, Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower, Fee Owner, and in and to the Mortgaged Property, including the Land, to the fullest extent under the terms of this Instrument, the Loan Agreement, and the other Loan Documents.
- (f) Any indebtedness of Borrower to Fee Owner now or later existing (including claims under the Ground Lease or any rights to subrogation Fee Owner may have as a result of this Instrument or any action taken by Lender under this Instrument), together with any interest thereon, will be, and such indebtedness is, hereby deferred, postponed and subordinated to the prior payment in full of the Indebtedness.
- (g) Fee Owner acknowledges that Lender may provide to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, ownership, purchase, participation or Securitization of the Loan, including any of the Rating Agencies, any entity maintaining databases on the underwriting and performance of commercial mortgage loans, as well as governmental regulatory agencies having regulatory authority over Lender, any and all information which Lender now has or may hereafter acquire relating to the Loan and the Mortgaged Property, including the Fee Owner, as Lender determines necessary or desirable, and that such information may be included in any Disclosure Document and also may be included in any filing with the Securities and Exchange Commission pursuant to the Securities Act or the Securities Exchange

Act. To the fullest extent permitted under applicable law, Fee Owner irrevocably waives all rights, if any, to prohibit such disclosure, including any right of privacy.

- (h) Fee Owner has no personal liability for the repayment of the Indebtedness or for the performance of any of Borrower's or Fee Owner's obligations under the Loan Documents, and Fee Owner's liability under the Loan Documents is expressly limited to the Mortgaged Property. However, nothing in this Rider limits the liability or obligations of Fee Owner as Landlord under the Ground Lease.

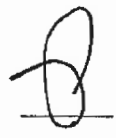
70. Exhibit D (Ground Lease Description) is attached to this Instrument and made a part of this Instrument by this reference.

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:



FEE OWNER'S INITIALS:



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: \_\_\_\_\_

FEE OWNER'S INITIALS: \_\_\_\_\_

AGENCY'S INITIALS:  \_\_\_\_\_

LENDER'S INITIALS:

NW



**EXHIBIT C**

**FINANCING STATEMENT INFORMATION**

1. Name and Address of Debtor:                   Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
  
Name and Address of Fee Owner:               Park Avenue Lantern Corporation  
225 Wilkinson Street  
Syracuse, New York 13204
  
2. Debtor's State of Organization and Organizational I.D.#:
  
3. State of Formation:                            Delaware  
  
Type of Entity:                                    Limited Liability Company  
  
Organizational I.D.#:                            47-5292277  
  
Fee Owner's State of Organization and Organizational I.D.#:  
  
State of Formation:                            New York  
  
Type of Entity:                                    Corporation  
  
Organizational I.D.#:                            81-1084314
  
4. Name and Address of Secured Party:       CPC Funding SPE 1 LLC  
28 East 28th Street, 9th Floor  
New York, New York 10016-7943
  
5. 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.

**22**

ONONDAGA COUNTY CLERK

401 MONTGOMERY ST.

SYRACUSE NY 13202

PHONE: 435-2227

RECEIPT #: 1314261 DATE: 10/25/16 12:03

From: FITCH, RS

Instrument #: 3786916

NAME: PARK AVENUE LANTERN CORPORAT-

CD#	DESCRIPTION	AMOUNT
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16	RETT	5.00
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24	RMI	20.00
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01	TAX TRANSFER	0.00
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11	RECORD DEEDS	50.50
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Total \$75.50

Instrument #: 3787016

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
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16	RETT	5.00
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24	RMI	20.00
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01	TAX TRANSFER	0.00
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11	RECORD DEEDS	50.50
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Total \$75.50

Instrument #: 3787216

NAME: CITY OF SYRACUSE INDUSTRIAL

CD#	DESCRIPTION	AMOUNT
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16	RETT	5.00
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24	RMI	
01	TAX TRANSFER	0.00
11	RECORD DEEDS	50.50
Total		\$75.50

Instrument #: 3787516  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD <u>MTG</u>	405.50
17	AFFIDAVIT	5.00
24	RMI	20.00
Total		\$430.50

Instrument #: 3787616  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD <u>MTG</u>	405.50
17	AFFIDAVIT	5.00
24	RMI	20.00
Total		\$430.50

Instrument #: 2016LB122  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
16	BRADFORD & EUCLID	25.00
Total		\$25.00

Instrument #: 3787716  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD <u>MTG</u>	405.50

*Acquisition*  
 BK 18140 pg. 553

*Construction Loan*  
 BK 18140 pg. 630

*Project Loan*  
 BK 18140 pg. 707

12	RECORD MTG	405.50
17	AFFIDAVIT	5.00
24	RMI	20.00
Total		\$430.50

Instrument #: 3787916  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
12	RECORD MTG	107.00
17	AFFIDAVIT	5.00
24	RMI	20.00
Total		\$132.00

Instrument #: 2016LN96  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
16	BRADFORD & EUCL	15.00
Total		\$15.00

Instrument #: 84216  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
18	UCC	40.00
Total		\$40.00

Instrument #: 84316  
 NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
18	UCC	40.00
Total		\$40.00

*Assignment of  
 Leases + Rents  
 Book 18140 Page 184*

*Acquisition  
 2016-842*

*Construction Loan  
 2016-843*

Total Paid 2039.00

CHECK 2039.00

Receipt Total #2024.00

Total \$12.00

17 PROCESS FEE 12.00

CD# DESCRIPTION AMOUNT

NAME:

Instrument #: 00

Total \$126.00

24 RMI 20.00

12 RECORD MTB 106.00

CD# DESCRIPTION AMOUNT

NAME: RE DIETZ BUILDING MASTER TEN

Instrument #: 3788716

Total \$76.00

11 RECORD DEBDS 51.00

01 TAX TRANSFER 0.00

24 RMI 20.00

16 RETT 5.00

CD# DESCRIPTION AMOUNT

NAME: BRADFORD & EUCLID LFG

Instrument #: 3788316

Total \$40.00

18 UCC 40.00

CD# DESCRIPTION AMOUNT

2016-844 project loan

ASSIGNMENT OF LEASES AND RENTS

BY

PARK AVENUE LANTERN CORPORATION,  
AS FEE OWNER

AND

BRADFORD & EUCLID, LLC,  
AS LEASEHOLD OWNER

AND

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY,  
AS SUB-LEASEHOLD OWNER

TO

CPC FUNDING SPE 1 LLC

Dated: October 20, 2016

LOCATION OF PREMISES:

Address: 225-303 Wilkinson Street  
Syracuse, New York

SBL No: 105.-07-06.0

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After recording, please return to:

CANNON HEYMAN & WEISS, LLP  
726 EXCHANGE STREET, SUITE 500  
BUFFALO, NEW YORK 14210  
ATTENTION: STEVEN J. WEISS, ESQ.

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS, made October 20, 2016, among **BRADFORD & EUCLID, LLC**, a New York limited liability company having an office at 255 Wilkinson Street, Syracuse, New York 13204 ("**Borrower**") and Park Avenue Lantern Corporation, a New York business corporation having an address at 225 Wilkinson Street, Syracuse, New York 13204 ("**Fee Owner**") (Borrower and Fee Owner are collectively referred to as the "**Assignor**") and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices at 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "**Agency**"), to **CPC FUNDING SPE 1 LLC**, a New York limited liability company, having an office c/o The Community Preservation Corporation, 28 East 28<sup>th</sup> Street, 9<sup>th</sup> Floor, New York, New York 10016-7943 ("**Assignee**").

### W I T N E S S E T H:

WHEREAS, Borrower is the leasehold and sub-leasehold owner, Agency is the sub-leasehold owner and Fee Owner is the legal owner of certain improved real property situated in the City of Syracuse, County of Onondaga and State of New York, and more particularly described in Schedule A annexed hereto and made a part hereof (the "**Premises**");

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 executes 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 hereby agrees as follows:

1. Assignor and Agency 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 and Agency 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 (and excepting therefrom that certain Agency Lease Agreement dated as of October 1, 2016, between the Agency, as lessor, and the Assignor, as lessee (the "Leaseback Agreement"), that certain underlying lease agreement dated as of October 1, 2016, between the Assignor, as lessor, and the Agency, as lessee (the "Lease Agreement" and together with the



Leaseback Agreement, 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 the extent of Assignor's rights, 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 (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 thirty (30) 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 General Counsel, with a copy to Cannon Heyman & Weiss, LLP, 726 Exchange Street, Suite 500, Buffalo, New York 14210, Attention: Steven J. Weiss, Esq.; and in the case of the Assignor, to Barclay Damon, 125 East Jefferson Street, Syracuse, New York 13202, Attention: James J. Canfield, Esq. with a copy to 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. City of Syracuse Industrial Development Agency Special Provisions.

Notwithstanding any other terms or conditions contained in this Assignment:

(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) 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 the City of Syracuse, New York, and neither the State of New York nor the City of Syracuse, New York shall be liable hereon. All obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Premises by means of this Assignment or any other loan documents. Neither the members of the Agency, nor any person executing this Assignment on its behalf shall be liable personally under this Assignment. No recourse shall be had for the payment of the principal or interest on the Mortgage or the Note or for any claim based on the Mortgage, or otherwise in respect hereof, or based upon or in respect of this Assignment, or any modification of or supplemental hereto or thereto, against any past, present, or future member, officer, agent, servant, or employee, as such, of the Agency or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officers, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Assignment. Any judgment or decree shall be enforceable against the Agency only to the extent of its interest in the Premises and any such judgment shall not be subject to execution on or by a lien on assets of the Agency other than its interest in the Premises.

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless 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. 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 may, at its option, place, in an account with the Agency, an amount or undertaking sufficient to cover such reasonable fees and expenses whereupon the Agency shall agree to comply with such request. 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, directors, servants, agents or employees shall be subject to potential liability, the party seeking such order or decree may, at its option, (1) agree to protect, defend, indemnify and hold harmless the Agency and its members, officers, directors, servants, 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 reasonably satisfactory security to protect the Agency and its members, officers, directors, servants, agents and employees against all liability reasonably expected to be incurred as a result of compliance with such request whereupon the Agency shall agree to comply with such request. This agreement on the part of the Assignee shall not be construed in any way so as to effect or impair the lien of this Assignment or the Assignee's right to foreclose under the Mortgage as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Assignee in any foreclosure proceedings.

(d) The Assignor will record or cause this Assignment to be recorded in the office of the Onondaga County Clerk and will pay, or cause to be paid, all documentary stamp taxes, if any, which may be imposed by the United States of America or any agency thereof or by the State of New York or other governmental authority upon this Assignment.

(e) Assignor shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Lease Agreement and the Leaseback Agreement as and when such sums become due and payable, but in any event before the expiration of any grace period provided in the Lease Agreement and the Leaseback Agreement, as applicable, 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 Lease Agreement and the Leaseback Agreement to be performed, observed or complied with by Assignor as lessor under the Lease Agreement and lessee under the Leaseback Agreement. If the Lease Agreement and/or the Leaseback 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.

(f) 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 reasonable attorney's fees.

(g) Assignee by accepting this Assignment acknowledges that notwithstanding any other provision contained in this Assignment, it is agreed that the execution of this Assignment by the Agency shall impose no personal liability on the Agency or any members or officers thereof for payment of the indebtedness under the Note. This Assignment is executed by the Agency solely for the purpose of subjecting its interest in the Mortgaged Property, and in the event of a default, Assignee shall look, only with respect to the Agency, solely to the Mortgaged

Property described in the Mortgage 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.

(h) The Assignor hereby acknowledges that the terms of the Leaseback Agreement, 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.

21. This Assignment may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

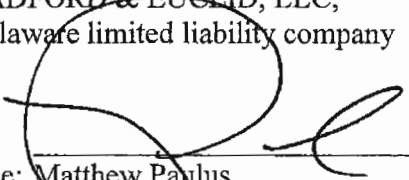
**[NO FURTHER TEXT ON THIS PAGE]**



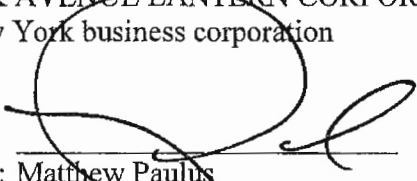
IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

**ASSIGNOR:**

BRADFORD & EUCLID, LLC,  
a Delaware limited liability company

By:   
Name: Matthew Paulus  
Title: Authorized Signatory

PARK AVENUE LANTERN CORPORATION,  
a New York business corporation

By:   
Name: Matthew Paulus  
Title: Authorized Signatory

**AGENCY:**

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY,  
a New York public benefit corporation

By: \_\_\_\_\_  
Name: William M. Ryan  
Title: Chairman

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first above written.

**ASSIGNOR:**

**BRADFORD & EUCLID, LLC,**  
a Delaware limited liability company

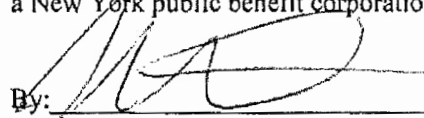
By: \_\_\_\_\_  
Name: Matthew Paulus  
Title: Authorized Signatory

**PARK AVENUE LANTERN CORPORATION,**  
a New York business corporation

By: \_\_\_\_\_  
Name: Matthew Paulus  
Title: Authorized Signatory

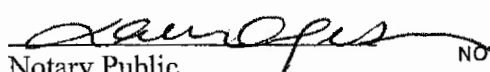
**AGENCY:**

**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY,**  
a New York public benefit corporation

By:  \_\_\_\_\_  
Name: William M. Ryan  
Title: Chairman

STATE OF NEW YORK )  
 ) S.S.  
COUNTY OF Onondaga )

On the 13<sup>th</sup> day of October, 2016 before me, the undersigned, a notary public in and for said state, personally appeared Matthew Paulus, 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

LAUREN ANNE PISTELL  
NOTARY PUBLIC-STATE OF NEW YORK  
NO. 01PI6178961  
QUALIFIED IN ONONDAGA COUNTY  
MY COMMISSION EXPIRES 12-17-2019

STATE OF NEW YORK )  
 ) S.S.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 2016 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

STATE OF NEW YORK )  
 ) S.S.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 2016 before me, the undersigned, a notary public in and for said state, personally appeared Matthew Paulus, 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 )  
 ) S.S.  
COUNTY OF Orange )

On the 20<sup>th</sup> day of October, 2016 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.

Joe L. McRobbie  
Notary Public

JOE L. McROBBIE  
Notary Public, State of New York  
One State Street, Orange Co. NY 14863-5501  
Commission Expires on 12/31/18.

**EXHIBIT A**

**SCHEDULE OF MORTGAGES**

1. Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing made by Bradford & Euclid, LLC and Park Avenue Lantern Corporation to CPC Funding SPE 1 LLC in the amount of \$18,353,308.00, dated as of the date hereof and intended to be recorded in the Office of the Onondaga County Clerk, State of New York; and
2. Multifamily Acquisition Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing made by Bradford & Euclid, LLC and Park Avenue Lantern Corporation to CPC Funding SPE 1 LLC in the amount of \$640,000.00, dated as of the date hereof and intended to be recorded in the Office of the Onondaga County Clerk, State of New York; and
3. Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing made by Bradford & Euclid, LLC and Park Avenue Lantern Corporation to CPC Funding SPE 1 LLC in the amount of \$249,650.00, dated as of the date hereof and intended to be recorded in the Office of the Onondaga County Clerk, State of New York.

**SCHEDULE A**  
**LEGAL DESCRIPTION**

ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence  $S.01^{\circ}15'40''W.$  along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence  $S.71^{\circ}11'30''W.$  along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence  $N.19^{\circ}00'00''W.$  along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence  $N.01^{\circ}22'40''E.$  along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence  $S.88^{\circ}45'20''E.$  along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

The hereinbefore described parcel of land is subject to any and all easements and or rights of way of record.

**23**

ONONDAGA COUNTY CLERK

401 MONTGOMERY ST.

SYRACUSE NY 13202

PHONE: 435-2227

RECEIPT #: 1314261 DATE: 10/25/16 12:03

From: FITCH RS

Instrument #: 3786916

NAME: PARK AVENUE LANTERN CORPORAT

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
----	------	------

24	RMI	20.00
----	-----	-------

01	TAX TRANSFER	0.00
----	--------------	------

11	RECORD DEEDS	50.50
----	--------------	-------

Total \$75.50

Instrument #: 3787016

NAME: BRADFORD & EUCLID LLC

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
----	------	------

24	RMI	20.00
----	-----	-------

01	TAX TRANSFER	0.00
----	--------------	------

11	RECORD DEEDS	50.50
----	--------------	-------

Total \$75.50

Instrument #: 3787216

NAME: CITY OF SYRACUSE INDUSTRIAL

CD#	DESCRIPTION	AMOUNT
-----	-------------	--------

16	RETT	5.00
----	------	------



24 RMI

01 TAX TRANSFER 0.00

11 RECORD DEEDS 50.50

Total 175.50

Instrument #: 3787516

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

12 RECORD MTG 405.50

17 AFFIDAVIT 5.00

24 RMI 20.00

Total 430.50

Instrument #: 3787616

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

12 RECORD MTG 405.50

17 AFFIDAVIT 5.00

24 RMI 20.00

Total 430.50

Instrument #: 2016LB122

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

16 BRADFORD & EUCLID 25.00

Total 25.00

Instrument #: 3787716

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

12 RECORD MTG 405.50

Acquisition  
BK 18140 pg. 553

Construction Loan  
BK 18140 pg. 630

Project Loan  
BK 18140 pg. 707

12 RECORD MTG 405.50

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$430.50

Instrument #: 3787916

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

12 RECORD MTG 107.00

17 AFFIDAVIT 5.00

24 RMI 20.00

Total \$132.00

Instrument #: 2016LN96

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

16 BRADFORD & EUCL 15.00

Total \$15.00

Instrument #: 84216

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Instrument #: 84316

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Acquisition  
2016-842

Construction loan  
2016-843

CD# DESCRIPTION AMOUNT

18 UCC 40.00

Total \$40.00

Instrument #: 3788316

NAME: BRADFORD & EUCLID LLC

CD# DESCRIPTION AMOUNT

16 RETT 5.00

24 RMI 20.00

01 TAX TRANSFER 0.00

11 RECORD DEEDS 51.00

Total \$76.00

Instrument #: 3788716

NAME: RE DIETZ BUILDING MASTER TEN

CD# DESCRIPTION AMOUNT

12 RECORD MTB 106.00

24 RMI 20.00

Total \$126.00

Instrument #: 00

NAME:

CD# DESCRIPTION AMOUNT

17 PROCESS FEE 12.00

Total \$12.00

Receipt Total \$2024.00

CHECK 2039.00

Total Paid 2039.00

2016-844  
project wan

**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**  
**28 East 28<sup>th</sup> Street – 9<sup>th</sup> Floor**  
**New York, New York 10016-7943**  
**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  
**Bradford & Euclid, LLC**

1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY  
**225 Wilkinson 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.** | **Delaware** |  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  
**28 East 28<sup>th</sup> Street – 9<sup>th</sup> Floor** | **New York** | **NY** | **10016-7943** | **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: Onondaga County (Acquisition Loan Mortgage) CPC Loan # 70527**

# 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>Bradford &amp; Euclid, LLC</b>			
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				
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:

**225-303 Wilkinson Street  
City of Syracuse, Onondaga County  
State of New York.**

**Tax Map No. 105.-07-06.0**

**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, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40"W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30"W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00"W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40"E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20"E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

The hereinbefore described parcel of land is subject to any and all easements and or rights of way of record.

EXHIBIT A  
DESCRIPTION OF COLLATERAL

All of the right, title and interest of the Debtor in and to the following collateral:

(a) all structures and/or buildings, and replacements thereof, to be erected or now or hereafter located upon that certain lot, piece or parcel of land (the "Premises") more particularly described on Schedule A annexed hereto and made a part hereof by the Debtor, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures and/or buildings (collectively, the "Improvements");

(b) all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Improvements in, or located on, the Premises (including, but not limited to, all gas and electric ranges, refrigerators, gas and oil burners, automatic stokers, and all sprinkler, plumbing, heating, air-conditioning, electric power or lighting, incinerating, vacuum cleaning, ventilating and cooling systems, with each of their respective appurtenant furnaces, boilers, engines, motors, dynamos, radiators, pipes, wiring, and other apparatus, and all lighting, fixtures, doors, iceboxes, cupboards, cabinets, partitions, mantels, elevators, electric motors, pumps, shades, storm sashes, screens, shutters and awnings) (collectively, the "**Chattels**");

(c) all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code (as defined in that certain Fee and Leasehold Multifamily Acquisition Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing between the Debtor, as mortgagor, and the Secured Party, as mortgagee, and dated as of October 20, 2016 (the "Mortgage")) in any way relating to the Premises and/or the Improvements and in which the Debtor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the Premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Debtor insuring the Mortgaged Property (as defined in the Mortgage), and all rights and interest of the Debtor thereunder and all rights, claims and/or causes of action which the Debtor may have now or may have in the future against any party or parties with respect to the Premises, the Chattels and/or the Improvements (collectively, the "**Intangibles**");

(d) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property (collectively, the "**Rents**"), all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of the Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right upon the happening of an Event of Default (as defined in the Mortgage), to receive and collect the Rents thereunder;

- (e) the Letter of Credit (as defined in the Mortgage) or Cash In Lieu Agreement;
- (f) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of the Letter of Credit, Cash in Lieu Agreement, hazard and title insurance and condemnation awards and all rights of the Debtor to refunds of real estate taxes and assessments.
- (g) all of the right, title, profit and interest of the Debtor in and to the capital contributions of the Debtor.



**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**  
**28 East 28<sup>th</sup> Street – 9<sup>th</sup> Floor**  
**New York, New York 10016-7943**  
**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  
**Bradford & Euclid, LLC**

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**225 Wilkinson 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. Delaware** NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

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)

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**CPC Funding SPE 1 LLC**

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**28 East 28<sup>th</sup> Street – 9<sup>th</sup> Floor New York NY 10016-7943 USA**

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**SEE "EXHIBIT A" COLLATERAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.**

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8. OPTIONAL FILER REFERENCE DATA **Filing office: Onondaga County (Construction Loan Mortgage) CPC Loan # 70527**

# 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>Bradford &amp; Euclid, LLC</b>			
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

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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 <u>one</u> name (12a or 12b)				
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OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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				COUNTRY

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**City of Syracuse, Onondaga County**  
**State of New York.**

**Tax Map No. 105.-07-06.0**

**See "Schedule A" Legal Description attached hereto and made a part hereof.**

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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

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DESCRIPTION OF COLLATERAL

All of the right, title and interest of the Debtor in and to the following collateral:

(a) all structures and/or buildings, and replacements thereof, to be erected or now or hereafter located upon that certain lot, piece or parcel of land (the "Premises") more particularly described on Schedule A annexed hereto and made a part hereof by the Debtor, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures and/or buildings (collectively, the "Improvements");

(b) all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Improvements in, or located on, the Premises (including, but not limited to, all gas and electric ranges, refrigerators, gas and oil burners, automatic stokers, and all sprinkler, plumbing, heating, air-conditioning, electric power or lighting, incinerating, vacuum cleaning, ventilating and cooling systems, with each of their respective appurtenant furnaces, boilers, engines, motors, dynamos, radiators, pipes, wiring, and other apparatus, and all lighting, fixtures, doors, iceboxes, cupboards, cabinets, partitions, mantels, elevators, electric motors, pumps, shades, storm sashes, screens, shutters and awnings) (collectively, the "**Chattels**");

(c) all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code (as defined in that certain Fee and Leasehold Multifamily Construction Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing between the Debtor, as mortgagor, and the Secured Party, as mortgagee, and dated as of October 20, 2016 (the "Mortgage")) in any way relating to the Premises and/or the Improvements and in which the Debtor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the Premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Debtor insuring the Mortgaged Property (as defined in the Mortgage), and all rights and interest of the Debtor thereunder and all rights, claims and/or causes of action which the Debtor may have now or may have in the future against any party or parties with respect to the Premises, the Chattels and/or the Improvements (collectively, the "**Intangibles**");

(d) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property (collectively, the "**Rents**"), all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of the Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right upon the happening of an Event of Default (as defined in the Mortgage), to receive and collect the Rents thereunder;

(e) the Letter of Credit (as defined in the Mortgage) or Cash In Lieu Agreement;

(f) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of the Letter of Credit, Cash in Lieu Agreement, hazard and title insurance and condemnation awards and all rights of the Debtor to refunds of real estate taxes and assessments.

(g) all of the right, title, profit and interest of the Debtor in and to the capital contributions of the Debtor.

**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**  
**28 East 28<sup>th</sup> Street – 9<sup>th</sup> Floor**  
**New York, New York 10016-7943**  
**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  
**Bradford & Euclid, LLC**

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**225 Wilkinson 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. Delaware**  NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME** – insert only one debtor name (2a or 2b) – do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

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)

3a. ORGANIZATION'S NAME  
**CPC Funding SPE 1 LLC**

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**28 East 28<sup>th</sup> Street – 9<sup>th</sup> Floor New York NY 10016-7943 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

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: Onondaga County (Project Loan Mortgage) CPC Loan # 70527**

# 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>Bradford &amp; Euclid, LLC</b>			
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				
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:

**225-303 Wilkinson Street  
City of Syracuse, Onondaga County  
State of New York.**

**Tax Map No. 105.-07-06.0**

**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, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40"W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30"W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00"W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40"E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20"E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

The hereinbefore described parcel of land is subject to any and all easements and or rights of way of record.



EXHIBIT A  
DESCRIPTION OF COLLATERAL

All of the right, title and interest of the Debtor in and to the following collateral:

(a) all structures and/or buildings, and replacements thereof, to be erected or now or hereafter located upon that certain lot, piece or parcel of land (the "Premises") more particularly described on Schedule A annexed hereto and made a part hereof by the Debtor, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures and/or buildings (collectively, the "Improvements");

(b) all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Improvements in, or located on, the Premises (including, but not limited to, all gas and electric ranges, refrigerators, gas and oil burners, automatic stokers, and all sprinkler, plumbing, heating, air-conditioning, electric power or lighting, incinerating, vacuum cleaning, ventilating and cooling systems, with each of their respective appurtenant furnaces, boilers, engines, motors, dynamos, radiators, pipes, wiring, and other apparatus, and all lighting, fixtures, doors, iceboxes, cupboards, cabinets, partitions, mantels, elevators, electric motors, pumps, shades, storm sashes, screens, shutters and awnings) (collectively, the "**Chattels**");

(c) all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code (as defined in that certain Fee and Leasehold Multifamily Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing between the Debtor, as mortgagor, and the Secured Party, as mortgagee, and dated as of October 20, 2016 (the "Mortgage")) in any way relating to the Premises and/or the Improvements and in which the Debtor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the Premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Debtor insuring the Mortgaged Property (as defined in the Mortgage), and all rights and interest of the Debtor thereunder and all rights, claims and/or causes of action which the Debtor may have now or may have in the future against any party or parties with respect to the Premises, the Chattels and/or the Improvements (collectively, the "**Intangibles**");

(d) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property (collectively, the "**Rents**"), all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of the Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right upon the happening of an Event of Default (as defined in the Mortgage), to receive and collect the Rents thereunder;

(e) the Letter of Credit (as defined in the Mortgage) or Cash In Lieu Agreement;

(f) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of the Letter of Credit, Cash in Lieu Agreement, hazard and title insurance and condemnation awards and all rights of the Debtor to refunds of real estate taxes and assessments.

(g) all of the right, title, profit and interest of the Debtor in and to the capital contributions of the Debtor.

**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

019268

2017 SEP 22 AM 11:30

**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  
 28 East 28<sup>th</sup> Street - 9<sup>th</sup> Floor  
 New York, New York 10016-7943  
 Attention: General Counsel

**LCS**  
**DRAW/DOWN - #AL**

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**  
Bradford & Enclid, LLC

**OR**

**1b. INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

225 Wilkinson Street Syracuse NY 13202 USA

**1c. TYPE OF ORGANIZATION** **1d. JURISDICTION OF ORGANIZATION** **1e. ORGANIZATIONAL ID #, if any**

Limited Lib. Comp. Delaware NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

**2a. ORGANIZATION'S NAME**

**OR**

**2b. INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**2c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

**2d. TYPE OF ORGANIZATION** **2e. JURISDICTION OF ORGANIZATION** **2f. 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)**

**3a. ORGANIZATION'S NAME**  
CPC Funding SPE 1 LLC

**OR**

**3b. INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**3c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

28 East 28<sup>th</sup> Street - 9<sup>th</sup> Floor New York NY 10016-7943 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):**  LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAILOR  BELLEBUYER  AG. LIEN  NON-UCC FILING

**6. \* This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.** Attach Address(es) **7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)** (ADDITIONAL FEE) (optional)  All Other  Day 1  Day 2

**8. OPTIONAL FILER REFERENCE DATA** Filing office: NYSDOS (Acquisition Loan Mortgage) CPC Loan # [REDACTED]

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

**FILING NUMBER: 201709220470272**

**UCC FINANCING STATEMENT ADDENDUM**

219268

2017 SEP 22 AM 11:30

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

1a. ORGANIZATION'S NAME Bradford & Euclid, LLC			
OR	1b. 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					
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	ADDL. 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  so-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

225-303 Wilkinson Street  
City of Syracuse, Onondaga County  
State of New York.

Tax Map No. 105-07-06.0

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 PUNO-Finance Transaction -- effective 30 years

SCHEDULE A  
LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence  $S.01^{\circ}15'40''W.$  along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence  $S.71^{\circ}11'30''W.$  along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence  $N.19^{\circ}00'00''W.$  along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence  $N.01^{\circ}22'40''E.$  along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence  $S.88^{\circ}45'20''E.$  along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

The hereinbefore described parcel of land is subject to any and all easements and or rights of way of record.

EXHIBIT A  
DESCRIPTION OF COLLATERAL

All of the right, title and interest of the Debtor in and to the following collateral:

(a) all structures and/or buildings, and replacements thereof, to be erected or now or hereafter located upon that certain lot, piece or parcel of land (the "Premises") more particularly described on Schedule A annexed hereto and made a part hereof by the Debtor, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures and/or buildings (collectively, the "Improvements");

(b) all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Improvements in, or located on, the Premises (including, but not limited to, all gas and electric ranges, refrigerators, gas and oil burners, automatic stokers, and all sprinkler, plumbing, heating, air-conditioning, electric power or lighting, incinerating, vacuum cleaning, ventilating and cooling systems, with each of their respective appurtenant furnaces, boilers, engines, motors, dynamos, radiators, pipes, wiring, and other apparatus, and all lighting, fixtures, doors, iceboxes, cupboards, cabinets, partitions, mantels, elevators, electric motors, pumps, shades, storm sashes, screens, shutters and awnings) (collectively, the "Chattels");

(c) all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code (as defined in that certain Fee and Leasehold Multifamily Acquisition Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing between the Debtor, as mortgagor, and the Secured Party, as mortgagee, and dated as of October 20, 2016 (the "Mortgage")) in any way relating to the Premises and/or the Improvements and in which the Debtor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the Premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Debtor insuring the Mortgaged Property (as defined in the Mortgage), and all rights and interest of the Debtor thereunder and all rights, claims and/or causes of action which the Debtor may have now or may have in the future against any party or parties with respect to the Premises, the Chattels and/or the Improvements (collectively, the "Intangibles");

(d) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property (collectively, the "Rents"), all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of the Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right upon the happening of an Event of Default (as defined in the Mortgage), to receive and collect the Rents thereunder;

(e) the Letter of Credit (as defined in the Mortgage) or Cash In Lieu Agreement;

(f) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of the Letter of Credit, Cash in Lieu Agreement, hazard and title insurance and condemnation awards and all rights of the Debtor to refunds of real estate taxes and assessments.

(g) all of the right, title, profit and interest of the Debtor in and to the capital contributions of the Debtor.

219268

2017 SEP 22 AM 11:30

**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

219270

2017 SEP 22 AM 11:30

**LCS**  
**DRAWDOWN - #AL**

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  
 28 East 28<sup>th</sup> Street - 9<sup>th</sup> Floor  
 New York, New York 10016-7943  
 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  
Bradford & Euclid, LLC

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 225 Wilkinson Street Syracuse NY 13202 USA

1c. TAX ID #: SSN OR EIN ADDL INFO RE ORGANIZATION DEBTOR 1d. TYPE OF ORGANIZATION 1e. JURISDICTION OF ORGANIZATION 1f. ORGANIZATIONAL ID #: If any

United Liab. Comp. Delaware NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADDL 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 or ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME  
CPC Funding SPE 1 LLC

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 28 East 28<sup>th</sup> Street - 9<sup>th</sup> Floor New York NY 10016-7943 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):  LESSOR/LESSOR  CONSIGNEE/CONSIGNOR  SALES/BALOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (or refiled) (or recorded) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) in the REAL ESTATE RECORDS. Attach Addendum (ADDITIONAL FEE) (optional)  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA Filing office: NYS DOS (Project Loan Mortgage) CPC Loan # [REDACTED]

FILING NUMBER: 201709220470323



**UCC FINANCING STATEMENT ADDENDUM**

219270

2017 SEP 22 AM 11:36

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME Bradford & Euclid, LLC			
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE IS 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					
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	ADDL. 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. The FINANCING STATEMENT covers  timber to be cut or  oil-extracted collateral, or is filed as a  fixture filing.

14. Description of real estate:

225-303 Wilkinson Street  
City of Syracuse, Onondaga County  
State of New York

Tax Map No. 105-07-06.0

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  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, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence  $S.01^{\circ}15'40''W.$  along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence  $S.71^{\circ}11'30''W.$  along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence  $N.19^{\circ}00'00''W.$  along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence  $N.01^{\circ}22'40''E.$  along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence  $S.88^{\circ}45'20''E.$  along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

The hereinbefore described parcel of land is subject to any and all easements and or rights of way of record.

EXHIBIT A  
DESCRIPTION OF COLLATERAL

All of the right, title and interest of the Debtor in and to the following collateral:

(a) all structures and/or buildings, and replacements thereof, to be erected or now or hereafter located upon that certain lot, piece or parcel of land (the "Premises") more particularly described on Schedule A annexed hereto and made a part hereof by the Debtor, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures and/or buildings (collectively, the "Improvements");

(b) all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Improvements in, or located on, the Premises (including, but not limited to, all gas and electric ranges, refrigerators, gas and oil burners, automatic stokers, and all sprinkler, plumbing, heating, air-conditioning, electric power or lighting, incinerating, vacuum cleaning, ventilating and cooling systems, with each of their respective appurtenant furnaces, boilers, engines, motors, dynamos, radiators, pipes, wiring, and other apparatus, and all lighting, fixtures, doors, iceboxes, cupboards, cabinets, partitions, mantels, elevators, electric motors, pumps, shades, storm sashes, screens, shutters and awnings) (collectively, the "Chattels");

(c) all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code (as defined in that certain Fee and Leasehold Multifamily Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing between the Debtor, as mortgagor, and the Secured Party, as mortgagee, and dated as of October 20, 2016 (the "Mortgage")) in any way relating to the Premises and/or the Improvements and in which the Debtor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the Premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Debtor insuring the Mortgaged Property (as defined in the Mortgage), and all rights and interest of the Debtor thereunder and all rights, claims and/or causes of action which the Debtor may have now or may have in the future against any party or parties with respect to the Premises, the Chattels and/or the Improvements (collectively, the "Intangibles");

(d) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property (collectively, the "Rents"), all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of the Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms; including, further, the right upon the happening of an Event of Default (as defined in the Mortgage), to receive and collect the Rents thereunder;

- (e) the Letter of Credit (as defined in the Mortgage) or Cash In Lieu Agreement;
- (f) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of the Letter of Credit, Cash in Lieu Agreement, hazard and title insurance and condemnation awards and all rights of the Debtor to refunds of real estate taxes and assessments.
- (g) all of the right, title, profit and interest of the Debtor in and to the capital contributions of the Debtor.

219270

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**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

219269

2017 SEP 22 AM 11:30

**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  
 28 East 28<sup>th</sup> Street - 9<sup>th</sup> Floor  
 New York, New York 10016-7943  
 Attention: General Counsel

**LCS  
DRAWDOWN - #AL**

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**  
Bradford & Euclid, LLC

**OR**

**1b. INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY  
 225 Wilkinson Street Syracuse NY 13202 USA

**1d. TAX ID #: SSN OR EIN** **ADDL INFO RE ORGANIZATION DEBTOR** **1c. TYPE OF ORGANIZATION** **1f. JURISDICTION OF ORGANIZATION** **1g. ORGANIZATIONAL ID #, if any**  
 Limited Liab. Comp. Delaware NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

**2a. ORGANIZATION'S NAME**

**OR**

**2b. INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**2c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

**2d. TAX ID #: SSN OR EIN** **ADDL 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 B/P) - insert only one secured party name (3a or 3b)**

**3a. ORGANIZATION'S NAME**  
CPC Funding SPE 1 LLC

**OR**

**3b. INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**3c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY  
 28 East 28<sup>th</sup> Street - 9<sup>th</sup> Floor New York NY 10016-7943 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):**  LESSOR/LESSOR  CONSIGNEE/CONSIGNOR  BAILEY/BAILOR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

**6. This FINANCING STATEMENT is to be filed (or refiled) (or re-terminated) in the REAL ESTATE RECORDS.**  **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 # [REDACTED]

### UCC FINANCING STATEMENT ADDENDUM

219269

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FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

1a. ORGANIZATION'S NAME Bradford & Euclid, LLC			
OR	1b. 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					
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	

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:

225-303 Wilkinson Street  
City of Syracuse, Onondaga County  
State of New York.

Tax Map No. 105-07-06.0

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, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40"W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30"W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00"W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40"E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20"E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

The hereinbefore described parcel of land is subject to any and all easements and or rights of way of record.

EXHIBIT A  
DESCRIPTION OF COLLATERAL

All of the right, title and interest of the Debtor in and to the following collateral:

(a) all structures and/or buildings, and replacements thereof, to be erected or now or hereafter located upon that certain lot, piece or parcel of land (the "Premises") more particularly described on Schedule A annexed hereto and made a part hereof by the Debtor, including all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures and/or buildings (collectively, the "Improvements");

(b) all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and replacements thereof, other than those owned by lessees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Improvements in, or located on, the Premises (including, but not limited to, all gas and electric ranges, refrigerators, gas and oil burners, automatic stokers, and all sprinkler, plumbing, heating, air-conditioning, electric power or lighting, incinerating, vacuum cleaning, ventilating and cooling systems, with each of their respective appurtenant furnaces, boilers, engines, motors, dynamos, radiators, pipes, wiring, and other apparatus, and all lighting, fixtures, doors, iceboxes, cupboards, cabinets, partitions, mantels, elevators, electric motors, pumps, shades, storm sashes, screens, shutters and awnings) (collectively, the "Chattels");

(c) all "general intangibles" (as such quoted term is defined in the Uniform Commercial Code (as defined in that certain Fee and Leasehold Multifamily Construction Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing between the Debtor, as mortgagor, and the Secured Party, as mortgagee, and dated as of October 20, 2016 (the "Mortgage"))) in any way relating to the Premises and/or the Improvements and in which the Debtor has any interest, all licenses, trade names, good will and books and records relating to the business operated or to be operated on the Premises or any part thereof, and all unearned premiums, accrued, accruing or to accrue under all insurance policies now or hereafter obtained by the Debtor insuring the Mortgaged Property (as defined in the Mortgage); and all rights and interest of the Debtor thereunder and all rights, claims and/or causes of action which the Debtor may have now or may have in the future against any party or parties with respect to the Premises, the Chattels and/or the Improvements (collectively, the "Intangibles");

(d) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property (collectively, the "Rents"), all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of the Debtor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right upon the happening of an Event of Default (as defined in the Mortgage), to receive and collect the Rents thereunder;



(e) the Letter of Credit (as defined in the Mortgage) or Cash In Lieu Agreement;

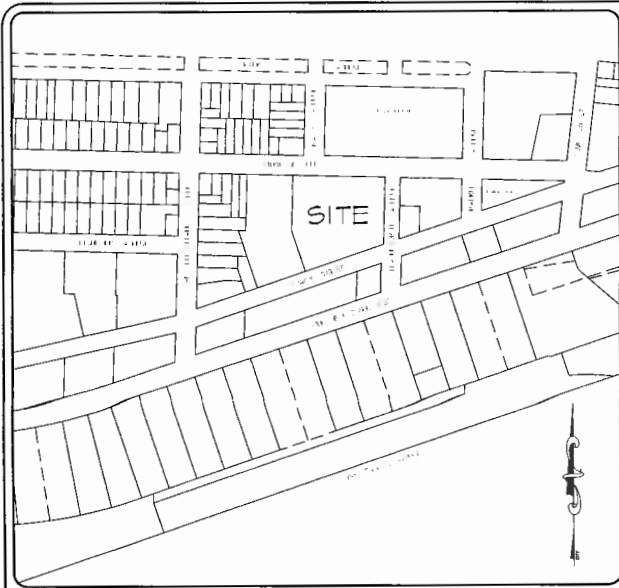
(f) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of the Letter of Credit, Cash in Lieu Agreement, hazard and title insurance and condemnation awards and all rights of the Debtor to refunds of real estate taxes and assessments.

(g) all of the right, title, profit and interest of the Debtor in and to the capital contributions of the Debtor.

19269

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**24**



LOCATION MAP  
NO SCALE

LEGAL DESCRIPTION:

PARCEL I  
ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, more or less, and distinguished as Lots 1, 2, 4, 10, 11, 24, 25, 26 & 27, Block 424 in said City.

PARCEL II  
ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Syracuse, County of Onondaga and State of New York, and being part of Block 424, in said City, and being more particularly described as that portion of Leavenworth Avenue, adjoining Lots II and 27, Block 424 portion of Leavenworth Avenue, as was dedicated as a public street by resolution of Common Council of City of Syracuse, dated December 22, 1922.

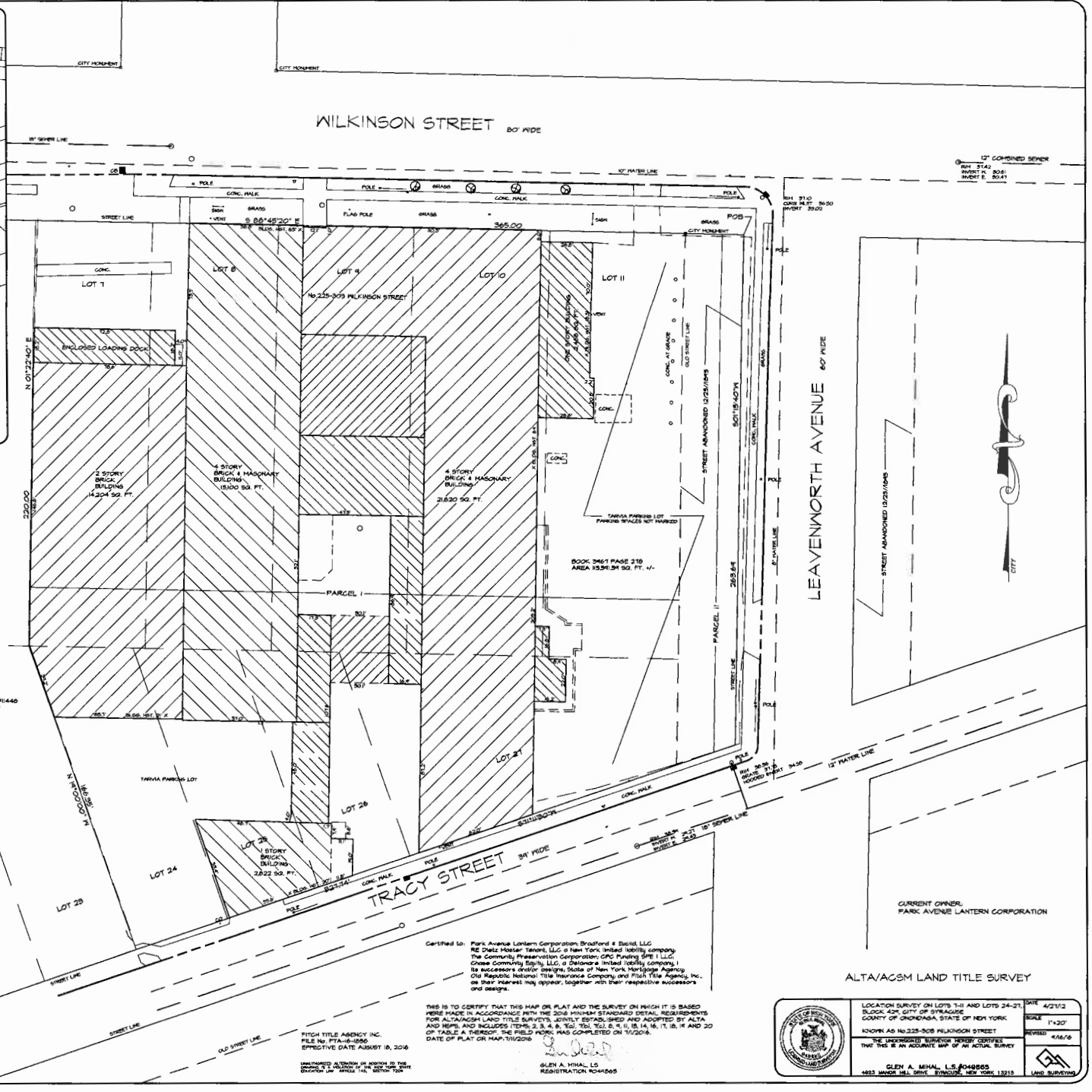
ALSO DESCRIBED AS:  
ALL THAT TRACT OR PARCEL OF LAND, being part of Block 424 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkison Street with the present east street line of Leavenworth Avenue, thence S 0° 0' 0" E along said east street line of Leavenworth Avenue a distance of 263.44 feet to its intersection with the northwesterly street line of Tracy Street, thence S 37° 15' 0" E along said northwesterly street line of Tracy Street a distance of 321.14 feet to the southwesterly corner of Lot 24, in Block 424, thence N 10° 00' 0" E along the southwesterly line of said Lot 24, a distance of 46.25 feet to the southeast corner of Lot 1, in Block 424, thence N 0° 22' 40" E along the east line of Lot 1, a distance of 230.00 feet to its intersection with the south street line of Wilkison Street, thence S 50° 45' 20" E along said south street line of Wilkison Street a distance of 268.00 feet to its intersection with the east street line of Leavenworth Avenue and the point and place of beginning.

The heretofore described parcel of land is subject to any and all assessments and or rights of way of record.

Notes:  
Floor Zone C, Community Panel #360 945 00036, Revised May 15, 1986  
No portion of the property shown on the survey lies within a Special Hazard Area, as described on the Flood Hazard Risk Map for the community in which the subject property is located.  
No parking spaces are delineated on the current parking list.  
No evidence of recent earth moving work, building construction or existing additions observed in the process of conducting the fieldwork.  
No proposed changes in street right of way lines. No evidence of recent street or sidewalk construction or repairs observed in the process of conducting the fieldwork.  
No observed evidence of site use as a solid waste dump, sump or sanitary landfill.  
No wetland areas are included on site.

ZONING INDUSTRIAL A: For uses permitted in the district, there are no yard requirements. The minimum permitted structural coverage shall be 100%. The maximum permitted parking surface coverage shall be 100%. On street parking requirements, and off street loading requirements.  
The total number of allowed parking spaces on the subject property is 0, including 0 designated disabled parking spaces.

City Plot #409, City Engineer's Office  
City sewer and water plans do not show lateral service locations.  
Subject to a Stormwater Control Facility Maintenance Agreement with the City of Syracuse covering the entire site (per schedule B).  
Subject to an Access Easement to the City of Syracuse for access to the Stormwater Management Facilities across the entire site (per schedule B).



Certified to: Park Avenue Lantern Corporation, 409 Park Avenue, New York, NY 10022  
By: Glen A. Mihal, L.S. #04865, Registration No. 4065

THIS IS TO CERTIFY THAT THIS MAP ON PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2004 MINIMUM STANDARD REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NIMS AND INCLUDES ITEMS 2, 3, 4, 5, 6, 7(a), 7(b), 7(c), 7(d), 7(e), 7(f), 7(g), 7(h) AND 20 OF TABLE A, THEREOF. THE FIELD WORK WAS COMPLETED ON 11/20/16.  
DATE OF PLAT OR MAP: 11/20/16

ALTA/ACSM LAND TITLE SURVEY  
EFFECTIVE DATE: AUGUST 18, 2016

UNLIMITED WARRANTY OR REFUND TO THE SURVEYOR IF THE SURVEYOR IS FOUND TO BE GUILTY OF NEGLIGENCE OR OTHER PROFESSIONAL MISFEASANCE OR MALPRACTICE.

LEAVENWORTH AVENUE 80' WIDE

TRACY STREET 34' WIDE

CURRENT OWNER:  
PARK AVENUE LANTERN CORPORATION

ALTA/ACSM LAND TITLE SURVEY



LOCATION SURVEY ON LOTS 1-11 AND LOTS 24-27, BLOCK 424, CITY OF SYRACUSE, COUNTY OF ONONDAGA, STATE OF NEW YORK  
KNOWN AS NO 225-308 WILKINSON STREET  
THE UNABRIDGED SURVEY CERTIFICATE THAT THIS IS AN ACCURATE MAP OF AN ACTUAL SURVEY  
DATE: 4/21/12  
SCALE: 1"=20'  
REVISED: 4/26/16  
GLEN A. MIHAL, L.S. #04865  
4823 WOOD HILL DRIVE, SYRACUSE, NEW YORK 13215

**25**

**GENERAL CERTIFICATE OF THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

This certificate is made in connection with the execution by the City of Syracuse Industrial Development Agency (the "**Agency**") of the Company Lease, the Agency Lease, the Mortgage and any other document now or hereafter executed by the Agency (collectively, the "**Agency Documents**") with respect to a project (the "**Project**") undertaken at the request of Bradford & Euclid, LLC (the "**Company**") consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "**Existing Building**") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "**Land**"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property taxes, State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of October 1, 2016 (the "**Agency Lease**"), between the Agency and the Company, and shall have the meanings ascribed to such terms in the Agency Lease except that, for purposes of this certificate, (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date, and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

I, the undersigned Chairman of the Agency, Do Hereby Certify:

1. I am an officer of the Agency and am duly authorized to execute and deliver this certificate in the name of the Agency.

2. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**") and Chapter 641 of the Laws of 1979 of the State (said Chapter with the Enabling Act, the "**Act**") (a certified copy of Chapter 641 of the Laws of 1979 of the State is attached hereto as **Exhibit "A"**), and it is a corporate governmental agency constituting a public benefit corporation of the State.

3. The Act empowers the Agency, among other things, to acquire, construct reconstruct, lease, improve, maintain, equip, sell and dispose of land and any building or other improvement, and all real and personal property, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the City of Syracuse and the State and to improve their standard of living. The Act further authorizes the Agency to lease any and all of its facilities on such terms and conditions as it deems advisable, to acquire, construct, lease, improve, and equip one or more projects as defined in the Act, to mortgage any or all of its facilities and to pledge the revenues and receipts from the sale or transfer of its facilities.

4. The Agency has full legal power and authority to own its property, conduct its business and execute, deliver, and perform its obligations under the Agency Documents and has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations, and no legislation has been enacted affecting the powers or authority of the Agency to execute and deliver the Agency Documents, affecting the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the members and officers of the Agency to their respective offices.

5. Pursuant to the Act, the governing body of the City of Syracuse, New York, for whose benefit the Agency was established, duly filed or caused to be filed within six (6) months after the effective date of Chapter 641 of the Laws of 1979 of the State in the office of the Secretary of State of the State the Certificate of Establishment of the Agency pursuant to Section 926 of the New York General Municipal Law. The Certificate of Establishment of the Agency described in the preceding sentence also named the members and officers of the Agency as appointed by the Mayor of the City of Syracuse. Attached hereto as **Exhibit "B"** are certified copies of said Certificates of Establishment and copies of the Certificates of Appointment relating to all of the current members of the Agency, who are:

William M. Ryan	Chairman
M. Catherine Richardson	Vice Chairman
Steven Thompson	Secretary
Donald Schoenwald	Treasurer
Kenneth Kinsey	Member

6. Attached hereto as **Exhibit "C"** is a true, correct, and complete copy of the by-laws of the Agency, together with all amendments thereto or modifications thereof; and said by-laws as so amended and modified are in full force and effect in accordance with their terms as of the date of this certificate.

7. That a resolution determining that the acquisition, construction and equipping of the Project constitutes a Project and describing the financial assistance in connection therewith

and authorizing a public hearing (the “**Public Hearing Resolution**”) was adopted by the Agency on December 15, 2015 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Public Hearing Resolution is attached hereto at **Exhibit “D.”**

8. Attached hereto as **Exhibit “E”** is proof of publication of a notice of the public hearing with respect to the Project (the “**Public Hearing Notice**”), required pursuant to Section 859-a of the Act and held on January 26, 2016, and proof of mailing of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on January 8, 2016.

9. That a resolution classifying the Project as an Unlisted Action pursuant to SEQRA, declaring the Agency lead agency for purposes of an uncoordinated review thereunder and determining that the Project will not have a significant effect on the environment (the “**SEQRA Resolution**”) was adopted by the Agency on January 26, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Resolution is attached hereto at **Exhibit “F.”**

10. That a resolution approving the undertaking of the acquisition, construction and equipping of the Project, appointing the Company as agent of the Agency for the purpose of the acquisition, reconstruction, renovation and equipping of the Project, and authorizing the execution and delivery of an agreement between the Agency and the Company (the “**Inducement Resolution**”) was adopted by the Agency on January 26, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Inducement Resolution is attached hereto at **Exhibit “G.”**

11. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on January 26, 2016 (the “**Final Approving Resolution**”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit “H”**.

12. That a resolution authorizing the an increase in the amount of Financial Assistance awarded to the Project by the Agency was adopted by the Agency on July 19, 2016 (the “**Approving Resolution**”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit “I”**.

13. That a resolution describing the request for additional financial assistance in connection with a project; clarifying interests; authorizing the transfer of certain membership interests; and authorizing a public hearing (the “**Second Public Hearing Resolution**”) was adopted by the Agency on September 20, 2016 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Second Public Hearing Resolution is attached hereto at **Exhibit “J.”**

14. Attached hereto as **Exhibit “K”** is proof of publication of a notice of a public hearing with respect to the Project (the “**Second Public Hearing Notice**”), required pursuant to

Section 859-a of the Act and held on October 18, 2016, and proof of mailing of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on September 29, 2016.

15. That a resolution authorizing a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with a PILOT Agreement was adopted by the Agency on October 18, 2016 (the “*PILOT Resolution*”) and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the PILOT Resolution is attached hereto at **Exhibit “L”**.

16. The execution, delivery and performance of all Agency Documents, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency, and the Agency Documents have been duly authorized, executed and delivered. The Agency Documents are in full force and effect on and as of the date hereof, and no authority or proceeding for the execution, delivery or performance of the Agency Documents has been materially amended, repealed, revoked or rescinded; and no event or circumstance has occurred or exists which constitutes, or with the giving of notice or the passage of time would constitute, a default on the part of the Agency under the Agency Documents.

17. The execution, delivery, and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each do not and will not: (a) violate the Act or the by-laws of the Agency; (b) require consent (which has not heretofore been received) under or result in a breach or default of any credit agreement, purchase agreement, indenture, deed of trust, commitment, guaranty, lease, or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected; or (c) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any government, governmental instrumentality, or court, domestic or foreign, having jurisdiction over the Agency or any of its Property.

18. The Agency has not received written notice that any event of default has occurred and is continuing, or that any event has occurred which with the lapse of time or the giving of notice or both would constitute an event of default by any party to the Agency Documents.

19. There is no action, suit, proceeding or investigation at law or in equity, before or by any court, public board or body of the United States of America or the State of New York, pending or, to the best of my knowledge, threatened against or affecting the Agency (or to my knowledge any basis therefor): (a) wherein an unfavorable decision or finding would adversely affect (i) the Inducement Resolution, the Final Approving Resolution, the Company Lease, the Agency Lease or the other Agency Documents; or (ii) the existence or organization of the Agency; or (iii) restrain or enjoin the financing, acquisition or construction of the Project or the performance by the Agency of the Agency Documents; or (b) in any manner questioning the proceedings or authority of the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the directors and officers of the Agency to their respective offices.



20. October 20, 2016 has been duly designated as the date for the Closing.

21. The Agency has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date.

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

(a) to assist the Company's acquisition, reconstruction, renovation and equipping of the Project Facility;

(b) to grant the Financial Assistance to the Company;

(c) to designate the Company as the Agency's agent for the acquisition, reconstruction, renovation and equipping of the Project Facility and to authorize the Company to appoint additional agents; and

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

23. That I did officially cause all certificates necessary for the financing and included in the Official Transcript of Closing, to be executed, as required, in the name of the Agency by the signing of each of such certificates with the signature of the (Vice) Chairman of the Agency.

24. That I did officially cause the following Agency Documents to be executed in the name of the Agency by the signing of each of such Agency Documents with the signature of the William M. Ryan, Chairman of the Agency:

(a) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

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

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

25. No member, officer or employee of the Agency having power to: (i) negotiate, prepare, authorize or approve any of the Agency Documents; (ii) audit bills or claims under any of the Agency Documents; or (iii) appoint an officer or employee who has any of the powers or duties set forth in (i) or (ii):

(a) directly or indirectly owns any stock of the Company;

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

(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

No member, officer, or employee of the Agency has publicly disclosed, in a writing included as part of the official minutes of the Agency, any Interest (as defined in Section 800.3 of the New York General Municipal Law), direct or indirect, in the Developer.

WITNESS, as of the 1<sup>st</sup> day of October, 2016.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William M. Ryan, Chairman

**EXHIBIT "A"**

**CHAPTER 641 OF THE LAWS OF 1979  
OF THE STATE OF NEW YORK**

LAWS OF NEW YORK, 1979

CHAPTER 641

AN ACT to amend the general municipal law, in relation to creating and establishing for the city of Syracuse industrial development agency and, providing for its functions and duties

Became a law July 11, 1979, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2 (b) (2) of the Constitution, by a majority vote, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The general municipal law is amended by adding a new section nine hundred twenty-six to read as follows:

§ 926. *City of Syracuse industrial development agency. (a) For the benefit of the city of Syracuse and the inhabitants thereof, an industrial development agency, to be known as the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall consist of five members who shall be appointed by the mayor of the city of Syracuse and its chairman shall be designated by such mayor. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.*

*(b) The city shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the city and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.*

§ 2. This act shall take effect immediately.

**EXHIBIT "B"**

**AGENCY'S CERTIFICATE OF ESTABLISHMENT  
AND  
CERTIFICATES OF APPOINTMENT OF CURRENT MEMBERS**

CERTIFICATE OF THE CITY OF SYRACUSE  
INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law, Lee Alexander, Mayor of the City of Syracuse, certifies as follows:

- 1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.
- 2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 18, 1979.
- 3) The names of the Chairman and the Members, respectively, of the City of Syracuse Industrial Development Agency and their terms of office are as follows:

(a)	Frank L. Canino	Chairman
	David M. Garber	Member
	David S. Michel	Member
	Erwin G. Schultz	Member
	Irwin L. Davis	Member

- (b) The term of office of the Chairman and of the Members of the City of Syracuse Industrial Development Agency is at the pleasure of the Mayor and continues until a successor is appointed and has qualified.

- 4) The facts establishing the need for the creation of a City of Syracuse Industrial Development Agency are as follows:

Expansion of its industrial-commercial base is essential to the City of Syracuse, especially in a time of mounting economic pressures. To achieve this goal of expansion, the City has designed a comprehensive economic development program, requiring an Industrial Development Agency.

The existing potential for economic development will be augmented by the financial incentives of an Industrial Development Agency. Various City agencies and departments, such as the Department of Community Development and the Office of Federal and State Aid Coordination will interface with the Syracuse Industrial Development Agency to strengthen the business and industrial climate of the community.

Access to the Department of Community Development will make available to the Syracuse Industrial Development Agency an array of staff assistance, technical expertise, and various other development services. The City's Office of Federal and State Aid Coordination will provide assistance to it in locating, analyzing, and obtaining various forms of federal and state assistance and participation.

STATE OF NEW YORK  
DEPARTMENT OF STATE


FILED JUL 20 1979

*Bill Paterson*

Secretary of State


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

July 20, 1979

  
Lee Alexander  
Mayor

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 20 1979

  
Secretary of State



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CITY OF SYRACUSE  
DEPARTMENT OF LAW  
OFFICE OF THE MAYOR

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DEPARTMENT OF STATE

**Stephanie A. Miner, Mayor**

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

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

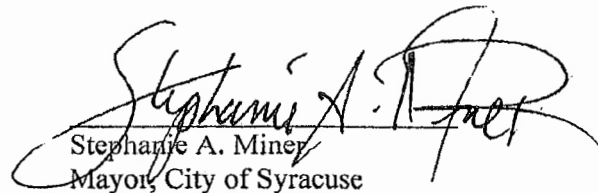
Mr. William Ryan - Member/Chairman

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

Mr. Irwin Davis -Member/Chairman

No Member or Officer of the City of Syracuse Industrial development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 15, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse



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OFFICE OF THE MAYOR

DEPARTMENT OF STATE

Stephanie A. Miner

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

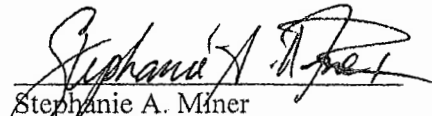
Pursuant to Article 18-A of the General Municipal Law of the State of New York,  
Stephanie A. Miner, Mayor of the City of Syracuse, hereby certifies the appointment of  
the following person as a ~~Member~~ <sup>AN OFFICER</sup> of the City of Syracuse Industrial Development  
Agency:

M. Catherine Richardson

- Member/Vice Chair

No Member or Officer of the City of Syracuse Industrial development Agency shall  
receive any compensation for the discharge of their duties as Member or Officer of the  
Agency, but shall be entitled to necessary expenses incurred in the discharge of their  
duties as such Member or Officer.

The appointment herein set forth shall be effective as of February 12, 2010.

  
Stephanie A. Miner  
Mayor, City of Syracuse



OFFICE OF THE MAYOR

Stephanie A. Miner, Mayor

CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

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

Mr. Donald Schoenwald

- Member

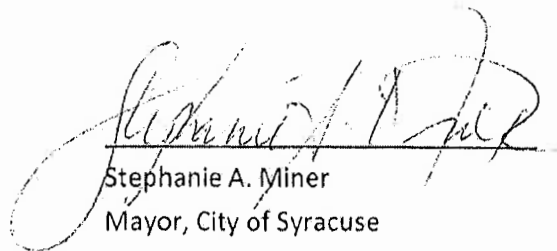
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. Kenneth Mokrzycki

- Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of March 1, 2011.



Stephanie A. Miner  
Mayor, City of Syracuse



**OFFICE OF THE MAYOR**

**Stephanie A. Miner, Mayor**

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

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

Mr. Steve Thompson

- Member/Secretary

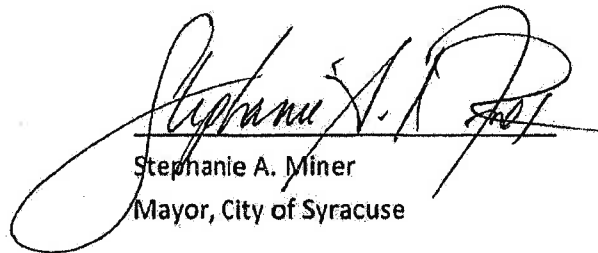
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Mr. John Gamage

- Member/Secretary

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 6, 2014.



Stephanie A. Miner  
Mayor, City of Syracuse



**OFFICE OF THE MAYOR**

**Stephanie A. Miner, Mayor**

**CERTIFICATE OF APPOINTMENT TO THE  
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

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

Mr. Kenneth Kinsey

- Member

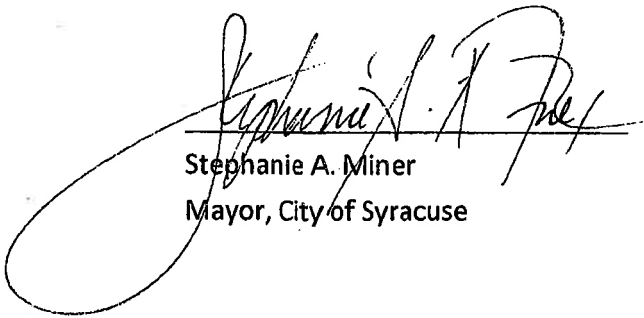
The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency:

Ms. Pamela Hunter

- Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 13, 2016.

  
Stephanie A. Miner  
Mayor, City of Syracuse

**EXHIBIT "C"**

**AGENCY'S BY-LAWS**

**BY-LAWS OF  
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY  
(as amended August 18, 2009)**

**Article I**

**THE AGENCY**

Section 1. Name

The name of the agency shall be "City of Syracuse Industrial Development Agency", and it shall be referred to in these by-laws as the Agency.

Section 2. Seal

The seal of the Agency shall be in such form as may be determined by the members of the Agency.

Section 3. Office

The principal office of the Agency shall be located in the City of Syracuse, New York, County of Onondaga, and State of New York. The Agency may have such other offices at such other places as the members of the Agency may, from time to time, designate by resolution.

**Article II**

**MEMBERS**

Section 1. Members

(a) There shall be five members of the Agency. All references in these by-laws to members shall be references to Members of the Agency. The persons designated in the certificates of appointment filed in the office of the Secretary of State as members of the Agency and their successors in office and such other persons as may, from time to time, be appointed as

Members of the Agency by the Mayor of the City of Syracuse, or by special act of the Legislature, shall constitute all the members.

(b) Members shall hold office at the pleasure of the Mayor and shall continue to hold office until his or her successor is appointed and has qualified. The Mayor may remove any Member at his discretion, with or without cause.

(c) Upon the resignation or removal of a Member, a successor shall be selected by the Mayor.

(d) Members may resign at any time by giving written notice to the Mayor and to the Chairman of the Agency. Unless otherwise specified in the notice the resignation shall take effect upon receipt of the notice by the Chairman or the Mayor. Acceptance of the resignation shall not be necessary to make it effective.

## Section 2. Meeting of the Members

(a) The Annual Meeting of the members shall be held on such date or dates as shall be fixed, from time to time, by the Members of the Agency. The first Annual Meeting of Members shall be held on a date within twelve (12) months after the filing of the Certificate of the Agency with the Secretary of State as required by General Municipal Law §856 (l) (a). Each successive Annual Meeting of Members shall be held on a date not more than twelve (12) months following the preceding Annual Meeting of Members.

(b) Regular meetings of the Agency may be held at such time and place as, from time to time, may be determined by the Members.

(c) Upon the written request of the Mayor, the Chairman or two (2) Members of the Agency, the Chairman of the Agency shall call a special meeting of the Members. Special meetings may be held on such date or dates as may be fixed in the call for such special meetings.



The call for a special meeting may be personally delivered to each Member of the Agency or may be mailed to the business or home address of such Member. A waiver of notice may be signed by any Member failing to receive a proper notice.

Section 3. Procedure at Meetings of Members

(a) The Chairman shall preside over the meetings of the Agency. In the absence of the Chairman, the Vice-Chairman shall preside. In the absence of both the Chairman and Vice-Chairman, any Member directed by the Chairman may preside.

(b) At all meetings of Members, a majority of the Members of the Agency shall constitute a quorum for the purpose of transacting business. If less than a quorum is present for any meeting, the Members then present may adjourn the meeting to such other time or until a quorum is present. Except to the extent provided for by law, all actions shall be by a majority of the votes cast, provided that the majority of the votes cast shall be at least equal to a quorum.

(c) When determined by the Agency that a matter pending before it is confidential in nature, it may, upon motion, establish an executive session and exclude any non-member from such session.

(d) Order of business

At all meetings of the Agency, the following shall be the order of business:

- (1) Roll Call;
- (2) Proof of Notice of Meeting;
- (3) Reading and approval of the minutes of the previous meeting;
- (4) bills and communications;
- (5) Report of the Treasurer;
- (6) Reports of Committees;

- (7) Unfinished business;
- (8) New business;
- (9) Adjournment.

The order of business may be altered or suspended at any meeting by the Members of the Agency.

(e) All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

### Article III

#### OFFICERS AND PERSONNEL

##### Section 1. Officers

The officers of the Agency shall be Chairman or Co-Chairman, Vice-Chairman, Secretary and Treasurer and such other offices as may be prescribed, from time to time, by the Agency. The Chairman or Co-Chairman and other officers shall be appointed by the Mayor of the City of Syracuse and may be removed with or without cause at his discretion. Each officer shall be a Member of the Agency during his or her term of office.

##### Section 2. Chairman or Co-Chairmen

The Chairman shall be chief executive officer of the Agency, and shall serve as an ex officio member of all duly constituted committees, shall supervise the general management and the affairs of the Agency, and shall carry out the orders and resolutions of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall execute (manually and by facsimile signature) all agreements, contracts, deeds, bonds, notes or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency. The Mayor may from time to time appoint two Co-Chairmen in place of the Chairman. During their term of office the Co-

Chairmen shall share equally the duties, rights, powers and responsibilities of the Chairman. The action of either Co-Chairman or execution (manually or by facsimile signature) by either Co-Chairman of any agreement, contract, deed, bond, note or other evidence of indebtedness or any other instrument of the Agency on behalf of the Agency shall have the same force and effect as such action or execution by the Chairman.

Section 3. Vice-Chairman

The Vice-Chairman shall have all the powers and functions of the Chairman or Co-Chairmen in the absence or disability of the Chairman or Co-Chairmen, as the case may be. The Vice-Chairman shall perform such other duties as the Members of the Agency shall prescribe or as delegated by the Chairman or Co-Chairmen.

Section 4. Secretary

The Secretary shall keep the minutes of the Agency, shall have the custody of the seal of the Agency and shall affix and attest the same to documents when duly authorized by the Agency, shall attest to the giving or serving of all notices of the Agency, shall have charge of such books and papers as the Members of the Agency may order, shall attest to such correspondence as may be assigned, and shall perform all the duties incidental to his office.

Section 5. Treasurer

The Treasurer shall have the care and custody of all the funds and securities of the Agency, shall deposit such funds in the name of the Agency, in such bank or trust company as the members of the Agency may elect, shall sign such instrument as may require the Treasurer's signature, but only with the approval of the Chairman or Co-Chairman, as the case may be, shall at all reasonable times exhibit the books and accounts of the Agency to the Mayor or any Member of

the Agency, and at the end of each fiscal year shall present an annual report setting forth in full the financial condition of the Agency.

Section 6. Additional Personnel

The Agency, with the consent of the Mayor, may appoint an Administrative or Executive Director to supervise the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Agency may, from time to time, employ such other personnel as it deems necessary to execute its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act (General Municipal Law, Article 18-A), as amended, and all other laws of the State of New York applicable thereto.

Section 7. Compensation of Chairman, Co-Chairmen, Members, Officers, and Other Personnel

The Chairman, Co-Chairmen, Members and Officers shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The compensation of other personnel, including the Administrative Director, shall be determined by the Members of the Agency.

Article IV

AMENDMENTS

Section 1. Amendments to By-Laws

These by-laws may be amended or revised, from time to time, by a two-third (2/3) vote of the Agency, but no such amendment or revision shall be adopted unless written notice of the proposed action shall have been given by mail to each Member and the Mayor at least ten (10) days prior to the date of the meeting at which it is proposed that such action be taken; provided, however,

that this provision and other provisions relating to the appointment, renewal and terms of office of Members and officers may be amended only with the prior written approval of the Mayor.

## Article V

### MISCELLANEOUS

#### Section 1. Sureties and Bonds

In case the Agency shall so require, any officer, employee or agent of the Agency shall execute to the Agency a bond in such sum and with such surety or sureties as the Agency may direct, conditioned upon the faithful performance of his or her duties to the Agency and including responsibility for negligence and for the accounting for all property, funds or securities of the Agency which may come into the hands of the officer, employee or agent.

#### Section 2. Indemnification

(a) Upon compliance by a Member or Officer of the Agency (including a former Member or Officer, the estate of a Member or Officer or a judicially appointed personal representative thereof) (referred to in this Section 2 collectively as "Member") with the provisions of subdivision (i) of this Section 2, the Agency shall provide for the defense of the Member in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Member was acting within the scope of the public employment or duties of such Member. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Agency.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the Member shall be entitled to be represented by private counsel of the Member's choice in any civil action or proceeding whenever the chief legal officer of the Agency or other counsel designated by the

Agency determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the Member is entitled to be represented by counsel of the Member's choice, provided, however, that the chief legal officer or other counsel designated by the Agency may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Members be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of a majority of the Members of the Agency eligible to vote thereon.

(c) Any dispute with respect to representation of multiple Members by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the Member delivers process and a written request for a defense to the Agency under subdivision (i) of this Section 2, the Agency shall take the necessary steps on behalf of the Member to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The Agency shall indemnify and save harmless its Members in the amount of any judgment obtained against such Members in a State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the Member was acting within the scope of the Member's public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by a majority of the Members of the Agency eligible to vote thereon.

(f) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this Section 2 shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Member seeking indemnification.

(g) Nothing in this subdivision shall authorize the Agency to indemnify or save harmless any Member with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Agency shall indemnify and save harmless its Members in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that the Member, acting within the scope of the Member's public employment or duties, has, without willfulness or intent on the Member's part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State or of the United States.

(h) Upon entry of a final judgment against the Member, or upon the settlement of the claim, the Member shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Chairman and the chief administrative officer of the Agency; and if not inconsistent with the provisions of this Section 2, the amount of such judgment or settlement shall be paid by the Agency.

(i) The duty to defend or indemnify and save harmless prescribed by this Section 2 shall be conditioned upon: (i) delivery by the Member to the Chairman of the Agency and the chief legal officer of the Agency or to its chief administrative officer of a written request to provide for such Member's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Member is served with such document, and (ii) the full cooperation of the Member in the defense of such action or

proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

(j) The benefits of this Section shall inure only to Members as defined in subdivision (a) of this Section 2 and shall not enlarge or diminish the rights of any other party.

(k) This Section 2 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section 10 of the Court of Claims Act, Section 880 of the General Municipal Law, or any other provision of law.

(l) The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State, or authorized by law to transact business in the State, against any liability imposed by the provisions of this Section 2, or to act as a self-insurer with respect thereto. The provisions of this Section 2 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) All payments made under the terms of this Section 2, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

(n) Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any Member of the Agency by, in accordance with, or by reason of, any other provision of State or Federal statutory or common law. The benefits under this Section 2 shall supplement, and be available in addition to, defense or indemnification protection conferred by any law or enactment. This Section 2 is intended to confer upon Members of the Agency all of the benefits of Section 18 of the Public Officers Law



and to impose upon the Agency liability for costs incurred under the provisions hereof and thereof.

Section 3. Fiscal Year

The fiscal year of the Agency shall be fixed by the Members, subject to the applicable law.

Section 4. Powers of the Agency

The Agency shall have all the powers of an Industrial Development Agency authorized by Article 18-A of the General Municipal Law and shall have the power to do all things necessary or convenient to carry out its purposes and exercise the powers authorized herein.

**EXHIBIT "D"**

**PUBLIC HEARING RESOLUTION**

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on December 15, 2015, at 8:30 o'clock a.m. in the City/County Economic Development Office, Suite 130, Washington Station, 333 West Washington Street, Syracuse, New York.

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

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

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff: Ben Walsh, Susan R. Katzoff, Esq., Thomas Babilon, Esq., Judith DeLaney, Debbie Ramsey-Burns, Theodore A. Trespasz, Jr., Esq.; Others present: Walt Dixie, Vince Raymond, Sharon Owens, Larry Losty, Matthew Paulus, Bill Marquardt

The following resolution was offered by M. Catherine Richardson and seconded by Steven Thompson:

### **RESOLUTION DETERMINING THAT THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF A COMMERCIAL FACILITY AT THE REQUEST OF THE COMPANY CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE IN CONNECTION THEREWITH; AND AUTHORIZING A PUBLIC HEARING**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant "financial assistance" (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more "projects" (as defined in the Act); and

**WHEREAS**, by application dated December 1, 2015 (the "**Application**"), Bradford & Euclid, 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 2.70

acres of real property improved by an existing approximately 208,082 square foot building (the “**Existing Building**”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “**Land**”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as said quoted term is defined in SEQRA) to be taken by the Agency and the approval of the Project constitutes such an action; and

**WHEREAS**, the Agency has not yet made a determination under SEQRA; and

**WHEREAS**, the Agency has not approved undertaking the Project or granting the Financial Assistance; and

**WHEREAS**, the grant of Financial Assistance to the Project is subject to, among other things, the Agency finding after a public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State.

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

(1) Based upon the representations made by the Company to the Agency, the Agency makes the following findings and determinations:

(A) The Project constitutes a “project” within the meaning of the Act; and

(B) The Financial Assistance contemplated with respect to the Project consists of assistance in the form of exemptions from State and local sales and use taxation and mortgage recording tax.

(2) The Agency hereby directs that pursuant to Section 859-a of the Act, a public hearing with respect to the Project and Financial Assistance shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

(3) The Secretary or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Donald Schoenwald	X	
Steven Thompson	X	

The foregoing Resolution was thereupon declared duly adopted.

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

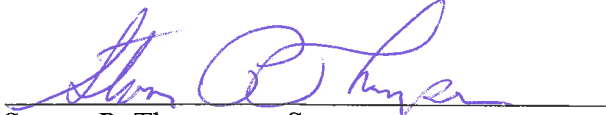
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on December 15, 2015, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 20 day of January 2016.

City of Syracuse Industrial Development Agency

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

(S E A L)

**EXHIBIT "E"**

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES  
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS  
859-a OF THE ACT**

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 26<sup>th</sup> day of January, 2016, at 9:00 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Bradford & Euclid, LLC, or an entity to be formed (the "Company"), has requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "Existing Building") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "Land"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: January 8, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY



# The Post-Standard

LEGAL AFFIDAVIT

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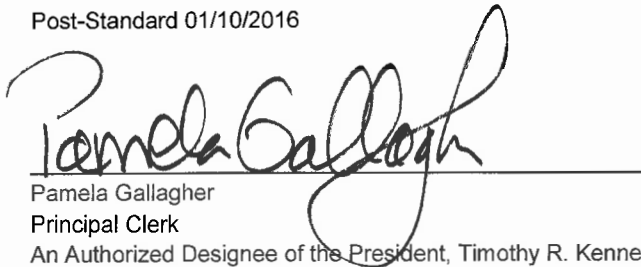
Account Number: 1056027

INV#: 0007537061

Date	Position	Description	P.O. Number	Ad Size
01/10/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	9999999/Bradford	1 x 122.00 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 01/10/2016



Pamela Gallagher

Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy

Subscribed and sworn to before me, this 11th day of January 2016



NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT

**KAREN M. MILLER BIALCZAK**  
Notary Public- State of New York  
No. 01M16334505  
Qualified in Onondaga County  
My Commission Expires: 12/21/19

Date	Position	Description	P.O. Number	Ad Size
01/10/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	9999999/Bradford	1 x 122.00 CL

**NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN** that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 26th day of January, 2016, at 9:00 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: Bradford & Euclid, LLC, or an entity to be formed (the "Company"), has requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "Existing Building") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "Land"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the 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"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the

Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement. The Company shall be the initial owner or operator of the Project Facility. The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York. Dated: January 8, 2016 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

BARCLAY DAMON LLP

Susan R. Katzoff

Partner

January 8, 2016

VIA CERTIFIED MAIL

7015 0640 0003 3543 9844

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

VIA CERTIFIED MAIL

7015 0640 0003 3543 9851

Honorable Joanne M. Mahoney  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency (the "*Agency*")  
Bradford & Euclid, LLC (the "*Company*")  
Bradford & Euclid, LLC Project

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the "*Project*") consists of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "*Existing Building*") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "*Land*"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "*Facility*"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a

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skatzoff@barclaydamon.com Direct: 315.425.2880 Fax: 315.425.8597

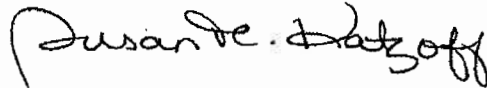
Honorable Stephanie A. Miner  
Honorable Joanne M. Mahoney  
January 8, 2016  
Page 3

sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)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 **January 26, 2016** at 9:00 a.m. in the Common Council Chambers at City Hall.

Very truly yours,



Susan R. Katzoff

SRK/llm  
Enclosure

cc: Thomas Babilon, Esq., City of Syracuse, via email (w/Enclosure)  
Ben Walsh, City of Syracuse Industrial Development Agency, via email (w/Enclosure)  
Judy DeLaney, City of Syracuse Industrial Development Agency, via email (w/Enclosure)

## NOTICE OF PUBLIC HEARING

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The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.


A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: January 8, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
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<b>2. Article Number (Transfer from service label)</b> 7015 0640 0003 3543 9844	<b>D. Is delivery address different from item 1? <input type="checkbox"/> Yes</b> <b>If YES, enter delivery address below: <input checked="" type="checkbox"/> No</b>	
 9590 9403 0673 5196 5371 91	<b>3. Service Type</b> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
PS Form 3811, April 2015 PSN 7530-02-000-9053	<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	

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SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<b>A. Signature</b> <i>x Dana Pango</i>	<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
<b>1. Article Addressed to:</b> Honorable Joanne M. Mahoney County Executive, Onondaga County John Mulroy Civic Center, 14 <sup>th</sup> Floor 421 Montgomery Street Syracuse, New York 13202	<b>B. Received by (Printed Name)</b> <i>Dana Pango</i>	<b>C. Date of Delivery</b> JAN 11 2016
<b>2. Article Number (Transfer from service label)</b> 7015 0640 0003 3543 9851	<b>D. Is delivery address different from item 1? <input type="checkbox"/> Yes</b> <b>If YES, enter delivery address below: <input type="checkbox"/> No</b>	
 9590 9403 0673 5196 5371 77	<b>3. Service Type</b> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
PS Form 3811, April 2015 PSN 7530-02-000-9053	<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	

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Adult Signature Restricted Delivery \$ \_\_\_\_\_

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**EXHIBIT "F"**

**SEQRA RESOLUTION**

## SEQRA RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on January 26, 2016 at 9:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

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

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Donald Schoenwald, Esq., Steven Thompson, Kenneth Kinsey

The following persons were **ALSO PRESENT:** **Staff present:** Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; **Others Present:** Sharon Owens, Larry Losty, Matthew Paulus, Timothy Lynn, Esq., Richard Puchalski, Aggie Lane, James Trasher, Walter Dixie, Dennis Bachman, Scott Smith, Barry Lentz, Clifford Ryan, Lionel Hoga, Joanne Stevens, Virginia DoLin, Richard Breland, Eddie Brown, Gwen Chaffin, Delores Perry, Anna Morris, Reggie Seigler, Ken Boy, Twiggy Billue

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

**RESOLUTION CLASSIFYING A PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, Bradford & Euclid, LLC, a Delaware limited liability company, or an entity to be formed (the "**Company**"), by application dated December 1, 2015 (the "**Application**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately



208,082 square foot building (the “**Existing Building**”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “**Land**”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as defined by SEQRA) to be taken by the Agency and the Project constitutes such an action; and

**WHEREAS**, to aid the Agency in determining whether the action described above may have a significant adverse impact upon the environment, the Company prepared an Environmental Assessment Form (the “**EAF**”), a copy of which is on file at the office of the Agency; and

**WHEREAS**, the Agency has examined and reviewed the EAF in order to classify the action and make a determination as to the potential significance of the action pursuant to SEQRA; and

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

(1) Based upon an examination of the EAF, the criteria contained in 6 NYCRR §617.7(c), and based further upon the Agency’s knowledge of the action and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations pursuant to SEQRA:

(a) The action constitutes an “Unlisted Action” (as said quoted term is defined in SEQRA);

(b) The Agency declares itself “Lead Agency” (as said quoted term is defined in SEQRA) with respect to an uncoordinated review pursuant to SEQRA;

(c) The action will not have a significant effect on the environment, and the Agency hereby issues a negative declaration pursuant to SEQRA, attached hereto as ***Exhibit A***, which shall be filed in the office of the Agency in a file that is readily accessible to the public.

(2) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(3) This Resolution shall take effect immediately. The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) The Agency hereby authorizes Agency staff to take all further actions deemed necessary and appropriate to fulfill the Agency's responsibilities under SEQRA.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Donald Shoenwald	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing resolution was thereupon declared duly adopted.

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

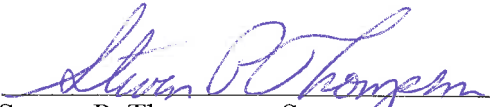
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on January 26, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 27th day of March, 2016.

City of Syracuse Industrial Development Agency

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

(S E A L)

**EXHIBIT "A"**

## Appendix C

### Short Environmental Assessment Form

(go back)

#### Instructions for Completing

**Part I - Project Information.** The applicant or project sponsor is responsible for the completion of Part I. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part I based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part I. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part I - Project and Sponsor Information</b>			
Bradford & Euclid, LLC			
Name of Action or Project: The Dietz at Leavenworth Park (mixed-used commercial development)			
Project Location (describe, and attach a location map): 225 Wilkinson Street, Syracuse, New York 13204			
Brief Description of Proposed Action: The proposed mixed-use development of the former R.E. Dietz building will result in 89 market-rate apartments, approximately 36,000 square feet of commercial square footage and onsite parking (including approximately 106 enclosed garage parking spaces) across the street from Leavenworth Park in the Park Avenue Neighborhood of Syracuse, New York.			
Name of Applicant or Sponsor: Lawrence V. Losty, Jr.		Telephone: 315-422-1076 E-Mail: melissa@syracusebusinesscenter.com	
Address: 225 Wilkinson Street			
City/PO: Syracuse		State: NY	Zip Code: 13204
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO	YES
		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: The Project will require a project site review from Zoning Administration, municipal building code review, and a municipal building permit.		NO	YES
		<input type="checkbox"/>	<input checked="" type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		_____ 2.70 acres	
b. Total acreage to be physically disturbed?		_____ N/A acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 2.70 acres	
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input checked="" type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? <b>T&amp;D</b> If the proposed action will exceed requirements, describe design features and technologies: N/A	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? <b>(IT IS THE APPLICANT'S INTENT TO BE A HISTORIC PLACE REGISTERED BY THE STATE &amp; NATIONAL LEVELS)</b>	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the proposed action located in an archeological sensitive area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? <b>T&amp;D</b> If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	

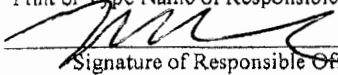
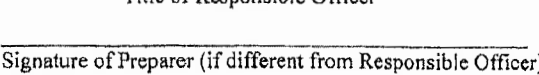
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: <u>Lawrence V. Losly, Jr.</u>		Date: <u>December 1, 2015</u>
Signature: <u><i>Lawrence V. Losly, Jr.</i></u>		

**Part 2 - Impact Assessment.** The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3.** For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input checked="" type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
<u>Syracuse Industrial Development Agency</u>	<u>1/26/16</u>
Name of Lead Agency	Date
<u>William Ryan</u>	<u>Chairman</u>
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
	
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

**PRINT**



**EXHIBIT "G"**

**INDUCEMENT RESOLUTION**

## INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on January 26, 2016 at 9:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

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

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Donald Schoenwald, Esq., Steven Thompson, Kenneth Kinsey

The following persons were **ALSO PRESENT:** **Staff present:** Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; **Others Present:** Sharon Owens, Larry Losty, Matthew Paulus, Timothy Lynn, Esq., Richard Puchalski, Aggie Lane, James Trasher, Walter Dixie, Dennis Bachman, Scott Smith, Barry Lentz, Clifford Ryan, Lionel Hoga, Joanne Stevens, Virginia DoLin, Richard Breland, Eddie Brown, Gwen Chaffin, Delores Perry, Anna Morris, Reggie Seigler, Ken Boy, Twiggy Billue

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

**RESOLUTION UNDERTAKING THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease, and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

**WHEREAS**, Bradford & Euclid, LLC, a Delaware limited liability company, or an entity to be formed (the “**Company**”), by application dated December 1, 2015 (the “**Application**”), requested the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “**Existing Building**”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “**Land**”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, the Agency adopted a resolution on December 15, 2015, describing the Project and the proposed financial assistance and authorizing a public hearing (“**Public Hearing Resolution**”); and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on January 26, 2016 pursuant to Section 859-a of the Act, notice of which was originally published on January 10, 2016, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated January 8, 2016; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the preliminary agreement of the Agency to undertake of the Project constitutes such an action; and

**WHEREAS**, to aid the Agency in determining whether the Project may have a significant impact upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (the “**EAF**”), a copy of which is on file at the office of the

Agency; and

**WHEREAS**, the Agency examined the EAF in order to classify the Project and determined that the Project constitutes an “Unlisted Action” as defined under SEQRA; and

**WHEREAS**, by resolution adopted January 26, 2016 (the “**SEQRA Resolution**”), the Agency determined that the Project will not have a significant adverse effect on the environment and issued a negative declaration; and

**WHEREAS**, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse; (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and improve their standard of living.

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

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

(A) Ratifies the findings in its Public Hearing Resolution and SEQRA Resolution;

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

(C) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to renovate and equip the Project Facility in the City of

Syracuse, and will serve the purposes of the Act by, among other things, advancing job opportunities, the standard of living and economic welfare of the inhabitants of the City of Syracuse;

(D) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(E) The Project is not primarily used in making retail sales to customers who personally visit the Facility.

**Section 3.** Subject to the terms of this Resolution and the conditions set forth in the Agreement (hereinafter defined), the Agency will: (i) acquire an interest in the Land and Facility pursuant to a lease agreement (the “*Lease*”) to be entered into between the Company and the Agency; and accept an interest in the Equipment pursuant to a bill of sale from the Company (the “*Bill of Sale*”); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the “*Sublease*” and with the Lease and the Bill of Sale, the “*Lease Documents*”) to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance; and (iv) provided that no default shall have occurred and be continuing under the Agreement (as defined herein) and provided the Company has executed and delivered all documents and certificates required by the Agency in conjunction with the Agency’s undertaking of the Project, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance or requested by the Agency, in form and substance acceptable to the Agency. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$990,000**.

**Section 4.** The Company may utilize, and is hereby authorized to appoint<sup>[1]</sup>, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, “*Additional Agents*”) to proceed with the reconstruction, renovation and equipping of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Company execute, deliver and comply with the Lease Documents. The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax

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<sup>[1]</sup> Additional Agents must be specifically appointed as an agent of the Agency in order to avail themselves of the IDA sales and use tax exemption for any and all purchases or rentals of construction materials, equipment, tools and supplies that do not become part of the Project Facility. Additional Agents who purchase construction materials, equipment and/or supplies that become part of the Project Facility need not, and will not, be specifically appointed as an agent of the Agency.

exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the “**Commissioner**”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project’s receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. for purposes of exemption from New York State (the “**State**”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**Section 5.** As a condition to the extension of State and local sales and use tax exemption benefits, and the Company’s appointment as provided herein, the Company agrees to execute an agreement with the Agency setting forth the preliminary undertakings of the Agency and the Company with respect to the Project. The form and substance of the proposed agreement (as set forth as on **Exhibit “A”** attached hereto and presented at this meeting) (the “**Agreement**”) are hereby approved. The Chairman or Vice Chairman of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, in substantially the same form as presented at this meeting and attached hereto as **Exhibit “A”**, with changes in terms and form as shall be consistent with this Resolution and as the Chairman or Vice Chairman shall approve. The execution thereof by the Chairman or Vice Chairman shall constitute conclusive evidence of such approval.

**Section 6.** Subject to the due execution and delivery by the Company of the Agreement, the satisfaction of the conditions of this Resolution and the Agreement, and the payment by the Company of any attendant fees, the Company and its designees, are appointed the true and lawful agent of the Agency to proceed with the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The appointment made by this Section 6 shall not be effective until the Agreement referred to in Section 5 hereof is duly executed and delivered by the Company and all conditions therein and herein satisfied.

**Section 7.** The Chairman and/or Vice Chairman of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution and the Agreement.

**Section 8.** The Secretary of the Agency is hereby authorized to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 9.** The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Agency's approval of the Financial Assistance and the Company's execution and delivery of, among other things, an Environmental Compliance and Indemnification Agreement in favor of the Agency in form and substance acceptable to the Agency and its counsel, in the discretion of the Chairman and/or Vice Chairman of the Agency.

**Section 10.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 11.** Should the Agency's participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 12.** Counsel to the Agency is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

**Section 13.** The Secretary of the Agency is hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 14.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Donald Shoenwald	X	
Steven Thompson	X	
Kenneth Kinsey		

The foregoing Resolution was thereupon declared duly adopted.



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

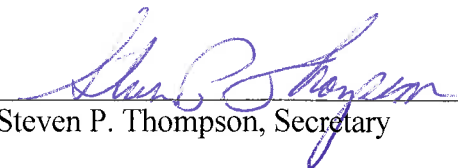
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on January 26, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 21<sup>st</sup> day of March, 2016.

City of Syracuse Industrial Development Agency

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

(S E A L)

## EXHIBIT "A"

### AGENCY/COMPANY AGREEMENT

THIS AGREEMENT is between CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY (the "*Agency*"), with an office at 333 West Washington Street, Suite 130, Syracuse, New York 13202 and BRADFORD & EUCLID, LLC (the "*Company*"), with a mailing address of 225 Wilkinson Street, Syracuse, New York 13204.

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "*Act*") to designate an agent for constructing and equipping "projects" (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

1.03. Bradford & Euclid, LLC, or an entity to be formed (the "*Company*"), by application dated December 1, 2015 (the "*Application*"), requested the Agency undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "*Existing Building*") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "*Land*"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "*Facility*"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

1.03(a). All documents necessary to effectuate the Agency's undertaking of the Project and the granting of the Financial Assistance between the Agency and the Company, including but not limited to, a company lease, an agency lease, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "**Lease Documents**".

1.04. The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency's agent for the reconstruction, renovation and equipping of the Project Facility, and the use and appointment, as necessary, by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**"): (i) will be an inducement to it to renovate and equip the Project Facility in the City of Syracuse (the "**City**"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project Facility will promote, create and/or preserve private sector jobs in the State. The Company hereby further represents to the Agency that the Project Facility is not primarily used in making retail sales to customers who personally visit the Facility.

1.05. The Agency has determined that the acquisition of a controlling interest in, and the 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.

1.06. On January 26, 2016, the Agency adopted a resolution (the "**Inducement Resolution**") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency's agent for the acquisition, 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 exceed **\$990,000**.

1.07. In the Resolution, subject to the execution of, and compliance with, this Agreement by the Company, and other conditions set forth in the Resolution and herein, the Agency appointed the Company as its agent for the purposes of reconstruction, renovation and equipping the Project Facility, entering into contracts and doing all things requisite and proper for 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 renovating and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) designation by the Company of Additional Agents for 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 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 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 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 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, 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 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, 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 the Local Access Agreement contained at Appendix I of the City of Syracuse Industrial Development Agency Financial Assistance Application and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the reconstruction, renovation and equipping of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term “*Local*” shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company’s sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, 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, reconstruction, renovation and equipping of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may utilize, and was authorized to appoint<sup>1</sup>, Additional Agents as

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<sup>1</sup> Additional Agents must be specifically appointed as an agent of the Agency in order to avail themselves of the Agency’s sales and use tax exemption for any and all purchases or rentals of construction materials, equipment, tools and supplies that do not become part of the Project Facility. Additional Agents who purchase construction materials, equipment and/or supplies that become part of the Project Facility need not, and will not, be specifically appointed as an agent of the Agency.

agents of the Agency, in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each appointed Additional Agent which provides for the assumption by the Additional Agent, for itself, certain of the obligations under this Agreement relative to the appointment, work and purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the 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; (b) the Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents, whether appointed as an agent of the Agency in accordance with Section 3.06 hereof or not, to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request, including but not limited to the Form ST-340 for itself and each Additional Agent; (c) the Company, by executing this Agreement, acknowledges and agrees to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agrees to cause all of its Additional Agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Company acknowledges that pursuant to Section 875(3) of the Act and in accordance with the Agency's policy and/or position, the Agency shall recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance (the "**Recapture Amount**") consisting of: (1) (a) that portion of the State and local sales tax exemption to which the Company was not entitled, which is in excess of the amount of the State and local sales tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State and local sales tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) The failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims or actions taken by the Agency against the Company, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder, including but not limited to, any obligations related to Additional Agents.

4.04. If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **January 26, 2017**, the provisions of this Agreement



(other than the provisions of Articles 1.04, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, 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.

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the 26<sup>th</sup> day of January, 2016.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

**BRADFORD & EUCLID, LLC**

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

**EXHIBIT "H"**

**FINAL APPROVING RESOLUTION**

## FINAL APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on January 26, 2016 at 9:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

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

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Donald Schoenwald, Esq., Steven Thompson, Kenneth Kinsey

The following persons were **ALSO PRESENT:** **Staff present:** Ben Walsh, Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Thomas Babilon, Esq., Susan Katzoff, Esq.; **Others Present:** Sharon Owens, Larry Losty, Matthew Paulus, Timothy Lynn, Esq., Richard Puchalski, Aggie Lane, James Trasher, Walter Dixie, Dennis Bachman, Scott Smith, Barry Lentz, Clifford Ryan, Lionel Hoga, Joanne Stevens, Virginia DoLin, Richard Breland, Eddie Brown, Gwen Chaffin, Delores Perry, Anna Morris, Reggie Seigler, Ken Boy, Twiggy Billue

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

### RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, Bradford & Euclid, LLC, a Delaware limited liability company, or an entity to be formed (the "**Company**"), by application dated December 1, 2015 (the "**Application**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "**Existing Building**") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "**Land**"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the

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

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on January 26, 2016 pursuant to Section 859-a of the Act, notice of which was originally published on January 10, 2016, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated January 8, 2016; and

**WHEREAS**, pursuant to Article 8 of the State Environmental Conservation Law, as amended and the regulations promulgated thereunder (collectively “*SEQRA*”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as defined by SEQRA) to be taken by the Agency and the approval of the Project and grant of Financial Assistance constitute such an action; and

**WHEREAS**, the Agency adopted a resolution on January 26, 2016 (the “*SEQRA Resolution*”) entitled:

**RESOLUTION CLASSIFYING A THE PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT**

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

**WHEREAS**, the Agency adopted a resolution on January 26, 2015 (the “*Inducement Resolution*”) entitled:

**RESOLUTION UNDERTAKING THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT; AND AUTHORIZING**

**THE EXECUTION AND DELIVERY OF AN AGREEMENT  
BETWEEN THE AGENCY AND THE COMPANY**

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

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

**Section 1.** Based upon the representations made by the Company to the Agency and after consideration of the comments received at the public hearing, if any, the Agency hereby ratifies all of its prior resolutions adopted in conjunction with the Project, including but not limited to the SEQRA Resolution, the Inducement Resolution, and all other action with respect to the Project and Financial Assistance taken by the Agency, and makes the following findings and determinations:

(a) The acquisition of a controlling interest in the Project Facility by the Agency, the granting of the Financial Assistance and the designation of the Company as the Agency's agent for completion of the Project will be an inducement to, and permit, the Company to develop and operate the Project Facility in the City of Syracuse, thus serving the public purposes of Article 18-A of the General Municipal Law of New York State by promoting and preserving the job opportunities, general prosperity, health and economic welfare of the inhabitants of the City of Syracuse (the "**City**") in furtherance of the purposes of the Act.

(b) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

(c) The commitment of the Agency to provide Financial Assistance to the Company will enable and induce the Company to reconstruct, renovate and equip the Project Facility.

(d) The acquisition, reconstruct, renovation and equipping of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the City and the granting of the Financial Assistance is a necessary component to the financing of the Project.

(e) The Project Facility constitutes a "project" within the meaning of the Act.

(f) The Project is not primarily used in making retail sales to customers who personally visit the Facility; and

(g) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

**Section 2.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by advancing job opportunities and promoting economic development.

**Section 3.** It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 4.** Subject to the conditions set forth in the resolutions previously adopted and the Agreement (as defined in the Inducement Resolution) and this and prior resolutions, the Agency will: (A) acquire a controlling interest in the Project Facility; (B) lease the Land and Facility from the Company pursuant to a lease agreement between the Agency and the Company (the “***Company Lease***”); acquire an interest in the Equipment pursuant to a bill of sale from the Company (the “***Bill of Sale***”); and sublease the Project Facility to the Company pursuant to a sublease agreement (the “***Agency Lease***”); (C) secure the Company’s borrowings with respect to the Project Facility by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Company’s lenders(s), and pledging and assigning to such lender (s) certain rights and remedies of the Agency under the sublease agreement by the execution and delivery of a Pledge and Assignment; (D) provide the approved Financial Assistance; and (E) execute and deliver any other documents necessary to effectuate the transfers contemplated by and consistent with this resolution upon the advice of counsel to the Agency.

**Section 5.** The Chairman, Vice Chairman and any authorized representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified in Section 4 of this resolution and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Section 4 of this resolution and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.

**Section 6.** The Agency’s participation in any of the documents referenced herein, or the granting of the approved Financial Assistance, is contingent upon counsel for the Agency’s review and the Chairman or Vice Chairman’s approval of, all documents requested or required by the Agency in connection with the Project Facility, as well as the Company’s execution of the Agreement (as defined in the Inducement Resolution) and all other documents

required by the Agency to effectuate the intent of this Resolution and as required in similar transactions.

**Section 7.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**Section 8.** Counsel to the Agency is hereby authorized to work with the Company and others to prepare, for submission to the Chairman and/or Vice Chairman, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

**Section 9.** The approvals provided for herein are contingent upon the Company's payment of all of the Agency's fees and costs, including but not limited to attorneys fees.

**Section 10.** The Secretary of the Agency is hereby authorized to distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 11.** Counsel to the Agency is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and to consummate the transactions contemplated by this Resolution.

**Section 12.** This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Donald Shoenwald	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.



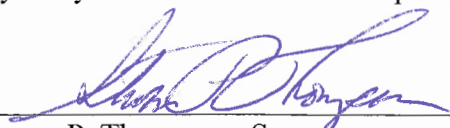
STATE OF NEW YORK            )  
                                          ) SS.:  
COUNTY OF ONONDAGA        )

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on January 26, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this XVII day of March, 2016.

City of Syracuse Industrial Development Agency  
  
\_\_\_\_\_  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "F"**  
**APPROVING RESOLUTION**

## APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on July 19, 2016 at 8:30 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

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

**PRESENT:** William Ryan, M. Catherine Richardson, Esq., Donald Schoenwald, Esq., Steven Thompson, Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others: Aggie Lane, Lionel Logan, Barry Lentz, Joe Porter, Gary Thurston, Rob Hutter, Esq., Andrew Maxwell, Matt Paulus, Sam White, Petes King, Zachary Benjamin, Thomas Schickel, Reggie Seigler; Media Present: Rick Morarity

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

### **RESOLUTION AUTHORIZING AN INCREASE IN THE AMOUNT OF FINANCIAL ASSISTANCE AWARDED BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, Bradford & Euclid, LLC, a Delaware limited liability company, or an entity to be formed (the "**Company**"), by application dated December 1, 2015 (the "**Application**"), requested that the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "**Existing Building**") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "**Land**"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site

parking, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, in its Application, the Company advised that the exemption from mortgage recording tax would be in the approximate amount of \$152,000; and

**WHEREAS**, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on January 26, 2016 pursuant to Section 859-a of the Act, notice of which was originally published on January 10, 2016, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated January 8, 2016; and

**WHEREAS**, the Agency adopted a resolution on January 26, 2016 (the “**SEQRA Resolution**”) determining that the project will not have a significant effect on the environment; and

**WHEREAS**, the Agency adopted a resolution on January 26, 2016 (the “**Inducement Resolution**”) agreeing, among other things, to undertake the Project and appoint the Company as the Agency’s Agent for purposes of equipping and completing the Project and authorizing the Financial Assistance based upon the Application; and

**WHEREAS**, the Agency adopted a resolution on January 26, 2016 (the “**Final Approving Resolution**”) authorizing, among other things, the execution and delivery of certain documents by the Agency in connection with a project undertaken at the request of the company; and

**WHEREAS**, subsequent thereto, the Company has advised that the amount of the mortgage relative to the Project has increased from approximately \$15,200,000 (as set forth in the Application) to \$19,500,000 (the “**New Mortgage Amount**”) thereby increasing the amount of the requested exemption from mortgage recording tax which formed a part of the approved Financial Assistance; and

**WHEREAS**, the Company has now requested that the Agency approve an increase in the amount of the exemption from mortgage recording tax to an approximate amount of \$195,000 to correspond to the New Mortgage Amount (the “**Additional Financial Assistance**”); and

**WHEREAS**, the Additional Financial Assistance does not exceed \$100,000 and therefore does not require the holding of a new public hearing under the Act; and

**WHEREAS**, the granting of the Additional Financial Assistance is in furtherance of the Financial Assistance that was previously approved for the Project, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act (“**SEQRA**”), and the requested Additional Financial Assistance is insubstantial and does not require reconsideration or further review by the Agency under SEQRA; 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, the Agency hereby ratifies all of its prior resolutions adopted in conjunction with the Project, including but not limited to the SEQRA Resolution, the Inducement Resolution, 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 Additional Financial Assistance does not amount to a significant change in the Project from what was originally approved by the Agency, and therefore further review under SEQRA and amendment of the Agency’s prior SEQRA negative declaration shall not be required.

(b) The commitment of the Agency to provide the Additional Financial Assistance to the Company will enable and induce the Company to reconstruct, renovate and equip the Project Facility.

(c) The Additional Financial Assistance will not exceed \$100,000.

**Section 2.** Subject to: (i) the payment by the Company of any administrative fees and/or other fees, including legal fees incurred by the Agency in connection herewith and in connection with the Additional Financial Assistance awarded hereby; and (ii) upon the advice of counsel to the Agency and review and approval of either the Chairman or Chief Executive Officer of the Agency of all necessary documents; the Agency will grant the Additional Financial Assistance and execute and deliver any documents necessary to effectuate the Additional Financial Assistance to the Project Facility contemplated by and consistent with this resolution.

**Section 3.** The Chairman, Vice Chairman and any authorized representative of the Agency, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.

**Section 4.** The Agency’s participation in any of the documents referenced herein, or the granting of the Additional Financial Assistance, is contingent upon counsel for the

Agency's review and the Chairman or Vice Chairman's approval of, all documents requested or required by the Agency in connection with the Project Facility, as well as the Company's execution of the Agreement (as defined in the Inducement Resolution) and all other documents required by the Agency to effectuate the intent of this Resolution and as required in similar transactions.

**Section 5.** 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 6.** Counsel to the Agency is hereby authorized to work with the Company and others to prepare, for submission to the Chairman and/or Vice Chairman, all documents necessary to effect the undertaking of the Project and the grant of the Additional Financial Assistance in connection with the Project.

**Section 7.** 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 8.** The Secretary of the Agency is hereby authorized to distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**Section 9.** This Resolution shall take effect immediately. A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson, Esq.	X	
Donald Schoenwald, Esq.	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

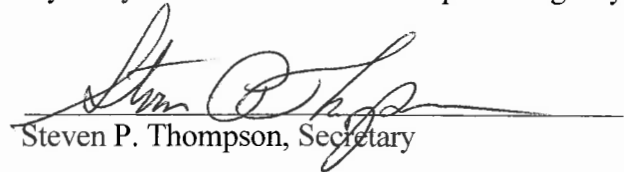
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on July 19, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 16 day of August, 2016.

City of Syracuse Industrial Development Agency

  
Steven P. Thompson, Secretary

(S E A L)

**EXHIBIT "J"**

**SECOND PUBLIC HEARING RESOLUTION**



## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on September 20, 2016, at 8:30 o'clock a.m. in the City/County Economic Development Office, Suite 130, Washington Station, 333 West Washington Street, Syracuse, New York.

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

**PRESENT:** William Ryan, Catherine Richardson, Esq., Steven Thompson, Donald Schoenwald, Esq., Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others: Aggie Lane, Joe Porter, Fred Swayze, Matthew Paulus, Larry Losty, Derek Persse; Media Present: Rick Moriarty

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

**RESOLUTION DESCRIBING THE REQUEST FOR  
ADDITIONAL FINANCIAL ASSISTANCE IN  
CONNECTION WITH A PROJECT; CLARIFYING  
INTERESTS; AUTHORIZING THE TRANSFER OF  
CERTAIN MEMBERSHIP INTERESTS; 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 December 1, 2015 (the "**Application**"), Bradford & Euclid, 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 2.70

acres of real property improved by an existing approximately 208,082 square foot building (the “**Existing Building**”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “**Land**”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, the Agency adopted a SEQRA, an Inducement and a Final Approving Resolution authorizing the Project at its January 26, 2016 meeting; and

**WHEREAS**, the Company did not request financial assistance in the form of an exemption from real property taxes in its Application; and

**WHEREAS**, the Agency and the Company have not yet closed on the lease transaction associated with the Project; and

**WHEREAS**, in light of changes in the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which became effective in June, 2016, the Company has now requested the Agency approve their request for additional financial assistance consisting of an exemption from real property taxes which comports to the Agency’s current UTEP (the “**Additional Financial Assistance**”); and

**WHEREAS**, the Company further seeks to clarify the structure of the transaction in as much as the Project involves a tax credit investor and other tax related issues which dictate the viability of the Project. The Company has advised that rather than taking fee title to the Land and the Facility (which would result in an Project breaking tax consequence), they will acquire their interest via a long-term ground lease (the “**Ground Lease**”); and to accommodate the infusion of capital by the tax credit investor and the transfer of the tax credits back to the tax credit investor, the Company must transfer certain of its membership interests to the tax credit investor and enter into a sublease with the tax credit investor (the “**Title and Membership Transfers**”); and

**WHEREAS**, the Company is hereby requesting that the Agency approve the Title and Membership Transfers in order to ensure that the Project is viable; and

**WHEREAS**, approval of and participation in the Title and Membership Transfers and the granting of the Additional Financial Assistance (both as defined herein) are in furtherance of the Financial Assistance that was previously approved for the Project, which underwent an

environmental review by the Agency pursuant to the State Environmental Quality Review Act (“*SEQRA*”), and the requested Financing Documents and Additional Financial Assistance are insubstantial and do not require reconsideration or further review by the Agency under SEQRA; and

**WHEREAS**, the grant of Additional Financial Assistance to the Project is subject to, among other things, the Agency finding after a public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State.

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

(1) Based upon the representations made by the Company to the Agency, the Agency makes the following findings and determinations:

- (A) The Additional Financial Assistance contemplated with respect to the Project consists of assistance in the form of exemptions from real property taxes; and
- (B) Approval of and participation in the Title and Membership Transfers and the granting of the Additional Financial Assistance (both as defined herein) are in furtherance of the Financial Assistance that was previously approved for the Project, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act (“*SEQRA*”), and the requested Transactional Documents (as defined herein) and Additional Financial Assistance are insubstantial and do not require reconsideration or further review by the Agency under SEQRA.
- (C) The Agency hereby approves the Title and Membership Transfers.
- (D) The Agency is authorized to: execute and deliver any and all documents and certificates necessary to effectuate the Title and Membership Transfers and to carry out the intent of this Resolution with respect thereto (collectively the “*Transactional Documents*”); and the Chairman and Vice Chairman of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Transactional Documents, upon the advice of counsel to the Agency. The execution thereof by the Chairman or Vice Chairman constitutes conclusive evidence of such approval.

(2) The Agency hereby directs that pursuant to Section 859-a of the Act, a public hearing with respect to the Additional Financial Assistance shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

(3) The Secretary or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson	X	
Donald Schoenwald	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

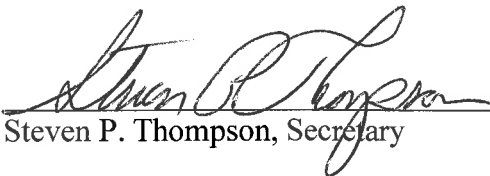
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on September 20, 2016, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this *20* day of November, 2016.

City of Syracuse Industrial Development Agency

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

(S E A L)

**EXHIBIT "K"**

**NOTICE OF SECOND PUBLIC HEARING  
WITH EVIDENCE OF PUBLICATION AND COPIES OF LETTERS  
TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS  
859-a OF THE ACT**

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 18<sup>th</sup> day of October, 2016, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Bradford & Euclid, 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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "Existing Building") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "Land"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

In addition to the Financial Assistance originally requested in its application, in light of changes in the Agency's Uniform Tax Exemption Policy ("UTEP"), which became effective in June 2016, the Company has requested certain additional financial assistance in the form of exemptions from real property taxes (the "Additional Financial Assistance").

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Additional Financial Assistance to the Company.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: September 29, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

# The Post-Standard

LEGAL AFFIDAVIT

INV#: 0007848023

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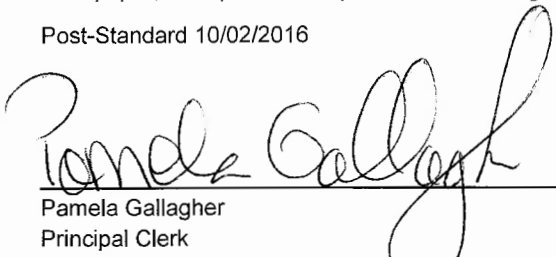
Account Number: 1056027

INV#: 0007848023

Date	Position	Description	P.O. Number	Ad Size
10/02/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that	matter #3079408	1 x 135.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 10/02/2016

  
\_\_\_\_\_  
Pamela Gallagher  
Principal Clerk  
An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 3rd day of October 2016

  
\_\_\_\_\_  
NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR Legals@Syracuse.com

HEIDI A. STEPHENS  
Notary Public - State of New York  
No. 01ST6290718  
Qualified in Onondaga County  
My Commission Expires: 10/7/2017



Date	Position	Description	P.O. Number	Ad Size
10/02/2016	Other Legals NY	NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a	matter #3079408	1 x 135.00 CL

**NOTICE** OF PUBLIC HEARING NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 18th day of October, 2016, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter: Bradford & Euclid, 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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "Existing Building") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "Land"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the 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"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the

the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement. In addition to the Financial Assistance originally requested in its application, in light of changes in the Agency's Uniform Tax Exemption Policy ("UTEPP"), which became effective in June 2016, the Company has requested certain additional financial assistance in the form of exemptions from real property taxes (the "Additional Financial Assistance"). The Company shall be the initial owner or operator of the Project Facility. The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Additional Financial Assistance to the Company. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York. Dated: September 29, 2016 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

BARCLAY DAMON<sup>LLP</sup>

Susan R. Katzoff  
Partner

September 29, 2016

VIA CERTIFIED MAIL  
7008 1300 0000 1722 3893

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

VIA CERTIFIED MAIL  
7008 1300 0000 1722 3886

Honorable Joanne M. Mahoney  
County Executive, Onondaga County  
John Mulroy Civic Center, 14<sup>th</sup> Floor  
421 Montgomery Street  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency (the "**Agency**")  
Bradford & Euclid, LLC (the "**Company**")  
Bradford & Euclid, LLC Project

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the "**Project**") consists of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "**Existing Building**") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "**Land**"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the

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

Honorable Stephanie A. Miner  
Honorable Joanne M. Mahoney  
September 29, 2016  
Page 3

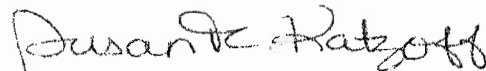
Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

In addition to the Financial Assistance originally requested in its application, in light of changes in the Agency's Uniform Tax Exemption Policy ("UTEP"), which became effective in June 2016, the Company has requested certain additional financial assistance in the form of exemptions from real property taxes (the "*Additional Financial Assistance*").

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **October 13, 2016** at 8:30 a.m. in the Common Council Chambers at City Hall.

Very truly yours,



Susan R. Katzoff

SRK/llm  
Enclosure

cc: Meghan Ryan, Esq., City of Syracuse, via email (w/Enclosure)  
Honora Spillane, City of Syracuse Industrial Development Agency, via email (w/Enclosure)  
Judy DeLaney, City of Syracuse Industrial Development Agency, via email (w/Enclosure)

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Section 859-a of the New York General Municipal Law, will be held by the City of Syracuse Industrial Development Agency (the "Agency") on the 18<sup>th</sup> day of October, 2016, at 8:30 o'clock a.m., local time, at 233 East Washington Street, Common Council Chambers, City Hall, Syracuse, New York, in connection with the following matter:

Bradford & Euclid, 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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "Existing Building") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "Land"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "Facility"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

In addition to the Financial Assistance originally requested in its application, in light of changes in the Agency's Uniform Tax Exemption Policy ("UTEP"), which became effective in June 2016, the Company has requested certain additional financial assistance in the form of exemptions from real property taxes (the "Additional Financial Assistance").

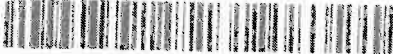
The Company shall be the initial owner or operator of the Project Facility.


The Agency will at the above-stated time and place hear all persons with views with respect to the proposed Additional Financial Assistance to the Company.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the office of the Agency located at 333 West Washington Street, Suite 130, Syracuse, New York.

Dated: September 29, 2016

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>M. Mahoney</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery            _____ 9-30-16</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes            If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>Honorable Stephanie A. Miner            Mayor, City of Syracuse            233 East Washington Street            Syracuse, New York 13202</p>  <p>9590 9402 2113 6132 5469 78</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™  <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery  <input type="checkbox"/> Insured Mail® <input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)  <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p> <p>7008 1300 0000 1722 3893</p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053	Domestic Return Receipt

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>Joanne Mahoney</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery            _____ SEP 30 2016</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes            If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>Honorable Joanne M. Mahoney            County Executive, Onondaga County            John Mulroy Civic Center, 14<sup>th</sup> Floor            421 Montgomery Street            Syracuse, New York 13202</p>  <p>9590 9402 2113 6132 5469 92</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™  <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery  <input type="checkbox"/> Insured Mail® <input type="checkbox"/> Signature Confirmation Restricted Delivery (over \$500)  <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p> <p>7008 1300 0000 1722 3886</p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053	Domestic Return Receipt

7008 1300 0000 1722 3886

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See Reverse for Instructions

7008 1300 0000 1722 3893

<p>U.S. Postal Service™  <b>CERTIFIED MAIL™ RECEIPT</b>            (Domestic Mail Only - No Insurance Coverage Provided)</p> <p>For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a></p> <p><b>OFFICIAL USE</b></p>	<p>Postage \$ _____</p> <p>Certified Fee \$ _____</p> <p>Return Receipt Fee (Endorsement Required) \$ _____</p> <p>Restricted Delivery Fee (Endorsement Required) \$ _____</p> <p>Total Postage &amp; Fees \$ _____</p> <p>Postmark Here</p>
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See Reverse for Instructions

**EXHIBIT "L"**  
**PILOT RESOLUTION**

## PILOT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on October 18, 2016 at 8:30 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

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

**PRESENT:** William Ryan, Catherine Richardson, Esq., Steven Thompson, Donald Schoenwald, Esq., Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Judith DeLaney, Meghan Ryan, Esq., Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others: Tim Lynn, Larry Losty, Matt Paulus, Joe Hucko, Alexander Marion, Elnore Davis; Media Present: Rick Moriarty

The following resolution was offered by M. Catherine Richardson and seconded by Steven Thompson:

### **RESOLUTION APPROVING AN PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A PILOT AGREEMENT**

**WHEREAS**, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and by application dated December 1, 2015 (the "**Application**"), Bradford & Euclid, 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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “**Existing Building**”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “**Land**”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 89 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement; and

**WHEREAS**, pursuant to the State Environmental Quality Review Act (“**SEQRA**”) the Agency adopted a SEQRA Resolution on January 26, 2016; and

**WHEREAS**, the Agency also adopted an Inducement and Final Approving Resolution authorizing the Project at its January 26, 2016 meeting; and

**WHEREAS**, the Company did not request financial assistance in the form of an exemption from real property taxes in its Application; and

**WHEREAS**, the Agency and the Company have not yet closed on the lease transaction associated with the Project; and

**WHEREAS**, in light of changes in the Agency’s Uniform Tax Exemption Policy (“**UTEP**”), which became effective in June, 2016, the Company has now requested the Agency approve their request for additional financial assistance consisting of an exemption from real property taxes which comports to the Agency’s current UTEP (the “**Additional Financial Assistance**”); and

**WHEREAS**, the Agency conducted a public hearing with respect to the proposed Additional Financial Assistance on October 18, 2016 pursuant to Section 859-a of the Act, notice of which was originally published on October 2, 2016, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated September 29, 2016; and

**WHEREAS**, the Agency has given due consideration to the request for Additional Financial Assistance and to representations by the Company that the proposed PILOT, as the



Additional Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse; and (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; (iii) undertaking the Project will advance job opportunities in the State and promote the general prosperity and economic welfare of the inhabitants of the City of Syracuse in furtherance of the purposes of the Act;

**WHEREAS**, approval of and participation in the Additional Financial Assistance is in furtherance of the Project, which underwent an environmental review by the Agency pursuant to SEQRA, and the requested Additional Financial Assistance and does not require reconsideration or further review by the Agency under SEQRA.

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

(1) Approval of and participation in the Additional Financial Assistance is in furtherance of the Project that was previously approved, which underwent an environmental review by the Agency pursuant to SEQRA, and the requested Additional Financial Assistance is insubstantial and does not require reconsideration or further review by the Agency under SEQRA.

(2) Based upon the representations made by the Company to the Agency, and the reasons presented by the Company in support of its request for the PILOT schedule, the Agency hereby approves the Additional Financial Assistance and the (Vice) Chairman and Secretary, acting individually, are each authorized to execute and deliver a PILOT agreement (the "**PILOT Agreement**") providing for the payment schedule attached as **Exhibit "A"** hereto, all in such form and substance as shall be substantially the same as approved by the Agency for other similar transactions and consistent with this Resolution and as approved by the Chairman or Vice Chairman of the Agency upon the advice of counsel to the Agency.

(3) The Chairman, Vice Chairman and any authorized representative of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any and all such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

(4) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or

agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(5) The Secretary and/or the Executive Director of the Agency are hereby authorized to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(6) This Resolution shall take effect immediately, but is subject to execution by the Company of a PILOT Agreement and the Agreement (as defined in the Inducement Resolution) and all other resolutions and other related documents adopted and/or approved by the Agency and/or as set forth herein.

(7) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
William Ryan	X	
M. Catherine Richardson, Esq.	X	
Donald Schoenwald, Esq.	X	
Steven Thompson	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

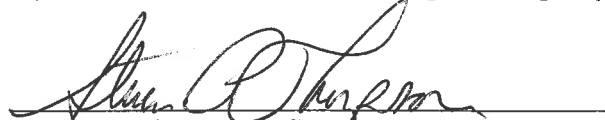
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on October 18, 2016, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

**I FURTHER CERTIFY** that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

**I FURTHER CERTIFY** that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 21<sup>st</sup> day of November, 2016.

City of Syracuse Industrial Development Agency

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

(S E A L)

**EXHIBIT "A"**

**PROPOSED PILOT SCHEDULE**

<b>Year</b>	<b>Total</b>
1	\$21,898
2	\$22,117
3	\$22,338
4	\$22,561
5	\$22,787
6	\$23,015
7	\$23,245
8	\$23,477
9	\$23,712
10	\$23,949
11	\$74,640
12	\$126,342
13	\$179,070
14	\$232,841
15	\$287,668
<b>TOTAL</b>	<b>\$1,129,660</b>

**26**

AFFIDAVIT RE: MORTGAGE TAX EXEMPTION

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

WILLIAM M. RYAN, being duly sworn, deposes and says:

He is Chairman of the City of Syracuse Industrial Development Agency (the “Agency”).

The Agency is an industrial development agency duly established under Title I of Article 18-A of the General Municipal Law of the State of New York (the “State”), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the “Act”), and it is a corporate governmental agency constituting a public benefit corporation of the State.

On or about January 26, 2016 the Agency adopted a resolution at the request of Bradford & Euclid, LLC (the “Applicant” and/or “Company”) agreeing to undertake a project (the “Project”) consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “Existing Building”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “Land”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “Facility”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “Equipment” and together with the Land and the Facility, the “Project Facility”); (B) the granting of certain financial assistance in the form of exemptions from real property taxes, State and local sales and use tax and mortgage recording tax (the “Financial Assistance”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

The Company and the Agency are mortgaging their respective interests in the improved real property described on Exhibit “A” to: The Community Preservation Corporation (the “Mortgage”), pursuant to a certain Fee and Leasehold Multifamily Construction Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated October 20, 2016 in the amount of \$18,353,308 (the “Construction Loan Mortgage”), a Fee and Leasehold Multifamily Acquisition Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated October 20, 2016 in the amount of \$640,000 (the “Acquisition Loan Mortgage”), a Fee and Leasehold Multifamily Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated October 20, 2016 in the amount of \$249,650 (the “Project Loan Mortgage” and together with the Construction Loan Mortgage and the Project Loan Mortgage, the “Mortgages”), and an Assignment of Leases and Rents dated October 20, 2016

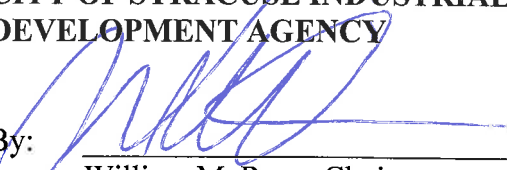
(“*Assignment of Leases and Rents*”). The Mortgages are pledged to secure notes given by the Company to the Mortgagee.

Pursuant to Article 18-A of the New York General Municipal Law, 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.


The Deponent submits that no mortgage tax should be imposed upon the Mortgages and Assignment of Leases and Rents, insomuch as the Mortgages and Assignment of Leases and Rents are being executed and delivered under the State authority creating the Agency, insomuch as the use by the Agency of its powers to secure the payment of principal and interest on the loan is deemed by Article 18-A public purpose essential to the public interest, and insomuch as both the New York State Department of Taxation and Finance and Counsel to the New York State Department of Taxation and Finance have expressed their opinion that the recording of similar documents by similar agencies organized under Article 18-A of the New York General Municipal Law are operations of said agencies entitled to exemption from the mortgage recording tax.

[Remainder of page intentionally left blank]

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

Subscribed and sworn to before me  
this 20<sup>th</sup> day of October, 2016.

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

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



EXHIBIT A  
DESCRIPTION OF LAND

Parcel I:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

Parcel II:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

The above premises are also described as follows: ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

**27**

**GENERAL CERTIFICATE OF  
BRADFORD & EUCLID, LLC**

This certificate is made in connection with the execution by Bradford & Euclid, LLC , a Delaware limited liability company (the “**Company**”) of the Company Lease, the Agency Lease, the Ground 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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “**Existing Building**”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “**Land**”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property taxes, State and local sales and use tax and mortgage recording tax (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

The Land and Facility is owned by Park Avenue Lantern Corporation (the “**Corporation**”) and the Corporation and has leased the Land and the Facility to the Company pursuant to a forty-nine (49) year ground lease dated January 1, 2016 (the “**Ground Lease**”). The Company, with the consent of Corporation, subleased, in accordance with the terms of the Ground Lease, the Land and Facility to the Agency pursuant to the Company Lease Agreement dated as of October 1, 2016 between the Company and the Agency. The Company and the Corporation have each conveyed their respective interests, if any, to the Equipment to the Agency pursuant to one or more bills of sale dated as of October 1, 2016 (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 October 1, 2016 (the “**Agency Lease**”).

The financing of the Project includes the infusion of capital by RE Dietz Building Master Tenant, LLC, a New York limited liability company, as the tax credit investor (“**TCI**”). To accommodate such structure, the Company must transfer certain of its membership interests in the Company to the TCI and transfer certain of its leasehold interests in the Project Facility to an entity controlled by the TCI (the “**Title and Membership Transfers**”).

The Company will enter into an approximately twenty-two (22) year master sublease of the Project Facility (the “**Master Lease**”) with the TCI as the master tenant (the “**Master Tenant**”). Chase Community Equity, LLC (“**Chase**”) holds ninety-nine (99%) percent of the membership interests in the Master Tenant and RE Dietz Building Master Tenant, LLC holds the remaining one (1%) percent of the membership interests in the Master Tenant. The Company will grant a ten

(10%) percent of its membership interests to the Master Tenant as the TCI.

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 Delaware State Secretary of State with proof of publication thereof attached thereto, which Articles (including any amendments) are in full force and effect on the date hereof.

2. Attached hereto as **Exhibit "B"** is a true, correct and complete copy of the Company's Operating Agreement, and any amendments thereto, and such Operating Agreement, as may have been amended, is in full force and effect on the date hereof.

3. The Company is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of Delaware State and authorized and licensed under the laws of New York State to transact business as a business corporation for the purpose of owning and operating the Project Facility in New York. Attached hereto as **Exhibit "C"** is a true and correct copy of a Certificate of Good Standing of the Company issued by the 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 Managing Member on behalf of the Company and are in full force and effect as of the date hereof. Attached hereto as **Exhibit "D"** is a true, correct and complete copy of the authorizing resolution of the Managing Member of the Company (the "**Resolution**") in respect of the execution, delivery and performance of the Company Documents.

5. The Company understands and agrees that, unless a written waiver is first obtained from the Agency, the Company and its Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term "**local**" shall mean Onondaga, Oswego, Madison, Cayuga, 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"**.

6. Attached hereto as **Exhibit "F"** is a true copy of the Ground Lease.

7. Attached hereto as **Exhibit "G"** is a true copy of the Master Lease.
8. The Company understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. The Company further understands and acknowledges that consideration will be given by the Agency to the Company's efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by the Company.
9. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Company or for the execution and delivery by the Company of the Company Documents or the consummation on the part of the Company of the transactions contemplated thereby have been obtained.
10. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting the Company or, to the knowledge of the Company, any basis therefor: (i) in any way affecting the organization, existence or good standing of the Company; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of the Company or its authority with respect to the Company Documents; (iv) contesting the authority of the Company to act on behalf of the Company or the authority of the representatives of the Company to act on behalf of the Company; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of the Company; or (B) the consummation on the part of the Company of the transactions contemplated by any Company Documents.
11. The execution and delivery by the Company of the Company Documents and the consummation by the Company of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the organizational documents of the Company; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Company is subject; or (iii) any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which the Company is a party or by which the Company or its properties is bound.
12. All information concerning the Project Facility and the Company submitted to the Agency and any Mortgagee by the Company is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.
13. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other

Company Documents are the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by the Company or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. The Company has duly authorized the taking of and has taken all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.

14. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best knowledge of the Company, conflict with any zoning or similar ordinance applicable to the Project. To the best of the Company's knowledge, the Project conforms to all material environmental regulations.

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

16. The Company Lease, the Agency Lease, the Mortgage, the Environmental Compliance and Indemnification Agreement and the other Company Documents are in full force and effect and the Company has not assigned or pledged any of its rights under these documents.

17. The Company acknowledges and restates all of the obligations, representations and covenants in Sections 2.2, 6.2, 8.12, 11.12 and 11.14 of the Agency Lease and incorporates same herein by reference as if fully set forth herein.

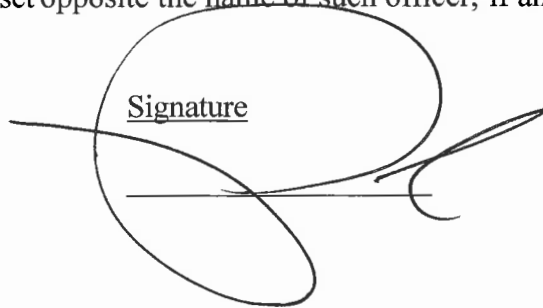
18. The Company further acknowledges its obligation under Section 8.5 of the Agency Lease to provide the additional information as set forth therein and agrees to same.

19. The authorized representatives of the Company who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

Name

Matthew R. Paulus

Signature



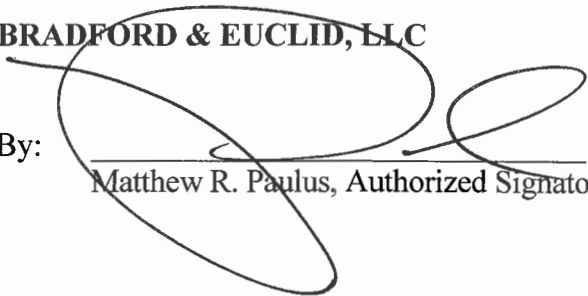
Office/Title

Authorized Signatory

**IN WITNESS WHEREOF**, I have set my hand and signature as officer of the Company as of October 1, 2016.

**BRADFORD & EUCLID, LLC**

By:

  
Matthew R. Paulus, Authorized Signatory

**EXHIBIT "A"**  
**CERTIFICATE OF FORMATION**

**See Tab #29**



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

**See Tab #29**

**EXHIBIT “C”**  
**GOOD STANDING CERTIFICATES**  
**(DELAWARE and NEW YORK)**

**State of New York  
Department of State } ss:**

I hereby certify, that BRADFORD & EUCLID, LLC a DELAWARE Limited Liability Company filed an Application for Authority pursuant to the Limited Liability Company Law on 10/15/2015. 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 BRADFORD & EUCLID, LLC was filed on 12/17/2015.

I further certify, that no other documents have been filed by such Limited Liability Company.



\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 29th day of August  
two thousand and sixteen.*

*Anthony Giardina*

Anthony Giardina  
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 "BRADFORD & EUCLID, 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 TWENTY-SECOND DAY OF AUGUST, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "BRADFORD & EUCLID, LLC" WAS FORMED ON THE SECOND DAY OF APRIL, A.D. 2015.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



  
Jeffrey W. Bullock, Secretary of State

5722363 8300

SR# 2016545529

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 202862963

Date: 08-22-16

# Delaware

Page 1

The First State

## CERTIFICATE

SEARCHED AUGUST 22, 2016 AT 10:38 A.M.  
FOR DEBTOR, BRADFORD & EUCLID, LLC

THE UNDERSIGNED FILING OFFICER HEREBY CERTIFIES THAT THERE ARE NO PRESENTLY EFFECTIVE FINANCING STATEMENTS, FEDERAL TAX LIENS OR UTILITY SECURITY INSTRUMENTS FILED IN THIS OFFICE WHICH NAME THE ABOVE DEBTOR, BRADFORD & EUCLID, LLC AS OF AUGUST 16, 2016 AT 11:59 P.M.



  
Jeffrey W. Bullock, Secretary of State

20166639257-UCC11  
SR# 20165455610

Authentication: 202863015  
Date: 08-22-16

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**EXHIBIT "D"**  
**RESOLUTION**

**See Tab #29**

**EXHIBIT "E"**  
**LOCAL ACCESS AGREEMENT**

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

**Local Access Agreement**

BRADFORD + EVCLIO, LLC (the Company) understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

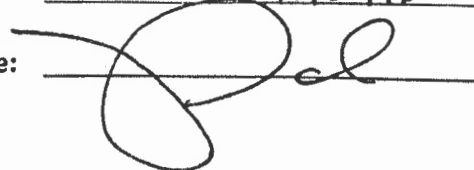
Company	BRADFORD + EVCLIO, LLC				General Contractor	HUEBER BREUER CONSTRUCTION COMPANY, INC.					
Representative for Contract Bids and Awards	MATTHEW PAULUS				Contact	CHARLES F. BREUER					
Address	225 WILKINSON ST.				Address	148 BERWYN AVENUE					
City	SYRACUSE	ST	NY	Zip	13204	City	SYRACUSE	ST	NY	Zip	13205
Phone	(315) - 416-9566		Fax	N/A		Phone	(315) - 476-7917		Fax	(315) - 476-7990	
Email	MATTHEW@PAVLUSDEVCO.COM				Email	CBREUER@HUEBER-BREUER.COM					
Project Address	225 WILKINSON ST.				Construction Start Date	10/1/16					
City	SYRACUSE	ST	NY	Zip	13204	Occupancy Date	Est. 8/1/17				

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

Item	Estimated Value	Bid Date	Contact
Site work/Demolition	1,158,366		
Foundation and footings	Incl. in Building		
Building	202,860		
Masonry	812,030		
Metals	329,010		
Wood/casework	242,120		
Thermal/moisture proof	697,250		
Doors, windows, glazing	1,735,214		
Finishes	3,444,685		
Electrical	2,180,000		
HVAC	2,025,000		
Plumbing	900,100		
Specialties	137,900		
Machinery & Equipment	545,900		
Furniture and Fixtures	585,520		
Utilities	Incl. in site work		
Paving	Incl. in site work		
Landscaping	Incl. in site work		
Other (identify) Contingency, Tenant fit out and fire Protection	1,250,269		

Date: 10/20/16

Company: BRADFORD + EVCLIO, LLC

Signature: 

Name: MATTHEW R. PAULUS



**EXHIBIT "F"**  
**GROUND LEASE**  
**See Tab #2**

**EXHIBIT "G"**  
**MASTER LEASE**

ONONDAGA COUNTY CLERK'S OFFICE  
 LISA DELL - COUNTY CLERK  
 401 Montgomery St - Room 200  
 Syracuse, NY 13202

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

Doc Type: LEASE , Receipt: 1314261 RS  
 Grantor: BRADFORD & EUCLID LLC Book/Page: 05397/0125 Inst: 37883  
 RE DIETZ BUILDING MASTER TEN Date Filed: 10/25/2016 at 11:59AM  
 Grantee: RE DIETZ BUILDING MASTER TEN Updated: 10/26/2016 AD  
 BRADFORD & EUCLID LLC Record and Return To:

Legal Desc: SYR L7-11&24-27 B429 N W & BLK ALSO **BARCLAY DAMON  
 ATTORNEY PICK UP BOX**

Prop Address: 225-303 WILKINSON ST Submitted by: FITCH

Recording Fees			Miscellaneous Fees		
Addl pages:	5 x 5.00 =	\$ 25.00	RMI:		\$ 20.00
Addl Names:	0 x 0.50 =	\$ 0.00	TP 584:		\$ 5.00
Addl Refs:	1 x 0.50 =	\$ 0.50	RP5217:		\$ 0.00
Misc:		0.00	AFFTS:		\$ 0.00
Basic:		\$25.50			
		=====			=====
<b>TOTAL:</b>		<b>\$51.00</b>	<b>TOTAL:</b>		<b>\$ 25.00</b>

MORTGAGE TAX			DEED TRANSFER TAX		
Mortgage:			Consideration		\$0.00
Basic:	\$0.00		Transfer Tax:		\$0.00
Ins Fund:	\$0.00		SWIS:		3115
Net Add:	\$0.00		Map #:		105-07-06
Misc:	\$0.00				=====
		=====	Total Paid		\$ 76.00
<b>TOTAL</b>		<b>\$0.00</b>	Control no		3680

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

LISA DELL  
 Onondaga County Clerk

Book/Page 05397 / 0125 Instrument no.: 37883



D053970125

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**BRADFORD & EUCLID, LLC**

**AND**

**RE DIETZ BUILDING MASTER TENANT, LLC**

---

**MEMORANDUM OF MASTER LEASE AGREEMENT**

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**DATED AS OF OCTOBER 20, 2016**

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**THIS DOCUMENT IS INTENDED TO CONSTITUTE A  
MEMORANDUM OF LEASE OF REAL ESTATE, AND IS  
INTENDED TO BE RECORDED IN LIEU OF SUCH LEASE,  
IN ACCORDANCE WITH THE PROVISIONS OF  
SECTION 294 OF THE NEW YORK REAL PROPERTY LAW.**

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27826

11 FEB 10/25/16 0755216 AM DB-5397P-125

## MEMORANDUM OF MASTER LEASE AGREEMENT

The undersigned, **BRADFORD & EUCLID, LLC** ("*Master Landlord*"), a Delaware limited liability company, registered and authorized to do business in the State of New York, having an office for the transaction of business located at 225 Wilkinson Street, Syracuse, New York 13204, and **RE DIETZ BUILDING MASTER TENANT, LLC** ("*Master Tenant*"), a New York limited liability company having an office for the transaction of business located at c/o Bradford & Euclid, LLC, 225 Wilkinson Street, Syracuse, New York 13204, have entered into a certain Master Lease Agreement dated as of October 20, 2016 (the "*Master Lease Agreement*").

The Master Lease Agreement covers a leasehold interest affecting the real property described on **Exhibit A** attached hereto and made a part hereof, and the improvements located thereon (the "*Premises*").

The term of the Master Lease Agreement commences on the Commencement Date, as defined in the Master Lease Agreement, and continues until the twenty second anniversary of the Commencement Date, unless sooner terminated or extended pursuant to the terms of the Master Lease Agreement.

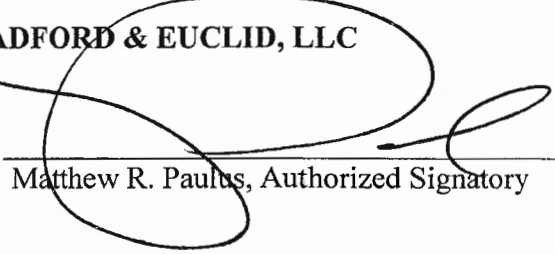
This Memorandum of Master Lease Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[There is no further text on this page. The signature and notary pages follow.]

**IN WITNESS WHEREOF**, the Master Landlord and the Master Tenant have caused this Memorandum of Master Lease Agreement to be executed in their respective names by their duly authorized officers and to be dated as of the \_\_\_ day of October, 2016.

**BRADFORD & EUCLID, LLC**

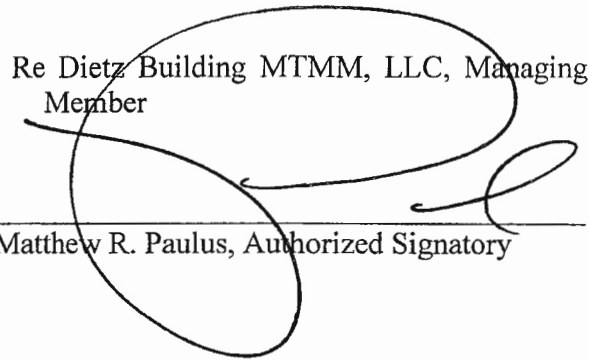
By:

  
Matthew R. Paulus, Authorized Signatory

**RE DIETZ BUILDING MASTER  
TENANT, LLC**

By: Re Dietz Building MTMM, LLC, Managing  
Member

By:

  
Matthew R. Paulus, Authorized Signatory

Signature Page to Memorandum of Master Lease

STATE OF NEW YORK )  
COUNTY OF ) SS.:

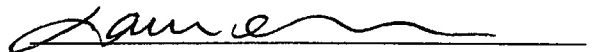
On the 18<sup>th</sup> day of October, 2016 before me, the undersigned, a Notary Public in and for the State of New York, personally appeared Matthew Paulu, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.

  
Notary Public

LAUREN ANNE PISTELL  
NOTARY PUBLIC-STATE OF NEW YORK  
NO. 01PI6178961  
QUALIFIED IN ONONDAGA COUNTY  
MY COMMISSION EXPIRES 12-17-2019

STATE OF NEW YORK )  
COUNTY OF ) SS.:

On the 18<sup>th</sup> day of October, 2016 before me, the undersigned, a Notary Public in and for the State of New York, personally appeared Matthew Paulu, 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 that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.

  
Notary Public

Lauren Anne Pistell  
Onondaga Cty. Ex: 12-17-19

EXHIBIT A  
DESCRIPTION OF LAND

Parcel I:

CM  
All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

Parcel II:

CM  
All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

CM  
The above premises are also described as follows: ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.



**MASTER LEASE AGREEMENT**  
**[Credit Pass Through Election]**

This Master Lease Agreement (this "Agreement") is made as of October 20, 2016 (the "Effective Date"), by and between the undersigned landlord ("Landlord") and the undersigned tenant ("Tenant") with reference to the following Recitals.

**Recitals**

A. Landlord has ground subleasehold interest in the Premises pursuant to the Ground Lease, subject to: (i) a lease of the Premises to Syracuse Industrial Development Agency (the "SIDA Lease Agreement") and (ii) a subleasehold interest in the Premises pursuant to a lease from Syracuse Industrial Development Agency (the "SIDA Leaseback Agreement").

B. Tenant desires to master lease, or sublease, as applicable, the Premises from Landlord.

C. The parties desire to enter into this Agreement to govern their landlord and tenant relationship regarding the Premises.

NOW, THEREFORE, in consideration of the following mutual promises and good and valuable consideration, the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

1. DEFINITIONS

All initially capitalized terms not defined herein are defined in the Tenant Operating Agreement (defined below). The following are defined terms used in this Agreement:

"Accountants" is defined in the Tenant Operating Agreement.

"Approved Plans and Specifications" means the plans and specifications for the rehabilitation of the Premises and the Improvements that have been or will hereafter be approved by Landlord and Tenant and any applicable governmental entities, as such plans and specifications may be changed with the approval of Landlord and Tenant and any applicable governmental entities, if required. No change to the Approved Plans and Specifications is authorized unless the Secretary's approval of such change has been obtained, if and to the extent such approval is required pursuant to Title 36 of the Code of Federal Regulations, Part 67.6 (or any successor provisions thereto).

"Base Lease Payment" means the rental payment due each year of the Term per the Schedule of Base Lease Payments attached as Exhibit B; provided that if the Premises are Placed in Service in multiple phases or if the final Placement in Service of the Premises is later than the date set forth in the Economic Projections, then Base Lease Payment will be reduced proportionately to reflect the portions of the Premises that have not yet been Placed in Service, based on the pro forma rent values for such portions of the Premises reflected in the Economic Projections as of the Effective Date. After the Commencement Date, at the request of either party, Landlord and Tenant agree to negotiate in good faith regarding an adjustment of the Base

Lease Payment (on a one-time basis) based on then-current market considerations, including but not limited to the financing terms available for any Permanent Loan and prevailing market leasing and subleasing rates and terms.

“Best Knowledge” means, in the case of a specified individual, such individual’s actual knowledge after making due inquiry and exercising due diligence with respect thereto. In connection therewith, the knowledge of any general partner, managing member, director, manager, executive officer or key employee of a Person, will be deemed to be the knowledge of the Person.

“Building” means the building(s) located at 225-303 Wilkinson Avenue, Syracuse, New York and commonly known as “Dietz Building,” together with all improvements located on the Land.

“Capital Replacement Reserve” means the reserve maintained by Landlord for capital repairs and replacement to the Premises in an amount determined by the Landlord.

“Certification Application” means, the Historic Preservation Certification Application provided for in Title 36 of the Code of Federal Regulations, Part 67, with respect to the Property.

“CofO Date” means the date on which all Certificates of Occupancy required to occupy all rentable space in the Building have been obtained, pursuant to evidence reasonably satisfactory to the Investor Member.

“Commencement Date” means the day before the first day on which any portion of the Rehabilitation is Placed in Service for purposes of the Historic Tax Credits under Code Section 47, as determined pursuant to the Tenant Operating Agreement. At the request of either Landlord or Tenant, the parties will enter into an amendment to this Lease confirming the Commencement Date.

“Completion Date” means the date on which the Rehabilitation of the Building has been “substantially completed” which is deemed to occur when the Tenant and Investor Member have received each of the following: (i) a certificate of completion as certified by the Architect; (ii) all necessary Certificates of Occupancy for one hundred percent (100%) of the improvements therein or such other percentage as may be agreed to by the parties; (iii) any other documentation necessary to establish Placement in Service of the QREs for purposes of Code Section 47(b); and (iv) copies of both the Part 1 Approval and Part 2 Approval received by Landlord.

“Deferrable Rent” is defined in Section 3(d).

“Development Agreement” means the Development Agreement of even date herewith between Landlord and Developer.

“Economic Projections” means the economic projections attached as Exhibit B to the Tenant Operating Agreement and prepared by the Accountants with respect to the Tenant’s operations at the Premises and the aggregate amount of Historic Tax Credits and State Tax Credits anticipated to be generated by the Rehabilitation.

"Election" is defined in Section 18(2)(a).

"Event of Default" means an event set forth in Section 14.

"Ground Lease" is defined in the Tenant Operating Agreement.

"Historic Tax Credits" means the tax credit allowable pursuant to Code Section 47 for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure."

"Impositions" means all taxes, license, and permit fees and obligations for any other governmental assessments, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including, but not limited to, assessments for sidewalks, streets, sewers, water, or any public improvements, and any other improvements or benefits which may, during the Term hereof be made, assessed, levied, or imposed upon, or become due and payable in connection with or a lien upon, the Premises, or any part thereof, or Improvements thereon, or upon this Agreement.

"Improvements" means all permanent improvements, including apartment dwelling units, retail space, appurtenant parking areas, drive in lanes, driveways and landscaped areas to be made upon the Premises, as the same has been restored and improved pursuant to the Rehabilitation.

"Investor Member" means Chase Community Equity, LLC, a Delaware limited liability company, as the investor member of the Tenant, together with its successors and assigns.

"Investor Member's Address" means:

Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
10 S. Dearborn, 19<sup>th</sup> Floor  
Mail Code: IL1-0953  
Chicago, Illinois 60603-5506  
Attention: HTC Asset Management  
Project Name: Dietz Bldg. Syracuse  
Facsimile: (312) 325-5050

And:

Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
300 South Grand Ave., 4<sup>th</sup> Floor  
Los Angeles, California 90071  
Attention: Timothy C. Karp  
Project Name: Dietz Bldg. Syracuse  
Telephone: (213) 621-8404  
Facsimile: (213) 621-8401

With copies to Investor Member's counsel:

Buchalter Nemer, a Professional Corporation  
1000 Wilshire Blvd., Suite 1500  
Los Angeles, California 90017  
Attention: C. Tyler Ohanian, Esq.  
Project Name: Dietz Bldg. Syracuse -- J0732-0016  
Telephone: (213) 891-5041  
Facsimile: (213) 630-5818

"Landlord's Address" means:

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, NY 13202  
Attention: Matthew Paulus  
Telephone: (315) 416-9566

With copies to Landlord's counsel:

Barclay Damon, LLP  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: James J. Canfield, Esq.  
Telephone: (315) 425-2763  
Facsimile: (315) 703-7378

"Landlord's Work" is defined in Section 11(a).

"Lender(s)" is defined in the Tenant Operating Agreement.

"Loan Documents" means all documents evidencing or securing any Mortgage Loan or any other indebtedness encumbering the Premises or the Landlord's interest therein.

"Material Landlord Default" means the occurrence of any of the following: (i) a Bankruptcy of Landlord or any guarantor of the Landlord's obligations under this Agreement; (ii) the Landlord's failure to comply with any provision of this Agreement relating to the payment of money, which failure is not cured within ten (10) days after Notice of such failure; (iii) Landlord's failure to comply with any material provision of this Agreement, other than those which relate to the payment of money, which failure is not cured within thirty (30) days after Notice to the Landlord; provided that no default will exist under this clause (iii) if the default is such that it cannot be cured within such thirty (30) day period and the Landlord within such thirty (30) day period commences diligently to cure such default and prosecutes such cure to completion; (iv) any Landlord representation or warranty in this Agreement is untrue in any material respect when made; provided that no default will exist under this clause (iv) if the underlying condition that caused such representation or warranty to be untrue is cured or corrected within thirty (30) days following Notice of such a default; (v) the occurrence of a

default or breach by Landlord continuing beyond any applicable cure period under any covenant or provision of an Operating Document; or (vi) any violation of Applicable Law by the Landlord which has a material adverse effect on the Tenant or the Property.

“Minimum Base Lease Payment” means for any year, an amount equal to the sum of (i) the amount of regular debt service on any loans secured by the Mortgages (excluding any amounts that are deferred or are paid from loan reserves), and (ii) the amount of Impositions that Landlord is obligated to pay under this Agreement and insurance costs that Landlord is obligated to pay under this Agreement, in each case as and to the extent due and payable for such year.

“Monthly Installment of Base Lease Payment” means one twelfth (1/12) of the applicable Base Lease Payment.

“Mortgage” is defined in the Tenant Operating Agreement.

“Mortgage Loan” is defined in the Tenant Operating Agreement.

“Net Operating Income” is defined in the Tenant Operating Agreement.

“Non-Permitted Uses” means with respect to any lease or sublease of the Premises, a use by a tenant thereunder which involves in any material respect (i) the handling, processing or storage of Hazardous Substances in more than minor quantities, (ii) the sale, display or rental of adult, erotic or similar materials which may only be sold on an age-restricted basis, or (iii) the operation of an adult, erotic or similar entertainment venue whether involving live entertainment, video or other media.

“Notice of Default” means a Notice served by Landlord to Tenant and Lender upon the occurrence of a default by Tenant in accordance with Section 14.

“Notice of Termination” means a Notice that may be served by Landlord upon Tenant upon the occurrence of an Event of Default pursuant to which Landlord elects to terminate this Agreement.

“Operating Documents” is defined in the Tenant Operating Agreement.

“Part 2 Approval” is defined in the Tenant Operating Agreement.

“Part 3 Approval” is defined in the Tenant Operating Agreement.

“Placed in Service” or “Placement in Service” means, with respect to the Premises or any phase thereof, the occurrence of the events necessary to establish placement in service of the Premises for purposes of Treasury Reg. §1.48-12(f)(2), including, if applicable, the issuance of all necessary Certificates of Occupancy.

“Premises” or “Property” means all those tracts or parcels of land owned by Landlord and the improvements thereon, which tracts or parcels of land are more particularly described on the attached Exhibit A.

“QRE” means “qualified rehabilitation expenditures” as such term is defined in Code Section 47(c)(2).

“Rehabilitation” is defined in the Tenant Operating Agreement.

“Rent” means all Base Lease Payment, Supplemental Rent and all other charges and costs hereunder payable by Tenant to Landlord under this Agreement.

“Rent Commencement Date” means the CofO Date or, if the Premises are Placed in Service in multiple phases or stages, then the CofO Date for each applicable phase or stage.

“Secretary’s Standards” means the standards for rehabilitation set forth in Title 36 of the Code of Federal Regulations, Part 67.7, or any successor provisions, as amended.

“Shortfall” is defined in Section 3(d).

“SIDA Lease Agreement” is defined in the recitals to this Agreement.

“SIDA Leaseback Agreement” is defined in the recitals to this Agreement.

“State” means the State of New York.

“State Tax Credits” is defined in the Tenant Operating Agreement.

“Subleases” means collectively, the sublease agreements for the rental of any commercial space in the Premises, each of which must be an “Approved Sublease” under the Tenant Operating Agreement and by Lender.

“Subtenant” means any subtenant under any Sublease.

“Supplemental Rent” means all sums of money or charges required to be paid by Tenant under this Agreement, other than Base Lease Payment, in an amount equal to the least of the following:

(i) forty percent (40%) of the Tenant’s gross revenue from the operation of the Premises for the year in question;

(ii) ninety percent (90%) of Net Cash Flow for the year in question; and

(iii) (a) for the calendar year 2017, an amount equal to \$130,000; and (b) for the calendar years 2018 through 2038, an amount equal to \$340,000.

The amount of Supplemental Rent in any given year will be reduced by the amount of Deferrable Rent owed by the Tenant, if any. Supplemental Rent will be payable from Net Cash Flow and the net proceeds resulting from any Capital Transaction, as set forth in the Tenant Operating Agreement. If there is insufficient Net Cash Flow and proceeds resulting from a Capital Transaction available to pay any installment of Supplemental Rent in full for any year, then any unpaid portion of Supplemental Rent will not accrue and will no longer be due and payable. Supplemental Rent will be payable on or before April 15 of the immediately following calendar

year or at such other time as the Landlord and Tenant may agree. The amount of Supplemental Rent may be reduced in connection with any permanent financing to the extent necessary as a result of lower than anticipated Net Operating Income, as reasonably required by the Tenant.

“Taking” means the acquisition by authority of any governmental authority in exercise of its power of eminent domain or by private purchase in lieu thereof.

“Tax” or “Taxes” means all liabilities, losses, expenses and costs that are, or are in the nature of, taxes, fees or other governmental charges, including interest, penalties, fines and additions to tax imposed by any governmental authority.

“Tenant Managing Member” means RE Dietz Building MTMM, LLC, a New York limited liability company, as the managing member of the Tenant.

“Tenant Operating Agreement” means the Operating Agreement of Tenant dated as of October 20, 2016.

“Tenant’s Address” means:

RE Dietz Building Master Tenant, LLC  
225 Wilkinson Street  
Syracuse, NY 13202  
Attention: Matthew Paulus  
Telephone: (315) 416-9566

With copies to Tenant’s counsel:

Barclay Damon, LLP  
125 East Jefferson Street  
Syracuse, New York 13202  
Attention: James J. Canfield, Esq.  
Telephone: (315) 425-2763  
Facsimile: (315) 703-7378

“Term” means the period commencing on the Commencement Date and ending on the earlier of: (i) December 31, 2039 or (ii) the twenty-second anniversary of the Commencement Date.

“Threshold Amount” means \$50,000.

When used herein, the singular will apply to the plural, the plural to the singular, and the use of any gender will apply to all genders.

## 2. DEMISE OF PREMISES

Landlord leases to Tenant and Tenant leases from Landlord the Premises, together with the Improvements now existing or hereafter constructed, for the Term.

### 3. RENT

(a) Base Lease Payment. Subject to Section 3(d) below, a Monthly Installment of Base Lease Payment will accrue and be due and payable beginning on the Rent Commencement Date and thereafter on the first day of each month for the Term of this Agreement, in the annual amounts set forth in Exhibit B hereof, without deduction, set-off, recoupment, counterclaim, or demand, at Landlord's Address or at such other place as will be designated in writing by Landlord. If the Term commences or ends on a day other than the first of the month, Base Lease Payment for any such partial month will be prorated on a per diem basis.

(b) Supplemental Rent. Supplemental Rent (if any) will be due and payable on an annual basis out of Net Cash Flow and the net proceeds resulting from any Capital Transaction at the times set forth for such payment under the Tenant Operating Agreement; provided, however, that if there is insufficient Net Cash Flow available to pay any installment of Supplemental Rent in full, then any unpaid portion of Supplemental Rent for any given year will not accrue and will no longer be due and payable. Supplemental Rent will be payable beginning on the Rent Commencement Date, without deduction, set-off, recoupment counterclaim or demand, at Landlord's Address or at such other place as will be designated in writing by Landlord.

(c) If any rights or obligations of Tenant hereunder (whether relating to payment of Rent or to any other provision of this Agreement) relate to a period in part before the Rent Commencement Date, or in part after the date of termination of the Term, or if the Rent Commencement Date is not the first day of a month, or if this Agreement terminates other than on the last day of a month, appropriate adjustments and pro rations will be made.

(d) Notwithstanding anything to the contrary contained herein, if the sum of Net Operating Income is insufficient to make payments of Base Lease Payment as and when due (a "Shortfall"), Tenant can defer a portion of each such Shortfall equal to the lesser of: (i) the amount of such Shortfall, and (ii) the difference between (A) the amount of Base Lease Payment then due and (B) the Minimum Base Lease Payment (such deferrable portion of the Base Lease Payment is hereinafter called "Deferrable Rent"). All amounts of Deferrable Rent will accrue interest at the Designated Prime Rate and will be repaid from Tenant's cash flow to the extent available after the payment of all current obligations under this Agreement and in accordance with the Tenant Operating Agreement. Other than Deferrable Rent, all Base Lease Payment will be paid as described in Section 3(a) and will be known as "Non-Deferrable Rent". Any Deferrable Rent is due and payable in all events no later than six (6) years after the date such Deferrable Rent was originally due and payable.

### 4. LATE PAYMENTS

If any payment of Rent will be past due for more than fifteen (15) days, Tenant must pay to Landlord as Supplemental Rent a late charge equal to the greater of (a) 3% of the unpaid Rent, or (b) the interest on the unpaid Rent from the date when due until payment at the Designated Prime Rate. The late charge imposed under this Section is not a penalty and has been agreed to by Landlord and Tenant as necessary to compensate Landlord for its additional costs associated with late payment. Notwithstanding any other provision of this Agreement to the contrary, the late payment of any Rent (other than Deferrable Rent permitted under Section 3) for a period of



more than thirty (30) days will constitute a basis for removal of the Managing Member of the Tenant in accordance with Section 8.11 of the Tenant Operating Agreement. The assertion of a claim by the Landlord pursuant to Section 14 or 16 will constitute a basis for removal of the Tenant Managing Member in accordance with Section 8.11 of the Tenant Operating Agreement.

## 5. IMPOSITIONS

(a) As part of the consideration for this Agreement, and subject to receipt from Tenant of the Minimum Base Lease Payment, Landlord must pay all Impositions when due and payable and before any penalty or late charge is due. Tenant and Landlord both must send to each other copies of any notices in respect of any such Imposition, promptly upon receipt. Landlord covenants to furnish to Tenant official receipts of the proper taxing or other governmental authorities or other proof satisfactory to Tenant, evidencing the full payment of all such Impositions.

(b) If by law any Imposition may be paid, at the option of the taxpayer, in installments (whether or not interest accrues thereon), Landlord may pay the same in installments.

(c) The provisions of this Agreement will not be deemed to require Landlord to pay any income, gift, inheritance, corporate, or capital levy or excess profits tax that may be payable by Tenant under any existing or future law of the United States or of any jurisdiction therein.

(d) Landlord has the right, if Landlord disputes the amount or validity of any Imposition upon the Premises or Improvements thereon (whether in respect of the amount of tax assessment or otherwise) to contest and defend against the same, and in good faith diligently to conduct any necessary proceedings to prevent and avoid the same; provided, however, that such contest will be prosecuted to a final conclusion as promptly as is reasonably possible and in all events in accordance with any conditions or requirements of any applicable Loan Documents; provided, further that Tenant has the right to require Landlord to dispute the amount or validity of any Imposition in accordance with the foregoing sentence. Any rebate made on account of any Imposition paid by Landlord will belong and be paid to Landlord. Tenant agrees to render Landlord all reasonable assistance in contesting the validity or amount of any Imposition, including joining in the execution of any reasonable documents, or the signing of any reasonable protests or pleadings, which Landlord may file. During any such contest, Landlord must (by payment of such disputed Imposition, if necessary) prevent any foreclosure of, or any divesting thereby, of Tenant's title or other interest in or to the Premises, and will further (by the payment of such disputed Imposition, if necessary) prevent the public sale or enforcement of any lien for such Imposition. The party proposing the dispute of the amount of Impositions will bear the costs of bringing such dispute.

(e) In the event Landlord fails to pay any Impositions costs when due, Tenant has the right to pay such Impositions and offset the payment of Rent by an amount equal to such Impositions.

## 6. INSURANCE AND CASUALTY

(a) As part of the consideration for this Agreement, and subject to receipt from Tenant of the Minimum Base Lease Payment, Landlord covenants and agrees to carry and pay all premiums and costs of the insurance required for the Premises in such types and amounts as required under the Tenant Operating Agreement in Exhibit C and in accordance with the requirements of any applicable Loan Documents (collectively "Required Insurance"). Landlord must provide Tenant with evidence of such insurance, including evidence of the placement of renewals of such insurance at least thirty (30) days before expiration of existing policies.

(b) Each insurance policy must, to the extent obtainable, contain provisions that no act or negligence of Tenant or any subtenant or occupant of the Premises, or its or their contractors or subcontractors or their agents or employees which might otherwise result in a forfeiture of such insurance or any part thereof, will in any way affect validity or enforceability of such insurance insofar as Landlord is concerned.

(c) If Landlord fails to maintain any such insurance required hereunder, Tenant may, at Tenant's election, after five (5) business days' written Notice to Landlord, procure the same, and the premium cost will be used to offset Tenant's obligation to pay Landlord any Rent, it being hereby expressly covenanted and agreed that payment by Tenant of such premium will not be deemed to waive or release the obligation of Landlord to payment thereof or any of Tenant's rights hereunder.

(d) Subject to the requirements of the Loan Documents, insurance proceeds recovered by reason of destruction of the Improvements on the Premises will be paid to Landlord and such proceeds will be used to repair and restore the Improvements so damaged to the same condition and with the same type of material and quality of construction as when the Rehabilitation was completed in order to protect and preserve the Historic Tax Credits and State Tax Credits. If the insurance proceeds are insufficient to pay for the full cost of repair and restoration of the Improvements, Landlord must deposit such shortfall within thirty (30) days of the payment of insurance proceeds by the insurance carrier, and such sum will be disbursed by Landlord following disbursement of the insurance proceeds to pay for the completion of the repair and restoration. In addition, Landlord must take all other actions necessary to satisfy any and all conditions and requirements in any Loan Documents to permit the insurance proceeds to be applied to restoration as set forth above. If the Premises are sufficiently destroyed or taken by condemnation that rebuilding or restoration will not prevent a Recapture Event in the determination of the Tenant and the Investor Member, then (i) Landlord has no right to rebuild or restore the Premises; (ii) there will be an abatement in the payment of Rent and other sums payable by Tenant under the provisions of this Agreement occurring after the date of such casualty; and (iii) Landlord acknowledges that all net casualty or condemnation proceeds will be treated as proceeds of a Capital Transaction and paid as provided in Section 11.04(a)-(f) of the Tenant Operating Agreement, with any remaining balance distributed to the Landlord. Notwithstanding anything to the contrary contained in this Agreement or the Tenant Operating Agreement, Landlord must first obtain the written approval of the Investor Member before using insurance proceeds for any purpose whatsoever.

(e) If there is a casualty of such a substantial portion of the Premises (but less than all) such that it will no longer be reasonably economical or practical because of such casualty for Tenant to continue its then business on the Premises in its reasonable judgment, Tenant has the

right, at its option, of terminating this Agreement by Notice in writing to Landlord within ninety (90) days after Notice of such casualty, and in such event this Agreement will be terminated and the Premises will revert to the Landlord.

## 7. UTILITIES

Tenant must promptly pay for, or cause each Subtenant to pay for, utilities rendered or furnished to the Premises from the date Landlord delivers possession of the Premises to Tenant and continuing throughout the Term of this Lease, including water and sewage charges, electricity, telephone, trash removal and gas. Tenant must cause all such utility charges to be billed in its name or in the name of one or more Subtenants. Landlord will not be liable for any permanent or temporary interruption of utility services nor will any of Tenant's obligations under this Lease be affected by any such interruption of utility services.

In addition to the payment of Rent, Tenant agrees to pay all costs pertaining to its operation and use of the Premises during the Term, except as otherwise set forth herein.

## 8. USE OF PREMISES

(a) Tenant agrees not to use the Premises for any Non-Permitted Use, any unlawful purpose, in violation of any Certificate of Occupancy, or for any purpose that may constitute a nuisance, public or private. Tenant must comply with all Applicable Law including, but not limited to, the Americans with Disabilities Act of 1990 (the "ADA") that may require alterations or improvements to the Premises after the completion of the Rehabilitation. Tenant agrees not to commit waste and not to suffer any dangerous article to be brought on the Premises unless safeguarded as required by law on the Premises. Tenant has the right to use the Premises for any other legal purpose. Landlord agrees to promptly provide Tenant with a copy of any notice from any governmental authorities in respect of the Premises including, without limitation, any notice pertaining to air and water quality, Hazardous Substances, waste disposal, air emissions, and other environmental matters, and any direction of any public agency that imposes any duty upon Landlord or Tenant with respect to the use or occupancy of the Premises. Tenant may, in good faith, dispute the validity of any complaint or action taken pursuant to or under color of any of the foregoing, defend against the same, and, in good faith, diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. Tenant agrees that any such contest will be prosecuted to a final conclusion as speedily as possible, and Tenant will save and hold Landlord harmless with respect to any actions taken by any governmental authorities with respect thereto.

(b) At the commencement of this Agreement, and on January 1 of each year thereafter, including January 1 of the year after the termination of this Agreement, Tenant must disclose to Landlord the names and amounts of any Hazardous Substance which is stored, used, or disposed of on the Premises, or which Tenant intends to store, use, or dispose of on the Premises, other than ordinary course and customary amounts of ordinary household cleaning supplies and materials each used in the ordinary course of business and stored and handled in compliance with Applicable Law.

(c) Notwithstanding anything herein to the contrary, Tenant's use of the Premises will be such as to comply with all requirements with respect to the Hazardous Substances and the ADA.

#### 9. MAINTENANCE AND REPAIR

Throughout the Term, Tenant must, at Tenant's sole cost and expense, keep the Premises and the Improvements in good order and condition and must make or cause to be made all necessary repairs, alterations and/or replacements thereto, interior, exterior, structural and nonstructural, reasonable wear and tear excepted. All such repairs, alterations, and replacements will be equal in quality to the original work and must comply with the Part 2 Approval, Secretary's Standards, and the Part 3 Approval. Tenant must, at Tenant's sole cost and expense, keep the sidewalks, curbs, entrances, passageways, and areas adjoining or appurtenant to the Premises in a clean and orderly condition, free of snow, ice, rubbish, and obstruction. Landlord has no responsibility whatsoever in respect of maintenance or repair, it being intended that Tenant has full responsibility for the Premises during the term of this Agreement; provided that (i) Landlord will be responsible for any defects in the Improvements made pursuant to the Rehabilitation and must use commercially reasonable efforts to enforce all warranties of contractors and suppliers to cause such defects to be corrected, (ii) substantial repairs and the replacement of capital assets will be performed and paid for by the Landlord with its own funds, including funds maintained in the Capital Replacement Reserve, as required from time to time to keep the Property in compliance with Applicable Law and in good operating condition, and (iii) Landlord must cooperate fully with Tenant, to the extent required for Tenant to perform its obligations under this Section 9. Tenant and Landlord must each promptly furnish the other with copies of all notices given to each of them by governmental authorities concerning environmental matters affecting the Premises and copies of all responses to governmental authorities. Landlord will assign to Tenant (on a non-exclusive basis with Landlord), and Tenant will have the benefit of, any warranties provided by Landlord's contractors and material suppliers with respect to construction of and materials supplied in connection with Landlord's Work.

#### 10. RIGHT TO ENTER

Landlord has access to the Premises and the Improvements with a Tenant representative at reasonable times during business hours after reasonable notice, to inspect the Premises, or to carry out the Landlord's rights under this Agreement, all subject to security requirements and legal and leasehold rights of subtenants in possession.

#### 11. CONSTRUCTION AND ALTERATION OF IMPROVEMENTS

(a) The Building comprising a portion of the Premises is a "certified historic structure" within the meaning of Code Section 47. Landlord is rehabilitating the Building in a manner intended to qualify for Historic Tax Credits and State Tax Credits and has agreed to pass the Historic Tax Credits and State Tax Credits through to Tenant in accordance with the provisions of Code Section 50(d). The nature and scope of the Rehabilitation, including certain of the Improvements, is more specifically described in the Approved Plans and Specifications. Landlord acknowledges and agrees that it is Landlord's obligation to complete the Rehabilitation

in accordance with the Approved Plans and Specifications, the Part 2 Approval, the Secretary's Standards and Applicable Law and to complete all Improvements, and all other improvements provided for in the Approved Plans and Specifications as necessary for initial occupation of the Premises and to enable the Landlord to obtain the Part 3 Approval, at Landlord's sole cost and expense, subject to any work required of or by any subtenant and approved by Landlord ("Landlord's Work"). Landlord agrees to cause Landlord's Work to be completed in a good and workmanlike manner and must remove or discharge any mechanic's and materialmen's liens in accordance with the requirements of any applicable Loan Documents and as necessary to satisfy the requirements of the Tenant Operating Agreement.

(b) Subject to the restrictions set forth in this Section 11, tenant improvements may be completed by the Tenant or any Subtenant. Subject to Section 9, Tenant may not demolish or destroy the Improvements without the prior written consent of Landlord. Tenant does not have the right to make any material changes, additions, or alterations, structural or otherwise, to the Improvements without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned, or delayed. Any such work consented to by Landlord: (i) must be completed in a good and workmanlike manner, with new first-class materials and equipment, and in accordance with all Applicable Law; (ii) without deviation or change in the plans in any material respect as approved by Landlord; and (iii) must not give rise to a Recapture Event or otherwise cause a recapture of any Historic Tax Credits or State Tax Credits. Any contract for the construction or alteration of any Improvements which exceeds the Threshold Amount in the aggregate, and any amendment thereto will be subject to the approval of Landlord, and the building contract must state that the contractor's duties and obligations thereunder and in connection with the Improvements run to the benefit of Landlord as well as Tenant.

(c) Tenant has no authority, express or implied to create or place or permit to be created or placed any lien or encumbrance, of any kind or nature whatsoever, upon or in any manner to bind the interest of Landlord in the Premises without the written consent of Landlord. Tenant covenants and agrees to pay promptly all sums legally due and payable by Tenant on account of any labor performed at the request of Tenant, or on account of any material supplied at the request of Tenant, on or to the Premises as to which any lien is or legally can be asserted against Tenant's sub-subleasehold interest in the Premises or the Improvements.

(d) Any maintenance and repair work, alterations, replacements, and additions in connection with the Improvements must be of first class quality.

(e) Tenant may not permit any tenants under any Subleases to: (i) alter the Premises in any manner which would increase Tenant's or Landlord's responsibilities for compliance with Applicable Law, without the prior written approval of Landlord, which consent may not be unreasonably withheld, conditioned or delayed; (ii) cause a default under the Loan Documents; or (iii) use the Premises for any Non-Permitted Use. The foregoing applies to tenant improvements constructed by Tenant or by any of its tenants. Landlord may condition any such approval upon receipt of a certificate from an architect, engineer or other person reasonably acceptable to Landlord that such improvements comply with Applicable Law with respect to access to the Premises and all requirements of the Historic Tax Credits and State Tax Credits.

## 12. CONDEMNATION

(a) If the Premises will be acquired by a Taking, and such Taking relates to the entire ground leasehold and/or subleasehold title to the Premises, as well as to the right, title, and interest of Tenant, the rights and obligations of the parties hereunder (except rights and obligations arising prior to such Taking and except rights and obligations provided in this Section) will terminate as of the date of such Taking. The parties hereby agree to look solely to the condemnation award for compensation in the proportions hereinafter provided for their respective interests in the Premises, and there will be an abatement in the payment of Rent and other sums payable by Tenant under the provisions of this Agreement occurring after the date of the Taking.

(b) If there will be a Taking of any portion of the Premises less than the whole, and if Section 12(c) does not apply, then the Rent will be reduced, as of the date of Taking, in the same proportion that the rentable area of the Premises so taken compares to the total rentable area of the Premises immediately prior to such Taking, and there will be equitable apportionment of the condemnation award as set forth in Section 12(c); provided, that if it is economically feasible to repair and restore the remaining Improvements to a condition that will avoid recapture of Historic Tax Credits and State Tax Credits, and unless Tenant elects to terminate this Lease as provided in Section 12(c), Landlord will be responsible for and will promptly undertake and complete the repair and restoration of the remaining Improvements, using the proceeds of the condemnation award plus such additional funds as may be required for such purpose (which Landlord will be responsible for providing), in a manner consistent with Section 6(d). Landlord must take all actions necessary to satisfy any and all conditions and requirements in any Loan Documents to permit the condemnation proceeds to be applied to repair and restoration of the remaining Improvements as set forth above.

(c) If there is a Taking of such a substantial portion of the Premises (but less than all) such that it will no longer be reasonably economical or practical because of such Taking for Tenant to continue its then business on the Premises in its reasonable judgment, Tenant has the right, at its option, of terminating this Agreement by Notice in writing to Landlord within ninety (90) days after Notice of such Taking, and in such event this Agreement will be terminated, except that there will be an equitable apportionment of the condemnation award as set forth in Section 12(c) hereof and the Premises will revert to the Landlord.

(d) Subject to the terms of any Mortgage, if there is a temporary Taking of all or part of the right to possession and use of the Premises, Tenant will be entitled to that portion of the award, to the extent that it relates to a period within the Term, and there will be no abatement or reduction in Rent.

(e) If any Taking occurs, the net condemnation award (after deduction of all expenses, including fees of attorneys, appraisers, and expert witnesses) will be paid as follows and in the following order of priority:

(i) To any Lender, the balance due on any loan secured by such Mortgage in accordance with the terms thereof;

(ii) To Landlord, a sum equal to the value of the portion of the Premises taken, valued with the Improvements, determined as if the Improvements then situated thereon were the highest and best use to which the land could lawfully be put, plus the present value of Landlord's interest in the Improvements at the end of the Term; provided, however, that the Landlord agrees that any proceeds of a condemnation award must first be paid to the Investor Member if and only to the extent of any costs and expenses resulting from a Recapture Event caused by the taking of the Premises; and

(iii) Notwithstanding anything to the contrary herein contained, Tenant will be entitled to any award in respect of moving expenses, or loss of goodwill or profit or in respect of fixtures owned by Tenant, or the cost or expense for the repair and removal of such fixtures.

(f) Tenant and Lender have the right to intervene in any condemnation.

### 13. ASSIGNMENT AND SUBLETTING

(a) Landlord may assign this Agreement or sell or assign Landlord's reversion hereunder in connection with (i) any sale of all (but not less than all) of the Landlord's interest in the Premises and/or (ii) on a collateral basis to secure any financing by Landlord permitted under this Agreement, in each case with the prior written consent of the Tenant, which consent may not be unreasonably withheld, delayed or conditioned, and which consent will be required in connection with an assignment for security purposes pursuant to the documents evidencing and securing any Mortgage. Landlord may not otherwise assign this Agreement or sell or assign Landlord's interest in the Premises, and in no event may Landlord sell or assign this Agreement or sell or assign Landlord's reversion hereunder to a Disqualified Transferee (as defined in the Tenant Operating Agreement or if such sale or assignment would cause the Premises (i) to be deemed "tax exempt use property" under Section 47(c)(2)(B)(v) of Code, or (ii) to be operated for any Non-Permitted Uses.

(b) Tenant is entitled to enter into Subleases from time to time on such terms as Tenant may determine, without the approval or consent of Landlord, provided that no Sublease may extend beyond the Term. Notwithstanding anything herein to the contrary, Tenant may not enter into any sublease of any portion of the Premises whose occupancy thereof would, singularly, or in the aggregate with other tenants or subtenants of the Premises, cause the Premises (i) to be deemed "tax exempt use property" under Section 47(c)(2)(B)(v) of Code, or (ii) to be operated for any Non-Permitted Uses. Any requirements of a Lender with respect to subleases must be satisfied by the Tenant.

(c) Landlord agrees that (i) in the event, for any reason whatsoever, this Agreement expires, terminates or is canceled during the term of any Sublease, and (ii) so long as such Subtenant is not in default under its Sublease beyond any applicable grace period provided therein for the curing of such default, the Landlord will not disturb the quiet possession of any Subtenant under its Sublease and further agrees (in such case) to enter into a non-disturbance agreement, at the request of any Subtenant, in such commercially reasonable form as any such Subtenant may request.

14. EVENTS OF DEFAULT

(a) Any of the following events constitute an "Event of Default" hereunder:

(i) Failure to pay any Rent or other amount payable by Tenant under this Agreement when due and payable and the same is not cured within twenty (20) days after Notice of Default; or

(ii) Tenant's breach of any other provisions of this Agreement; which are not cured within thirty (30) days after Notice of Default (subject to the provisions of Section 15); or

(iii) Tenant becomes Bankrupt or files for Bankruptcy; or

(iv) Tenant abandons the Premises; or

(v) Any Shortfall or any interest thereon under Section 3(d) is unpaid for more than six (6) years.

(b) For any Notice of Default to be effective, Landlord must also concurrently provide it to the Investor Member (with any cure periods commencing after the Investor Member's receipt of such Notice) and Lender.

15. CURING OF DEFAULT

If any non-monetary default for which a Notice of Default is required to be sent cannot reasonably be cured within any applicable cure periods, then, so long as Tenant has commenced the curing of such default within the period specified in Section 14 hereof, then Tenant will be entitled to as long a period to cure such default as may be required by Tenant in the exercise of due diligence in endeavoring to cure such default, provided that Tenant is diligently pursuing a cure of the default; provided that in no event will such cure period extend beyond any cure period with respect to any resulting default by Landlord under the terms of any Loan Documents.

With respect to any Event of Default set forth in Section 14 hereof, including an Event of Default related to the payment of money, the Investor Member has the right, but not the obligation, to cure the Event of Default as set forth in Section 20 hereof. The occurrence of an Event of Default under this Agreement will be a basis for removal of the Tenant Managing Member in accordance with Section 8.11 of the Tenant Operating Agreement.

16. LANDLORD'S REMEDIES

(a) Upon the expiration of the period of time set forth in a Notice of Termination, without the specified Event of Default having been cured, Tenant must then immediately quit and surrender the Premises and each and every part thereof to Landlord, and must assign to Landlord all of Tenant's rights under any Subleases, and Landlord may enter upon the Premises, by force, summary proceedings, or otherwise, subject to Applicable Law. In any of such events, Landlord will be entitled to the benefit of all provisions of the ordinances and Applicable Law dealing with the speedy recovery of lands and tenements held over by tenants or proceedings in



forcible entry and detainer. Upon any entry or re-entry by Landlord, with or without legal process, Landlord will also have the right (but not the obligation) to re-let all or any part of the Premises at the risk and expense of Tenant, subject to the Subleases. No re-entry by Landlord with or without a declaration of termination will be deemed to be an acceptance or a surrender of this Agreement or as a release of the Tenant's liability for damages under the provisions of this Section. Landlord covenants notwithstanding any remedy granted to it under this Agreement, not to disturb the possession of any subtenant then occupying the premises under any Sublease, which Sublease is not in default.

(b) Tenant further agrees that, notwithstanding re-entry by Landlord with or without termination pursuant to the provisions above, if either: (i) this Agreement is annulled or terminated by reason of an Event of Default, (ii) Landlord retakes possession with or without process of law and/or re-enters with or without a declaration of termination, or (iii) Landlord, following any of the foregoing events, elects to let or re-let the Premises (whether once or more than once during the remainder of the Term, and upon such conditions as are satisfactory to Landlord), then Tenant will, nevertheless, in each instance, remain liable for the performance of any covenant of this Agreement then in default and for all Rent that may be due or sustained before the date of the occurrence of any of the events described in items (i) or (ii) above, together with the cost of seizure and repossession of the Premises and reasonable attorney's fees incurred by Landlord as a result of the breach of this Agreement. In any of such events, Tenant agrees that it will remain liable to Landlord for liquidated damages to be calculated and paid as set forth in the following Subsection.

(c) Upon an Event of Default by Tenant, Tenant must pay to Landlord an amount of money equal to the total amount of Rent that would have become payable during the unexpired portion of the Term remaining at the time of re-entry, repossession, or termination, less the net amount of Rent, if any, received by Landlord during the remaining Term from others to whom the Premises may be rented, at such times, upon such terms and conditions, and at such rentals as Landlord deems proper. Landlord must first deduct from any amounts received from any such letting or re-letting any reasonable costs and expenses incurred in connection with the Event of Default, including, but not limited to, the cost to repair, restore, renovate, or decorate the Premises for a new tenant, reasonable attorney's fees, real estate commissions, and the cost of any legal actions brought against Tenant. In connection with any such re-letting(s), Landlord has the absolute right, without such action's being, or being deemed to be, a surrender of its rights, a cancellation of this Agreement, or a release of Tenant's liability hereunder for the balance of the Term, to let or re-let the Premises for a longer or shorter term than that remaining after the Event of Default, to lease more or less area than that contained in the Premises, to lease the Premises together with other premises or property owned or controlled by Landlord, and to change the character or use of the Premises. Tenant will continue to be responsible and liable for any deficit created thereby, and Landlord must retain and apply any surplus until all such damages has been paid in full to Landlord. The damages will be payable in monthly installments, in advance, on the first day of each calendar month following re-entry, with or without termination, and will continue until the date fixed herein as the normal expiration date of the Term of this Agreement.

(d) Suit or suits for the recovery of such deficiency or damages or for a sum equal to any installment or installments of Rent may be brought by Landlord at Landlord's election. Nothing herein contained will be deemed to require Landlord to await the date when this

Agreement or the Term would have normally expired had there been no such Event of Default by Tenant or no such cancellation or termination by Landlord, nor will Landlord be barred by any claim involving a statute of limitations or other defense should Landlord delay in filing suit.

(e) No entry or re-entry by Landlord, whether had or taken under summary proceedings or otherwise, nor any termination hereof, nor any letting or re-letting will absolve or discharge Tenant from liability hereunder.

(f) No payment received by Landlord from Tenant after re-entry or the cancellation or termination of this Agreement in any lawful manner will reinstate, continue, or extend the Term of this Agreement or affect any notice theretofore given to Tenant by Landlord or operate as a waiver of the right of Landlord to recover possession of the Premises by proper suit, action, proceedings, or other remedy.

(g) Nothing in this Section 16 limits or prejudices the right of Landlord to prove and to obtain, as damages by reason of a termination arising out of the provisions of this Section 16, an amount equal to the maximum allowed by any statute or rule of law in effect as of the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of liquidated damages computed under this Section 16.

(h) Notwithstanding anything to the contrary in this Agreement in no event may Investor Member or any member or Affiliate of Investor Member, nor any Person who is an employee, officer or director thereof, have any liability or responsibility for any amounts, losses, damages or liabilities, including rent or other amounts due under this Agreement or any related agreement due Landlord and any rights Landlord may have to claim any of the foregoing are hereby expressly and irrevocably waived to the fullest extent permitted by law.

The assertion of a claim by the Landlord pursuant to Section 16 or Section 17 will constitute a basis for removal of the Tenant Managing Member in accordance with Section 8.11 of the Tenant Operating Agreement.

## 17 TENANT'S INDEMNIFICATION

Except when caused by the gross negligence or willful misconduct of Landlord, Tenant must indemnify and save Landlord harmless against and from, and must reimburse Landlord for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments, and expenses, including but not limited to reasonable attorney's fees, which may be imposed upon or incurred or paid by or asserted against Landlord or Landlord's ground leasehold or subleasehold interest or reversionary or other interest in the Premises by reason of or in connection with any of the following:

(a) Tenant's use and occupancy of the Premises;

(b) the conduct of Tenant's business or any work or activity or other things permitted by Tenant to be done in or on the Premises;

(c) any misrepresentation or breach of warranty by Tenant under this Agreement; and/or

(d) any acts or omissions of Tenant, its agents, employees, invitees or contractors.

In case any action or proceeding is brought against Landlord by reason of any claims described in this Section 17, Tenant, if Landlord gives Tenant prompt Notice thereof, must, at Tenant's expense, resist or defend such action or proceeding. Notwithstanding anything to the contrary contained herein, Landlord and Tenant hereby waive and release all claims against each other, and against the agents and employees of each other, for any loss or damage sustained by each other to the extent such claims are or could be insured against under any standard broad form policy of fire and extended coverage insurance, or under any fire and extended casualty insurance policy maintained by Landlord under this Agreement or required to be maintained by Landlord under this Agreement, regardless of whether such policy is in effect at the time of the loss and assuming a zero deductible in all cases. Landlord will cause the applicable insurance carriers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with damage to the Building or the Premises or any portions thereof or any personal property thereon; provided, however, that failure to obtain such endorsements will not affect the release hereinabove given. In addition to the foregoing, all such waivers of any claim, action, or cause of action will also be effective to any person claiming by, through, or under either Landlord or Tenant.

#### 18. LANDLORD'S WARRANTIES, REPRESENTATIONS, COVENANTS AND INDEMNITIES

In order to induce the Tenant to enter into this Agreement, the Landlord hereby represents, warrants and covenants as follows:

##### 1. Representations and Warranties.

(a) The Building is located in an historic district that is and/or the Building itself is listed in the National Register of Historic Places maintained by the Department of the Interior pursuant to the National Historic Preservation Act of 1966 and the National Park Service has certified that the Building is of historic significance to that district.

(b) Upon completion of the Rehabilitation of the Building, the QRE incurred in connection therewith will be "new section 38 property" (within the meaning of Treasury Reg. §1.48-2) in the hands of the Landlord, and the "original use" of such QRE (within the meaning of Treasury Reg. §1.48-4(b)) will commence with the Landlord. Such Rehabilitation will, upon completion, constitute a "certified rehabilitation" of a "certified historic structure" (as such terms are defined in Code Section 47).

(c) No portion of the Premises constituting QRE was Placed in Service before the date hereof. The QRE incurred in connection with the Rehabilitation of the Building would constitute "new section 38 property" to the Tenant if the Tenant had actually purchased such QRE, and the Tenant will be deemed to be the "original user" of such QRE (within the meaning of Treasury Reg. §1.48-4(b)).

(d) Neither the Landlord nor any of its direct or indirect Members is a mutual savings bank, cooperative bank, or domestic building and loan association to which Code Section 593 applies; a regulated investment company or real estate investment trust subject to taxation under Subchapter M, Chapter 1 of the Code; or a cooperative organization described in Code Section 1381(a).

(e) The Landlord does not and will not have any debt or financing that constitutes "nonqualified nonrecourse financing with respect to the credit base" of the Building within the meaning of Code Section 49(a)(1).

(f) The assumptions as to Rehabilitation costs for each taxable year shown in the Economic Projections correspond, or can reasonably be expected to correspond, in all material respects, to the actual work that has been or will be completed within that taxable year.

(g) The QRE incurred during the 24-month period ending on the applicable in service date for the Building (the "Measuring Period") exceeds the greater of (i) \$5,000 or (ii) the adjusted basis (within the meaning of Code Section 47(c)(1)(C)(i)) of the Building and its structural components as of the first day of the Measuring Period.

(h) Substantially all of the expenditures included in the calculation of QRE shown in the Economic Projections for the Building are properly chargeable to a capital account for residential or commercial real property (or an addition or improvement thereto), as applicable, for which depreciation is allowable under Code Section 168.

(i) As of the date of this Agreement, no portion of the Building was in a condition or state of readiness for its operation or occupancy as non-residential rental property (within the meaning of Code Section 168(e)). Without limiting the generality of the foregoing, as of the date of this Agreement, the Completion Date has not occurred for any portion of the Building.

(j) No one has claimed or will claim any Historic Tax Credits or State Tax Credits with respect to the QRE incurred by the Landlord with respect to the Building except the Tenant (or its members).

(k) The Building was Placed in Service at least once by a prior owner before the beginning of its Rehabilitation by the Landlord.

(l) The Rehabilitation expenditures that form the basis for the QREs in connection with the Building do not include (i) any expenditure with respect to which a method other than the straight-line method of depreciation over a recovery period determined under Code Sections 168(c) or (g) (as modified by Section 251(d)(4) of the Tax Reform Act of 1986) will be used, (ii) the cost of acquiring the Building, or (iii) the cost of any enlargement of the Building, excluding any increase in floor space resulting solely from interior remodeling.

(m) No portion of the Building is, or will be, tax-exempt use property (within the meaning of Code Section 168(h)).

(n) The Landlord is a limited liability company or limited partnership duly organized, validly existing, and in good standing under the laws of the State.

(o) The Landlord has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Landlord, enforceable in accordance with its terms and conditions.

(p) Neither the execution and delivery of this Agreement by the Landlord nor the Landlord's consummation of the transactions contemplated hereby, will: (i) violate any Applicable Law; or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice or consent (which notice has not been furnished or consent obtained) under any agreement, contract, lease, license, instrument, or other arrangement to which the Landlord or any of its Affiliates is a party or by which it is bound or to which any of its assets is subject, except where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, or failure to give notice would not have a material adverse effect on the business, financial condition, operations, or results of operations, of the Landlord or any of its Affiliates or on the ability of the parties hereto to consummate the transactions contemplated by this Agreement.

(q) The Landlord has complied with all Applicable Law relating to the Property, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against it alleging any failure so to comply, except where the failure to comply would not have a material adverse effect on the business, financial condition, operations, or results of operations of the Landlord.

(r) No litigation, demand, investigation, claim or proceeding against the Landlord or any other litigation or proceeding directly affecting the Property is pending or, to the Best Knowledge of the Landlord, threatened, before any court or other governmental authority that would, if adversely determined, have a material adverse effect on the Landlord, or its business or operations. Except as disclosed in writing to Tenant and Investor Member there is no litigation involving the Landlord or the Property which might have a material adverse impact on the Landlord or the Property.

(s) No default by the Landlord, or any of its Affiliates has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under any of the Operating Documents which default would have a material adverse effect on the Landlord or the Property, and the Operating Documents to which the Landlord is a party are in full force and effect (except to the extent fully performed in accordance with their respective terms).

(t) All material building, zoning, health, safety, business and other applicable certificates, permits and licenses necessary to permit the construction, use, occupancy and operation of the Property have been or will, at the time required, be obtained and maintained (other than, prior to completion of the Rehabilitation of the Building such as are issuable only on the completion of the Rehabilitation of the Building); and neither the Landlord nor any of its Affiliates has received any written notice or has any knowledge of any violation with respect to the Property of any Applicable Law which would have a material adverse effect on the Property or the construction, use or occupancy thereof, except for violations which have been cured and

notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.

(u) The Landlord owns good and marketable title to the ground leasehold interest and subleasehold interest in the Property, free and clear of any liens, charges or encumbrances other than the Mortgage(s), this Agreement, the SIDA Lease Agreement, the SIDA Leaseback Agreement, matters set forth in the Title Policy, encumbrances the Landlord is permitted to create under the terms of this Agreement, and mechanics' or other liens which have been bonded against in such a manner as to preclude the holder of such lien from having any recourse to the Property or the Landlord for payment of any debt secured thereby. None of the liens, charges, encumbrances or exceptions has or will have a material adverse effect upon the construction or operation of the Premises.

(v) The execution and delivery of all instruments and the performance of all acts heretofore or hereafter made or taken or to be made or taken, pertaining to the Landlord or the Property by the Landlord have been or will be duly authorized by all necessary corporate or other action, and the consummation of any such transactions with or on behalf of the Landlord will not constitute a breach or violation of, or a default under, the charter or by-laws or other governing documents of the Landlord or any agreement by which the Landlord or any of its Affiliates is bound, nor constitute a violation of any Applicable Law.

(w) No Material Landlord Default has occurred and is continuing.

(x) The Landlord is not in default in any material respect in the observance or performance of any provision of this Agreement to be observed or performed by the Landlord.

(y) No Bankruptcy has occurred and is continuing as to the Landlord.

(z) The Tenant has been provided with copies of all material documents available to the Landlord relating to the development, financing, and operation of the Property and the Landlord has disclosed to the Tenant all material facts and transactions known to Landlord that relate to the Property.

(aa) To the knowledge of the Landlord, the Property has no material design, maintenance or construction defects.

(bb) There are no material mechanic's liens recorded against the Property and, to the knowledge of the Landlord, no Person has threatened to assert or record any such mechanic's lien.

(cc) Other than obligations incurred in the ordinary course of business (including, without limitation, equipment leases), as of the date hereof, the Landlord has no material outstanding obligations except for obligations reflected in the Operating Documents and this Agreement.

(dd) All accounts of the Landlord required to be maintained under the terms of any of the Operating Documents including, without limitation, any reserves, are currently funded to levels required by the applicable Operating Document.

(ec) The Landlord is and must remain an accrual basis taxpayer.

(ff) Landlord did not use for personal or business purposes or Place in Service any portion of the Building on or before the Commencement Date. As of the Commencement Date, the Building was not in a condition or state of readiness for its operation or occupancy as a commercial rental complex.

(gg) The Premises is being rehabilitated in a manner that satisfies, and will continue to satisfy, all restrictions applicable to the Premises and projects generating Historic Tax Credits and State Tax Credits and in conformity with the description of the Premises set forth in the Certification Application.

(hh) The Historic Tax Credits projected to be available to Landlord with respect to the Property are \$4,351,951 and the State Tax Credits projected to be available to Landlord with respect to the Property are \$4,351,951.

(ii) The fair market value of the Premises exceeds the total amount of indebtedness, including accrued interest thereon, encumbering the Premises and is expected to do so throughout the term of such indebtedness, and the Mortgage Loan has a fixed maturity date which is before the end of the anticipated economic life of the Premises.

(jj) Landlord has not made and will not make an election under Code Section 168(g)(7) to depreciate any of the depreciable property in the Project under the alternative depreciation system.

(kk) Landlord has not conducted and will not conduct any activities so as to cause itself or Tenant to be an insurance company or bank that has its deposits secured under the Federal Deposit Insurance Act, as amended, or any similar federal statute, within the meaning of Treasury Reg. §301.7701-2(b).

(ll) Landlord is not and will not be wholly owned by a state or political subdivision thereof, within the meaning of Treasury Reg. §301.7701-2(b).

(mm) The Landlord Manager has taken and will take all actions necessary to ensure that Landlord is not and will not be a "publicly traded partnership" (as defined in Code Section 7704) or "taxable mortgage pool" (as defined in Code Section 7701(i), within the meaning of Treasury Reg. §301.7701-2(b).

(nn) Neither Landlord nor any member thereof (nor the Landlord Manager) or any other party on Landlord's behalf, has made or will make any election pursuant to Treasury Reg. §301.7701-3 (or otherwise) for Landlord to be treated for federal income tax purposes as an association taxable as a corporation or in any way other than as a partnership.

(oo) Landlord has obtained a Part 2 Approval, a true, correct, and complete copy of which has been provided by Landlord to Tenant, and Landlord knows of no reason why it would not be able to satisfy the conditions set forth therein, if any.

(pp) All material government permits, if any, necessary to rehabilitate the Project were or will be timely obtained and maintained by Landlord and Landlord has not received any notice and does not have any knowledge of any violation with respect to the Project of any law, rule, regulation, order or decree of any authority having jurisdiction over the Project which would have a material adverse effect on the Project or the rehabilitation, use or occupancy thereof, except for violations which have been cured or are in the process of being cured and notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.

(qq) All accounts of Landlord required to be maintained under the terms of any of the Operating Documents, including, without limitation, any Reserves, are and will be funded to levels required by the applicable Operating Document.

(rr) The Premises is not (and will not be) subject to any reversion of title or any restriction on use other than the matters referenced in this Agreement.

(ss) The Premises is not subject to any pending or threatened Taking.

(tt) Upon completion of Landlord's Work, the Premises will be in material compliance with all Applicable Law, ordinances, and regulations, including, without limitation, matters relating to zoning or use of the Premises for its intended purposes, construction, fire protection, building code, health code, traffic, flood control or fire safety.

(uu) No "common area" assessments or assessments for public improvements have been made against the Premises which remain unpaid and all bills and claims for labor performed and services and materials furnished for the Premises are or will be timely paid in full and the Premises is or will be timely free from mechanic's or materialman's liens.

(vv) There is no delinquent tax or any actual or threatened assessment of deficiency or additional tax or other governmental charge or a basis for such a claim with respect to the Premises. There are no tax liens on the Premises other than liens for real property taxes that are not yet due and payable.

(ww) The cost of Landlord's Work is anticipated to be reasonable for acquiring, constructing and/or renovating a project of this type, and was or will be established on the basis of third party arm's length contracts.

(xx) At the time of commencement of construction and as of the date hereof, the Land was and is properly zoned for the used contemplated herein, it has obtained all permits, consents, permissions and licenses required by all applicable governmental entities for the operation of the Premises and the Premises conforms to all Applicable Law.

## 2. Covenants of the Landlord.

(a) The Landlord must file the election substantially in the form of the attached Exhibit C (the "Election") with respect to the Building to pass through the Historic Tax Credits and State Tax Credits relating to the Premises to Tenant pursuant to the provisions of Code



Section 50(d) and Treasury Reg. §1.48-4 for all tax years in which the Historic Tax Credits and State Tax Credits are claimed for the Rehabilitation.

(b) Landlord must not take any action or permit any action to be taken by any of its affiliates that would (i) cause the Election not to be effective or otherwise result in a loss of the ability of Tenant to utilize the Historic Tax Credits or State Tax Credits to be passed through to Tenant pursuant to the terms of this Agreement; or (ii) cause a Recapture Event to occur.

(c) The Landlord must file the Election with the Tenant on or before the respective due dates (including any extensions of time) of the Tenant's tax returns for the years in which the QREs are first Placed in Service and otherwise comply with the provisions found in Code Sections 47 and 50 and the Treasury Regulations promulgated thereunder, including Treasury Reg. §1.48-4(a) and the requirements set forth in the Tenant Operating Agreement, in order to pass through the Historic Tax Credits and State Tax Credits to the Tenant.

(d) The Landlord must prepare and submit to the National Park Service, the Secretary of the Treasury or the IRS (or any other governmental authority designated for such purpose), on a timely basis, any requests for approval, reports, information returns and other certifications and information required: (i) to ensure that the Rehabilitation of the Building will qualify for the Historic Tax Credits and State Tax Credits; (ii) to pass through the Historic Tax Credits and State Tax Credits to Tenant; and (iii) subject to the provisions of this Agreement, to avoid recapture of (A) the Historic Tax Credits under Code Section 50 or reduction of the Historic Tax Credits under Code Sections 49, 50(b)(3) or 168(h) or (B) the State Tax Credits. By way of example, and not in limitation of the foregoing, Landlord will prepare and submit to the Secretary the certification application and any other requests for approval, reports, or other certifications and information required in order to obtain Part 3 Approval within ninety (90) days after Placement in Service.

(e) Landlord will use the straight line method of depreciation for the Premises over a recovery period of 27.5 years for the Building under Code Section 168(c) and Landlord must make an affirmative election under Code Section 168 not to claim any bonus depreciation available for all portions of the Building that are attributable to the QREs.

(f) Landlord understands and agrees that it must not be entitled to claim any Historic Tax Credits or State Tax Credits with respect to the Building and agrees to file all its federal income tax returns consistently with having elected to pass-through the Historic Tax Credits and State Tax Credits to Tenant. Landlord further agrees to take all such further acts as may be necessary or appropriate to permit Tenant to claim the Historic Tax Credits and State Tax Credits with respect to the Building.

(g) The Landlord must complete the Rehabilitation of the Property in accordance with the Approved Plans and Specifications relating thereto and the requirements for the Historic Tax Credits and State Tax Credits.

(h) The Landlord agrees that if the Tenant Managing Member is removed from the Tenant pursuant to Section 8.11 of the Tenant Operating Agreement, then the Tenant and/or the Investor Member has the right to make any payments which are otherwise to be made by the

Landlord (including, on account of Impositions, debt service or other costs and expenses payable by Landlord under this Agreement or otherwise) if the Tenant or the Investor Member reasonably determines that any failure by Landlord to make such payments would result in the termination of this Agreement, any termination or impairment of the rights of Tenant hereunder (whether by foreclosure or otherwise), or any recapture, loss or disallowance of the Historic Tax Credits or the State Tax Credits. Notwithstanding, anything to the contrary in this Agreement any amounts paid pursuant to the preceding sentence will offset Tenant's obligation to pay Rent payable under this Agreement by the amount of such payments so made and Tenant must give Landlord a full accounting of all such payments.

(i) If and so long as Tenant is not in default hereunder, Tenant will quietly hold, occupy, and enjoy the Premises and all rights relating thereto during the Term, without hindrance, ejection, or molestation by Landlord or any party claiming by, through, or under Landlord.

(j) Landlord may not (i) take any action that causes or is likely to cause the Building to be delisted from the National Register of Historic Places or to be certified as noncontributing to the historic district in which it is located, as applicable; or (ii) enter into any lease with respect to any portion of the Premises with any "tax-exempt entity" as that term is defined in Code Section 168(h), including the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing; any organization exempt from federal income tax; and any foreign person or entity; (iii) permit a transfer of any direct or indirect ownership interest in Landlord to a Disqualified Transferee or a "tax-exempt controlled entity," as such term is used in Code Section 168(h), unless such "tax-exempt controlled entity" has duly made, or will duly make, all the elections provided for under Code Section 168(h)(6)(F)(ii), or (iv) permit a disposition of the Premises within the meaning of Code Section 50 to the extent the same would cause a Recapture Event, or take any action that would cause a Recapture Event.

(k) Landlord must prepare and deliver to Tenant (a) promptly, upon learning of a condition or circumstance which is expected to reduce Actual Historic Tax Credits below Projected Historic Tax Credits or the Actual State Tax Credits below Projected State Tax Credits, a detailed statement describing such matters; (b) within two (2) days after receipt by Landlord, copies of all reports, notices, filings or correspondence sent or received regarding the Historic Tax Credits or the State Tax Credits; and (c) as soon as is practicable, the Cost Certification.

### 3. Landlord's Indemnification.

If Landlord becomes dispossessed of its interest in the Premises, then Landlord will indemnify, defend and hold Tenant harmless from and against all losses, costs, damages and expenses resulting (directly or indirectly) therefrom, including attorneys' fees and costs, with interest on such amounts at the Designated Prime Rate from the date incurred until paid.

### 4. Assignment to Tenant.

The Landlord hereby transfers and assigns to the Tenant all rights, title and interest in and to all contracts and agreements concerning operation of the Premises to which it is a party,

including those set forth in Article VII of the Tenant Operating Agreement, but excluding any contract and agreements relating to the Rehabilitation and/or pursuant to which expenditures thereunder give rise to any Historic Tax Credits and State Tax Credits, and in connection therewith Landlord must obtain any consents to such transfer and assignment.

19. TENANT REPRESENTATIONS, WARRANTIES AND COVENANTS.

1. Representations and Warranties of the Tenant.

To induce the Landlord to enter into this Agreement, the Tenant represents and warrants as follows:

(a) Subject to Landlord's satisfaction of its obligations hereunder, the Tenant will claim the Historic Tax Credits and State Tax Credits passed through to Tenant pursuant to the provisions of this Agreement for the Rehabilitation of the Building on its United States federal income tax returns for the years in which the QREs are first Placed in Service (subject to any available carryback or carryforward election).

(b) The QRE incurred in connection with the rehabilitation of the Building would constitute "new section 38 property" to the Tenant if the Tenant had actually purchased such QRE.

(c) The Tenant is a limited liability company or limited partnership duly organized, validly existing, and in good standing under the laws of the State.

(d) The Tenant has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Tenant enforceable in accordance with its terms and conditions.

(e) Neither the execution and delivery of this Agreement by Tenant, nor the Tenant's consummation of the transactions contemplated hereby, will: (i) violate any Applicable Law to which the Tenant is subject or any provision of its organizational or governing documents; or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Tenant is a party or by which it is bound or to which any of its assets is subject, except where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, or failure to give notice would not have a material adverse effect on the business, financial condition, operations, or results of operations of the Tenant or on the ability of the parties hereto to consummate the transactions contemplated by this Agreement.

(f) The Tenant is not in default in any material respect in the observance or performance of any provision of this Agreement to be observed or performed by the Tenant.

(g) No Bankruptcy has occurred and is continuing as to the Tenant.

(h) Tenant has not conducted and will not conduct any activities so as to cause itself or Landlord to be an insurance company or a bank that has its deposits secured under the Federal

Deposit Insurance Act, as amended, or any similar federal statute, within the meaning of Treasury Reg. §301.7701-2(b).

(i) Tenant is not and will not be wholly owned by a state or political subdivision thereof, within the meaning of Treasury Reg. §301.7701-2(b).

(j) Tenant, nor any member thereof (including the Tenant Managing Member) or any other party on Tenant's behalf, has made or will make any election pursuant to Treasury Reg. §301.7701-3 (or otherwise) for Tenant to be treated for federal income tax purposes as an association taxable as a corporation or in any way other than as a partnership.

## 2. Covenants of the Tenant.

(a) The Tenant must file its tax returns, execute and deliver such certifications, statements and other documents, and take such other action as may be necessary to effectuate the pass-through of the Historic Tax Credits and State Tax Credits relating to the Building to the Tenant in accordance with the provisions of Code Section 50(d) and Treasury Reg. §1.48-4.

(b) The Tenant may not take any action or suffer any action to be taken by any of its Affiliates that would (i) cause the Building to constitute "tax-exempt use property" within the meaning of Code Section 168(h)(1) (or any successor provision) or (ii) cause a Recapture Event to occur.

(c) The Tenant will maintain all public utilities necessary for the operation of the Property, including, but not limited to, sanitary and storm sewers, water, gas (if applicable), and electricity, operating in working condition, to the extent required by Applicable Law and pursuant to this Agreement and the subleases.

## 20. SPECIAL RIGHTS OF INVESTOR MEMBER AND SUBTENANTS

The following apply with respect to the Investor Member and any subtenant:

(a) Landlord agrees to accept payment or performance by the Investor Member or any subtenant leasing any portion of the Premises as though Tenant had done the same, and the Investor Member and any subtenant have the right to cure any breach, default or Event of Default within the time periods provided in this Section 20.

(b) Landlord agrees to give the Investor Member, at the Investor Member's Address, a written copy of all notices and demands, including any Notices of Default and Notices of Termination that Landlord gives to Tenant at the time such notices and demands are given to Tenant. No notice or demand under this Agreement will be effective until after the Investor Member receives such notices. All notices of a default or an Event of Default given by Landlord under this Agreement must describe the default or Event of Default with reasonable detail, and set forth all of the applicable cure period(s).

(c) After receipt by Tenant of a notice of an Event of Default under this Agreement and the expiration of any applicable period of cure given to Tenant under this Agreement, Landlord must deliver an additional notice to the Investor Member (an "Investor Member's

Notice”) and any subtenant. Such notice must specify the Event of Default and the Investor Member and any subtenant will have the additional periods of time to cure any uncured Event of Default, as set forth below, without payment of default charges, fees, late charges or interest that might otherwise be payable by Tenant, but neither the Investor Member nor any subtenant will be obligated to cure any uncured Event of Default. The Investor Member or any subtenant must pay any due and unpaid Rent as a condition to curing an Event of Default that is based upon the non-payment of Rent. Landlord may not terminate this Agreement or exercise its other remedies under this Agreement if:

(i) Within sixty (60) days after the receipt of their respective notices, the Investor or any subtenant (A) cures the Event of Default, or (B) if the Event of Default reasonably requires more than sixty (60) days to cure, commences to cure the Event of Default and diligently prosecutes the same to completion; or

(ii) If any Event of Default, by its nature, is such that it cannot practicably be cured within said sixty (60) day period, then the Investor Member and any subtenant will have such time as is reasonably necessary to cure the Event of Default provided that such person commences such cure within said sixty (60) day period and thereafter diligently prosecutes the cure to completion, and (A) cures all other Events of Default reasonably capable of cure, (B) complies with all other covenants and conditions of this Agreement reasonably capable of compliance, and (C) continues to pay all real property taxes and assessments, and insurance premiums to be paid by Tenant under this Agreement.

(d) Landlord agrees to accept performance by the Investor Member or any subtenant of all cures, conditions and covenants as though performed by Tenant, and agrees to permit the Investor Member access to the Premises to take all such actions as may be necessary or useful to perform Tenant’s covenants under this Agreement or to cure an Event of Default of Tenant. The Investor Member or any subtenant will not be required to perform any act that is not susceptible to performance by the Investor or any subtenant; provided, however, that if the Investor or any subtenant is unable to cure an Event of Default or to perform a Tenant covenant because of the foregoing limitation, Landlord may terminate this Agreement and must honor any Subleases then in effect.

## 21. RIGHTS TO PERFORM

(a) If Tenant defaults in any payment or performance obligation required of Tenant under this Agreement, then Landlord has the option to make such payment or do such act; provided, however, that except in the case of an emergency, for which no Notice is required, Landlord may not make any payment or perform any such act without giving Tenant five (5) days’ prior written Notice of its intention to do so. The amount of the expense thereof, if made or done by Landlord, will be charged to Tenant as Rent, payable on demand, and the late charge specified in Section 4 will accrue from the date paid or performed by Landlord; but the making of such payment or the doing of such act by Landlord will not operate to cure such default or to estop Landlord from the pursuit of any remedy to which Landlord may be entitled because of any breach on the part of Tenant of any term, covenant, or condition therein, nor will the acceptance of Rent herein by Landlord either from Tenant or any subtenant, whether or not such delay or

acceptance be with knowledge on the part of Landlord of such breach, prejudice Landlord's privilege to invoke such remedy, which privilege will continue until such breach is cured.

(b) If Landlord defaults in any payment or performance obligation required of Landlord under this Agreement, then Tenant has the option to make such payment or do such act; provided, however, that except in the case of an emergency, for which no Notice is required, Tenant may not make any payment or perform any such act without giving Landlord five (5) days' prior written Notice of its intention to do so. The amount of the expense thereof, if made or done by Tenant, will be charged to Landlord and will be payable on demand, and a late charge equal to the charge specified in Section 4 will accrue from the date paid or performed by Landlord; but the making of such payment or the doing of such act by Tenant will not operate to cure such default or to estop Tenant from the pursuit of any remedy to which Tenant may be entitled because of any breach on the part of Landlord of any term, covenant, or condition therein, whether or not such delay is with knowledge on the part of Tenant of such breach, prejudice Tenant's privilege to invoke such remedy, which privilege will continue until such breach is cured.

## 22. ESTOPPEL CERTIFICATES

(a) Tenant agrees at any time upon not less than ten (10) days' prior written Notice by Landlord to execute, acknowledge, and deliver, without charge, to Landlord, or to any person designated by Landlord, a statement in writing certifying: (i) that this Agreement is in full force and effect and has not been modified, assigned, subleased, supplemented, or amended except by such writings as will be stated; (ii) that Tenant has not received any Notice of Default or Notice of Termination of this Agreement (or, if Tenant has received such Notice that the default has been cured or termination has been revoked, if such be the case); (iii) that, to the knowledge of Tenant, no default exists hereunder (or if any such default does exist, specifying the same and stating that the same has been cured, if such be the case); (iv) that Tenant has no claims, defenses, set-offs, or recoupments against Landlord hereunder (or if Tenant has any claims, defenses, set-offs, or recoupments, specifying the same); and (v) the dates to which the Rent has been paid.

(b) Landlord agrees upon not less than ten (10) days' prior written Notice by Tenant to execute, acknowledge, and deliver, without charge, to Tenant, or to any person designated by Tenant, a statement in writing certifying: (i) that this Agreement is in full force and effect and has not been modified, assigned, subleased, supplemented, or amended except by such writings as will be stated; (ii) that no Notice of Default or Notice of Termination of this Agreement has been served on Tenant (or if Landlord has served such Notice, that the default has been cured or the termination has been revoked, if such be the case); (iii) that Landlord has no claims against Tenant hereunder (or, if Landlord has any such claims, specifying the same); and (iv) the dates to which the Rent has been paid by Tenant.

(c) The failure of either party to execute, acknowledge, and deliver to the requesting party a statement in accordance with the provisions of this Section within the period set forth herein will constitute an acknowledgment by the party to whom the request is made, which may be relied upon by any person holding or intending to acquire any interest whatsoever in the Premises or the Building, that, except as stated by the requesting party in the request, this

Agreement has not been assigned, amended, changed, or modified, is in full force and effect, and that the Rent has been duly and fully paid not beyond the respective due dates immediately preceding the date of the request for such statement. As to any persons entitled to rely on such statements, such failure will also be deemed to be a waiver of any defaults by the requesting party or defenses, set-offs, recoupments, or counterclaims against the enforcement of this Agreement by the requesting party which may exist before the date of the written request.

#### 23. NOTICES

All Notices will be in writing and will be sent by to Landlord, Tenant or the Investor Member, as applicable, to Landlord's Address, Tenant's Address, or Investor Member's Address, respectively, set forth in Section 1 of this Agreement. No notice to Tenant will be effective for any purpose unless and until a copy of such notice has been provided to the Investor Member. Either party may, by Notice given as aforesaid, change its address for all subsequent Notices. Notices will be deemed given on the next business day following the day when transmitted in accordance herewith. All Rent and payments of monies due to Landlord will be made to Landlord at Landlord's Address set forth in Section 1 of this Agreement.

#### 24. RECORDING

The parties hereto agree that a short form memorandum of this Agreement may be recorded in the real property records of the county or parish where the Premises are located, at the expense of the party desiring to record same.

#### 25. WAIVER OF JURY TRIAL

Landlord and Tenant waive trial by jury in any action or proceeding brought by either of the parties hereto against the other or on any counterclaim in respect thereof on any matters whatsoever arising out of, or in any way connected with, this Agreement, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises and/or any claim of injury or damage under this Agreement.

#### 26. NO PARTNERSHIP

Landlord is not construed as a joint venturer, partner or associate of Tenant in the conduct of Tenant's business, it being expressly understood and agreed that the relationship between the parties hereto is and will at all times remain that of landlord and tenant.

#### 27. NO WAIVER

No failure by Landlord or Tenant to insist upon the performance of any term, covenant, or condition of this Agreement or to exercise any right or remedy consequent upon a default or Event of Default hereunder, and no acceptance of full or partial payment of Rent during the continuance of any such default or Event of Default will constitute a waiver of any such default or of such term, covenant, or condition. No waiver of any default or Event of Default will affect or alter this Agreement, but each and every term, covenant, and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent default or Event of Default hereunder.

28. APPLICABLE LAW, CONSTRUCTION OF LANGUAGE OF LEASE

This Agreement is made pursuant to, and will be construed and enforced in accordance with, the Applicable Law in force in the State. All provisions of this Agreement will be construed to be "conditions" and "covenants" as though language specifically expressing or imposing covenants and conditions were used in each separate provision of this Agreement.

29. COVENANTS RUN WITH THE LAND

The parties hereto covenant and agree that all of the terms, covenants, conditions, agreements, rights, privileges, obligations, duties, specifications, and recitals in this Agreement contained will be construed as covenants running with the land, and as extending to, inuring to the benefit of, and binding upon Landlord and Tenant and their personal representatives, successors, and assigns to the same extent as if said personal representatives, successors, and assigns were herein named as original parties hereto, all to the end that this Agreement will bind the owner and holder of any interest whatsoever in or to the Premises and the Improvements thereon; provided, however, that no rights will accrue to any personal representative, successor, or assign of Tenant not permitted under Section 13. If Tenant consists of more than one Person, they all will be bound jointly and severally by the terms, covenants, and conditions herein.

In any provision of this Agreement involving Landlord's being defended, released from liability, indemnified, held harmless, or not being deemed to be liable for any action, omission, or circumstance, the term "Landlord" includes Landlord and Landlord's contractors and subcontractors and its or their present and future controlling persons, directors, officers, employees, and agents.

30. NO BROKER

The parties hereto covenant and agree with each other that no person is entitled to a brokerage commission, finder's fee, or other similar form of compensation in connection with the execution of this Agreement. Each party agrees to hold harmless the other for any action or claim by a person alleging entitlement to such a fee and claiming through that party.

31. ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than any payment of Rent herein stipulated will be deemed to be other than on account of the earliest stipulated Rent due and payable, nor will any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Agreement, at law, or in equity.

32. HOLDING OVER

If Tenant holds over possession of the Premises after this Agreement expires, Tenant will be deemed to be occupying the Premises from month to month as though this Agreement had continued; provided that the occupancy can be terminated by either party with at least thirty (30) days' written Notice. The occupancy will be subject to all of the terms, covenants, and



conditions of this Agreement, as applicable to a month-to-month tenancy; provided that Base Lease Payment will be calculated at double the applicable Rent in effect at the expiration of this Agreement. In addition, Tenant must pay as Rent to Landlord for all damages sustained by reason of Tenant's retention of possession. Nothing in this Section excludes Landlord's rights of re-entry or any other right hereunder.

### 33. TAX CONTESTS

Each of the parties must inform the other parties promptly of any oral or written communication or request for information which it receives from, or any conference with, the IRS or local state governmental authority directly relating to the amount of the Historic Tax Credits or State Tax Credits relating to the Premises or the right of the Landlord to pass through the Historic Tax Credits or State Tax Credits to the Tenant in accordance with the terms of this Agreement.

### 34. LIMITS ON TERMINATION

(a) Except as otherwise expressly provided herein, this Agreement will not terminate, nor will Tenant have the right to terminate this Agreement, nor will Tenant be entitled to any abatement or reduction of Rent hereunder, nor will the obligations of Tenant hereunder be affected, by reason of any default on the part of Landlord under this Agreement, or under any other agreement to which Landlord and Tenant may be parties. It is the intention of the parties hereto that the obligations of Tenant hereunder will be separate and independent covenants and agreements, that the Rent, and all other sums payable by Tenant hereunder will continue to be payable in all events and that the obligations of Tenant hereunder will continue unaffected, unless the requirement to pay or perform the same has been terminated pursuant to an express provision of this Agreement. Nothing hereunder precludes Tenant from pursuing or realizing upon its other remedies at law or in equity by reason of any default hereunder by Landlord.

(b) Tenant agrees that it will remain obligated under this Agreement in accordance with its terms, and that it will not take any action to terminate, rescind or avoid this Agreement, notwithstanding (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up or other proceeding affecting Landlord or any assignee of Landlord in any such proceeding and (ii) any action with respect to this Agreement which may be taken by any trustee or receiver of Landlord or of any assignee of Landlord in any such proceeding or by any court in any such proceeding; provided that this Agreement is not effectively disaffirmed in such proceedings and Tenant receives reasonable assurance thereof within a reasonable period of time and following the commencement of such proceedings.

(c) Tenant waives all rights which may now or hereafter be conferred by Applicable Law (except by a final and binding judicial determination by a court of competent jurisdiction) (i) to quit, terminate or surrender this Agreement or the Premises or any part thereof or (ii) to any abatement, suspension, deferment or reduction of Rent or any other sums payable under this Agreement, except as otherwise expressly provided herein.

### 35. MISCELLANEOUS

(a) The captions appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of the Sections of this Agreement nor in any way affect this Agreement. Capitalized terms used herein without definition are defined in the Tenant Operating Agreement.

(b) In computing any period of time prescribed or allowed by any provision of this Agreement, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Unless otherwise provided herein, all Notice and other periods expire as of 5:00 p.m. on the last day of the Notice or other periods.

(c) If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected by such holding and will be fully valid and enforceable. If any late charge, interest rate, or other payment exceeds the maximum charge allowed by law, then the late charge, interest rate, or other payment will be reduced to comply with legal requirements.

(d) This Agreement may be executed in multiple counterparts or in duplicate, and when so executed by all parties will constitute one agreement.

(e) This Agreement contains the entire agreement between the parties and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto.

(f) There will be no merger of this Agreement or of the sub-subleasehold estate hereby created with any fee estate in the Premises or any part thereof by reason of the fact that the same Person may acquire or hold, directly or indirectly, this Agreement or the sub-subleasehold estate and the fee estate in the Premises or any interest in such fee estate.

(g) Time is of the essence in all provisions of this Agreement to be performed by or on behalf of Tenant.

(h) Notwithstanding anything to the contrary herein, the representations, warranties and covenants of the parties in Sections 18 and 19 will survive the execution of this Agreement and termination of this Agreement until the expiration of any applicable statute of limitations for asserting a deficiency or claim with respect to any federal tax item as to which such representation, warranty or covenant relates.

(i) This Lease will not be recorded; provided, however, at the request of either Landlord or Tenant, the other party must execute, acknowledge, and deliver a memorandum of this Lease.

*[Signatures on following pages]*

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed as of the Effective Date.

**LANDLORD:**

BRADFORD & EUCLID, LLC,  
a Delaware limited liability company

By: 

Name: Matthew Paulus

Title: Authorized Signatory

IN WITNESS WHEREOF, Landlord and Tenant have caused this Agreement to be executed as of the Effective Date.

**TENANT:**

RE DIETZ BUILDING MASTER TENANT, LLC,  
a New York limited liability company

By: 

Name: Matthew Paulus

Title: Authorized Signatory

## EXHIBIT A

### Legal Description of the Premises

#### Parcel I:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, known and distinguished as Lots 7, 8, 9, 10, 11, 24, 25, 26 & 27, Block 429 in said City.

#### Parcel II:

All that tract or parcel of land, situate in the City of Syracuse, County of Onondaga and State of New York, and being a part of Block 429, in said City, and being more particularly described as that portion of Leavenworth Avenue adjoining Lots 11 and 27 Block 429 portion of Leavenworth Avenue, as was abandoned as a public street by resolution of Common Council of City of Syracuse, dated December 23, 1985.

The above premises are also described as follows: ALL THAT TRACT OR PARCEL OF LAND, being part of Block 429 and an abandoned portion of Leavenworth Avenue in the City of Syracuse, County of Onondaga and State of New York, and being more particularly described as follows: beginning at the intersection of the south street line of Wilkinson Street with the present west street line of Leavenworth Avenue, thence S.01°15'40" W. along said west street line of Leavenworth Avenue a distance of 263.69 feet to its intersection with the northwesterly street line of Tracey Street; thence S.71°11'30" W. along said northwesterly street line of Tracey Street a distance of 327.74 feet to the southwesterly corner of Lot 24, in Block 429; thence N.19°00'00" W. along the southwesterly line of said Lot 24, a distance of 166.35 feet to the southwest corner of Lot 7, in Block 429; thence N.01°22'40" E. along the west line of Lot 7, a distance of 220.00 feet to its intersection with the south street line of Wilkinson Street; thence S.88°45'20" E. along said south street line of Wilkinson Street a distance of 365.00 feet to its intersection with the west street line of Leavenworth Avenue and the point and place of beginning.

**EXHIBIT B**

**Schedule of Base Lease Payments**

<b>Year</b>	<b>Base Lease Payment</b>
2017	\$500,000
2018	\$1,391,089
2019	\$1,405,000
2020	\$1,419,050
2021	\$1,433,241
2022	\$1,447,573
2023	\$1,462,049
2024	\$1,476,669
2025	\$1,491,436
2026	\$1,506,350
2027	\$1,521,414
2028	\$1,536,628
2029	\$1,551,994
2030	\$1,567,514
2031	\$1,583,189
2032	\$1,599,021
2033	\$1,615,011
2034	\$1,631,161
2035	\$1,647,473
2036	\$1,663,948
2037	\$1,680,587
2038	\$1,697,393
2039	\$714,320

**EXHIBIT C**

**Form Of Pass-Through Election**

This Pass-Through Election is made by Bradford & Euclid, LLC, a Delaware limited liability company ("Lessor"), and RE Dietz Building Master Tenant, LLC, a New York limited liability company ("Lessee"), with respect to the building(s) located at 225-303 Wilkinson Avenue, Syracuse, New York and commonly known as "Dietz Building" (the "Building"), in accordance with the provisions of Treasury Reg. §1.48-4(f):

- (i) LESSOR NAME: Bradford & Euclid, LLC  
ADDRESS: 225 Wilkinson Street  
Syracuse, NY 13202  
TAXPAYER #: 47-5292277
- (ii) LESSEE NAME: RE Dietz Building Master Tenant, LLC  
ADDRESS: 225 Wilkinson Street  
Syracuse, NY 13202  
TAXPAYER #: 81-3400518
- (iii) DISTRICT DIRECTOR'S OFFICE WHERE LESSOR'S TAX RETURNS ARE FILED:  
  
DISTRICT DIRECTOR'S OFFICE WHERE  
LESSEE'S TAX RETURNS ARE FILED:
- (iv) PROPERTY WITH RESPECT TO WHICH ELECTION IS MADE:  
  
The Building located at 225-303 Wilkinson Avenue, Syracuse, New York.
- (v) DATE ON WHICH POSSESSION OF THE PROPERTY WAS TRANSFERRED TO LESSEE:  
  
\_\_\_\_\_, 20\_\_\_\_
- (vi) ESTIMATED USEFUL LIFE OF THE PROPERTY IN THE HANDS OF THE LESSOR:  
  
More than seven (7) years.
- (vii) AMOUNT FOR WHICH LESSEE IS TREATED AS HAVING ACQUIRED THE PROPERTY UNDER PARAGRAPH (c)(2) or (c)(3) OF TREASURY REG. §1.48-4:  
  
The Property is non-short-term lease property under paragraph (c)(2), and the Lessee is treated as having acquired the Property for its fair market value on the date possession

was transferred to the Lessee, namely \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_).

(viii) INFORMATION TO BE PROVIDED IF THE LESSOR IS ITSELF A LESSEE.

(1) Not Applicable

This election is hereby made by Lessor and filed with Lessee this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

**LESSOR:**

BRADFORD & EUCLID, LLC,  
a Delaware limited liability company

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

Name: Matthew Paulus

Title: Authorized Signatory



Consent to the foregoing information is hereby given by Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**LESSEE:**

RE DIETZ BUILDING MASTER TENANT, LLC,  
a New York limited liability company

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

Name: Matthew Paulus

Title: Authorized Signatory

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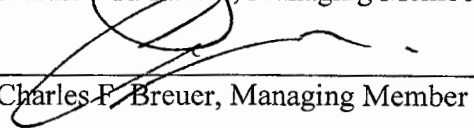
**MANAGERS' CERTIFICATE**  
**OF**  
**BRADFORD & EUCLID, LLC**

**THE UNDERSIGNED**, the managing members of **BRADFORD & EUCLID, LLC**, a Delaware limited liability company (the "*Company*"), having knowledge of the matters contained in this Certificate, hereby certify as follows:

1. Attached to this Certificate as **Exhibit A** is a true, complete and correct copy of the Certificate of Formation of the Company, as amended, and application for authority to do business in New York State, which Certificate and authorization are in full force and effect.
2. Attached to this Certificate as **Exhibit B** is a true, complete and correct copy of the current Operating Agreement of the Company, which Operating Agreement is in full force and effect.
3. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the States of Delaware and New York and has complied with all certifications, filings and requirements necessary to continue as a limited liability company in such States.
4. Attached to this Certificate as **Exhibit C** is a true, complete and correct copy of the resolutions duly adopted by the members and managers of the Company (the "*Resolutions*"); the Resolutions have not been subsequently amended, modified or rescinded and remain in full force and effect; and the Resolutions are the only resolutions adopted by the members and managers of the Company relating to the redevelopment of the RE Dietz building located at 225 Wilkinson Street, Syracuse, New York and financing thereof.
5. The Resolutions were adopted in accordance with Certificate of Formation and Operating Agreement of the Company together with applicable law, and neither the Resolutions nor any actions to be taken pursuant to them are or will be in contravention of any agreements or instruments to which the Company is a party and/or which are binding upon the Company.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 20 day of October, 2016.

  
\_\_\_\_\_  
Matthew R. Paulus, Managing Member

  
\_\_\_\_\_  
Charles F. Breuer, Managing Member

**EXHIBIT A**

**Certificate of Formation  
(see attached)**

# 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 "BRADFORD & EUCLID, LLC", FILED IN THIS OFFICE ON THE SECOND DAY OF APRIL, A.D. 2015, AT 4:05 O'CLOCK P.M.



5722363 8100

150460900

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 "J. Bullock", is written over a horizontal line. Below the signature, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 2262075

DATE: 04-02-15

CERTIFICATE OF FORMATION

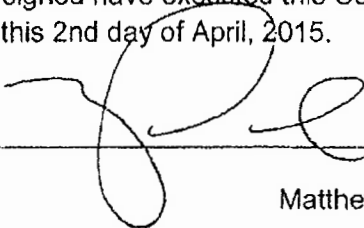
OF

Bradford & Euclid, LLC

1. The name of the limited liability company is Bradford & Euclid, LLC.

2. The address of its registered office in the State of Delaware is: Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation of Bradford & Euclid, LLC this 2nd day of April, 2015.



---

Matthew Paulus

Manager

CERTIFICATE OF AUTHORITY UNDER SEC. 805 OF THE LIMITED LIABILITY COMPANY LAW

ENTITY NAME: BRADFORD & EUCLID, LLC

DOCUMENT TYPE: APPLICATION FOR AUTHORITY (FOR LLC)

COUNTY: ONON

FILED:10/15/2015 DURATION:\*\*\*\*\* CASH#:151015000056 FILM #:151015000054  
DOS ID:4834463

FILER:

EXIST DATE

GERALD F. STACK, ESQ.  
BARCLAY DAMON, LLP  
ONE PARK PLACE, 300 SOUTH STATE ST.  
SYRACUSE, NY 13202

10/15/2015

ADDRESS FOR PROCESS:

THE LLC  
225 WILKINSON STREET  
SYRACUSE, NY 13204

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: LIBERTY CORPORATE SERVICES, INC. - AL SERVICE CODE: AL

FEEs	285.00	PAYMENTS	285.00
FILING	250.00	CASH	0.00
TAX	0.00	CHECK	0.00
CERT	0.00	CHARGE	0.00
COPIES	10.00	DRAWDOWN	285.00
HANDLING	25.00	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 October 16, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State



151015000 054

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**

**Bradford & Euclid, 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:

Bradford & Euclid, 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: April 2, 2015

**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:

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, NY 13204

FIFTH: (Check and complete the statement that applies)

The address of the office required to be maintained in the jurisdiction of its formation is:

Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801

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, Division of Corporations

The address for such officer is:

PO Box 898  
Dover, DE 19903

X

(Signature)

Gerald F. Stack, Esq.

(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 therefore, 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

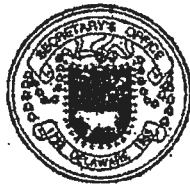
Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "BRADFORD & EUCLID, 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 SEVENTH DAY OF OCTOBER, A.D. 2015.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "BRADFORD & EUCLID, LLC" WAS FORMED ON THE SECOND DAY OF APRIL, A.D. 2015.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



5722363 8300

SR# 20150410514

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 in a small font.

Authentication: 10194122

Date: 10-07-15

054

APPLICATION FOR AUTHORITY  
OF

Bradford & Euclid, LLC

*(Insert name of Foreign Limited Liability Company)*

Under Section 802 of the Limited Liability Company Law

Filed by: Gerald F. Stack, Esq.

*(Name)*

Barclay Damon, LLP, One Park Place, 300 South State Street

*(Mailing address)*

Syracuse, NY 13202

*(City, State and Zip code)*

2015 OCT 15 PM 8:06

FILED

Customer Ref.# 61749

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.

*(For office use only.)*

LCC

LCS  
DRAWDOWN - #AL

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED

OCT 15 2015

TAX \$ \_\_\_\_\_

FY: Jae

Jae

RECEIVED

2015 OCT 14 PM 2:03

056

**EXHIBIT B**

**Operating Agreement**  
**(see attached)**

**SECOND AMENDED AND RESTATED  
OPERATING AGREEMENT  
of  
BRADFORD & EUCLID, LLC**

THE EQUITY INTERESTS REPRESENTED BY MEMBERSHIP UNITS PURSUANT TO THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH MEMBERSHIP UNITS MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER THE 1933 ACT AND SUCH LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

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**SECOND AMENDED AND RESTATED  
OPERATING AGREEMENT**

of

**BRADFORD & EUCLID, LLC**

**THIS SECOND AMENDED AND RESTATED OPERATING AGREEMENT** is entered into and shall be effective as of the 20<sup>th</sup> day of October, 2016 by and among **MATTHEW R. PAULUS**, an individual with residence at 511 Bradford Parkway, Syracuse, New York 13224 (“**Paulus**”) and **CHARLES F. BREUER (“C. Breuer”)** an individual with a place of business at 148 Berwyn Avenue, Syracuse, New York 13210 (Paulus and C. Breuer being hereinafter sometimes collectively referred to as the “**Managers**” and singularly referred to as a “**Manager**”), and each and all of the individuals and entities listed on **Exhibit “A”** annexed hereto (each individually a “**Member**” and collectively, the “**Members**”) with respect to **BRADFORD & EUCLID, LLC**, a Delaware limited liability company (the “**Company**”).

**WHEREAS**, the Lawrence V. Losty, Jr., James R. Fancher, Paulus and Braxton Capital, LLC (the “**Existing Members**”) are the current Members of the Company; and

**WHEREAS**, the Existing Members adopted that certain Amended and Restated Operating Agreement of the Company dated as of August 25, 2016 (the “**Amended Agreement**”) which currently governs the affairs of the Company; and

**WHEREAS**, the Existing Members desire to admit RE Dietz Master Tenant, LLC (the “**Investor Member**”) as a member in the Company; and

**WHEREAS**, in connection with the admission of the Investor Member, the parties desire to completely amend and restate the Amended Agreement in its entirety.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby amend and restate the Amended Agreement to read in its entirety as follows:

**SECTION 1  
DEFINED TERMS**

**1.1 DEFINITIONS.** The defined terms used in this Agreement (as indicated by the first letter of each word in the term being capitalized) shall, unless the context clearly requires otherwise, have the meanings specified in **Appendix “A”** and **Appendix “B”** at the end of this Agreement.

**SECTION 2  
THE COMPANY**

**2.1 CONTINUATION.** The parties hereby to continue the Company pursuant to the provisions of the Act and upon the terms and conditions of this Agreement.

**2.2 NAME.** The name of the Company shall continue to be **Bradford & Euclid, LLC**, a Delaware limited liability company, and all business of the Company shall be conducted in such name. The Management Committee may change the name of the Company at any time and if the

name is changed, the Managers shall, as soon as is reasonably practicable, give notice to the Members of such name change; provided, however, that the failure to give such notice shall not affect the validity of such name change. The Company shall hold all of its assets and Property in the name of the Company and not in the name of any Member. The Company may conduct business under an assumed name by filing an assumed name certificate where required, in the manner prescribed by applicable law.

**2.3 PURPOSE.** The purpose of the Company is to directly, or indirectly, acquire, own, hold, operate, lease, finance, sell, dispose of (however designated), improve, renovate and otherwise deal with the Project, and to take all actions reasonably necessary to hold, improve, entitle, maintain and sell such Project. The Company shall engage in no other business. The Company shall have the power and authority to enter into all transactions which are provided for in this Agreement and as may be necessary or incidental to accomplish or implement the purposes of the Company including such powers as may be authorized by this Agreement or permitted under the Act but in all events consistent with the terms, conditions and restrictions set forth in this Agreement. In no event shall the Company engage in any activity which is proscribed by the laws of the State of Delaware.

**2.4 PRINCIPAL PLACE OF BUSINESS.** The principal place of business of the Company shall be 225 Wilkinson Street, Syracuse, New York 13204. The Management Committee may change the principal place of business of the Company at any time and if the principal place of business is changed, the Management Committee shall, as soon as is reasonably practicable, give notice to the Members of such change of the principal place of business; provided, however, that the failure to give such notice shall not affect the validity of such change.

**2.5 TERM.** The term of the Company shall be perpetual unless the Company is dissolved earlier as set forth in this Agreement.

#### **2.6 FILINGS.**

(a) The Certificate of the Company have been filed in the office of the Secretary of State of the State of Delaware in accordance with the provisions of the Act. The Management Committee shall take any and all other actions reasonably necessary to perfect and maintain the status of the Company as a limited liability company under the laws of the State of Delaware. The Management Committee shall cause amendments to the Certificate to be filed whenever required by the Act. Such amendments may be executed by any Manager or by any Person duly authorized by the Management Committee to authorize such amendments.

(b) The Management Committee shall execute and cause to be filed original or amended certificates and shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Company as a limited liability company or similar type of entity under the laws of any other states or jurisdictions in which the Company engages in business.

(c) The address of the registered office of the Company in the State of Delaware is c/o Corporation Trust Company, Corporate Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The Management Committee may change the registered office of the Company at any time and from time to time.

(d) The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware are Corporation Trust Company, Corporate

Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The Management Committee may change the name and address of the registered agent of the Company at any time and from time to time.

### SECTION 3 MEMBERS; CAPITAL CONTRIBUTIONS

**3.1 MEMBERSHIP UNITS.** The ownership of the Company shall hereafter be represented by Membership Units. The number of Membership Units the Company is authorized to issue is twenty thousand (20,000). The Management Committee may, at any time and from time to time, increase the number of authorized Membership Units.

**3.2 CLASSES; VOTING RIGHTS.** The Company shall consist of four (4) classes of Members (each a “Class” and collectively, the “Classes”): Class A.1 Members, the Class A.2 Members, Class B Members and the Class C Member. Class A.1 Members shall consist of Members holding Class A.1 Units; Class A.2 Members shall consist of Members holding Class A.2 Units; Class B Members shall consist of Members holding Class B Units; and Class C Members shall consist of Members holding Class C Units. Of the currently authorized 20,000 Membership Units, 7,200 have been designated as Class A.1 Units; 7,200 have been designated as Class A.2 Units; 3,600 have been designated as Class B Units; and 2,000 have been designated as Class C Units. In the event any additional Membership Units are authorized, the Management Committee shall designate the Class of such Membership Units. Except as specifically set forth in **Section 6.13** hereof, neither the Class B Units nor the Class C Units shall have any voting rights other than those non-waivable voting rights, if any, that are expressly provided to holders of such Membership Units under the Act. Members holding Class A.1 Units or Class A.2 Units shall exercise all voting rights set forth in this Agreement and provided under the Act and any other applicable law. Unless otherwise specifically provided herein (including but not limited to the selection of Managers) or required by law, the Class A.1 Units and the Class A.2 Units shall vote as a single class on all matters submitted to a vote of the Members.

**3.3 MEMBERS.** The names and addresses of the Members, and the Class to which each is assigned, are set forth on **Exhibit “A”** hereto. Each such Person is hereby admitted as a Member of the Company as of the effective date of this Agreement. The number of Membership Units owned by each Unit Holder is set forth on **Exhibit “B”** hereto.

#### **3.4 CAPITAL CONTRIBUTIONS.**

(a) The Existing Members previously made Capital Contributions to the Company and in connection with the admission of the Investor Member as a Member the Existing Members shall not be required to make any Capital Contribution. The Class A.1 Member has been issued 7,200 Class A.1 Units. The Class A.1 will be repaid an advance the Class A.1 Member previously made the Company in the amount of \$48,772.17. The Investor Member shall be required to make the following Capital Contribution to the Company in connection with the execution of this Agreement and shall acquire the Class C Units set forth opposite the Investor Member’s name below:

<u>Class C Member</u>	<u>Capital Contribution</u>	<u>Class C Units</u>
RE Dietz Master Tenant, LLC	\$6,807,321	2,000

The Investor Member is obligated to fund to the Company its Capital Contributions as and when the Investor Member receives capital contributions from Chase Community Equity, LLC (the “**Master Tenant Investor Member**”) pursuant to the RE Dietz Master Tenant, LLC Operating Agreement. The amount of the Master Tenant Investor Member capital contributions to the Investor Member which are required to be funded to the Company are set forth in the Investor Member’s Operating Agreement.

Fancher shall continue to hold his Class B Units pursuant to an incentive grant award attached hereto as **Exhibit “J”**.

(b) Pursuant to Regulation 1.704-1(b)(2)(iv)(f) and the Code Section 704(b), “book” value of the assets will be adjusted to reflect their Gross Asset Value as of the date hereof with an appropriate adjustment being made to the Capital Accounts of the Existing Members.

**3.5 ADDITIONAL MEMBERS.** The Management Committee shall have the authority, exercisable at any time and from time to time, to admit additional Members (the “**Additional Members**”) to the Company on such terms and conditions as the Management Committee, in its sole discretion, shall deem appropriate. In connection with any such admission, the Management Committee shall have the authority, in its sole discretion, to determine the number of Membership Units that each such Additional Member will receive, the consideration, if any, to be paid therefore and the Class to which such Additional Member shall be assigned. Upon the issuance of any additional Membership Units and/or the admission of any Additional Members the Exhibits hereto shall be amended as required.

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

**3.7 INTEREST.** No Unit Holder shall receive any interest, salary or drawing with respect to his Capital Contribution or his Capital Account or for services rendered on behalf of the Company or otherwise in his capacity as a Unit Holder, except as otherwise provided in this Agreement.

**3.8 LIMITED LIABILITY.** The Members shall not be liable for the debts, liabilities, contracts or any other obligations of the Company. Except as otherwise provided by applicable state law or this Agreement (including, but not limited to, **Section 3.10** hereof), a Unit Holder shall not be required to lend any funds to the Company or to make any additional Capital Contributions to the Company. No Manager shall have any personal liability for the repayment of any Capital Contributions of the Unit Holders; provided, however, nothing in this **Section 3.8** shall be deemed to relieve any Manager of any liability resulting from such Manager’s bad faith, intentional misconduct, knowing violation of law or breach of any fiduciary duty.

**3.9 LOANS.** Any Unit Holder or Manager or any Affiliate of a Unit Holder or Manager may, with the approval of the Management Committee, lend or advance money to the Company. If any Unit Holder, Manager or Affiliate thereof shall make any loan to the Company or advance

money on its behalf, the amount of any such loan or advance shall not be treated as a Capital Contribution but shall instead, be a debt due from the Company. The amount of any such loan or advance shall be repayable out of the Company's cash and shall have priority over any distributions made pursuant to **Section 5** hereof. All such loans or advances shall bear interest at the same rate the Company could have borrowed such funds from the Institutional Lender that the Company normally does business with or if there is no such Institutional Lender or if such Institutional Lender would decline to advance such funds, at the Prime Rate *plus* two (2) percentage points. Except as otherwise set forth in this Agreement, no Unit Holder shall be obligated to make any loan or advance to the Company.

### 3.10 ADDITIONAL CAPITAL CONTRIBUTIONS.

(a) If the Company shall need additional capital then each Class A.1, Class A.2 and Class B Unit Holder hereby agrees to make such additional cash Capital Contributions from time to time, on or before the Contribution Date specified in any duly given Deficit Contribution Notice, equal to such Unit Holder's Pro-Rata Share of the Cash Flow Deficit identified in such Deficit Contribution Notice (the "**Additional Capital Contribution**"). It is specifically understood that once the required Capital Contribution is made by the Class C Unit Holder pursuant to Section 3.5 hereof, that the Class C Unit Holder shall not be obligated to make any further Capital Contributions hereunder.

Notwithstanding the foregoing, in the event that Deficit Contribution Notice is given during the Initial Operating Period, then the Class A.2 Unit Holder agrees to loan to the Class A.1 Unit Holder and Losty their Pro-Rata share of the Additional Capital Contribution (the "**Capital Contribution Loan**"). The Class A.1 Unit Holder and Losty (the "**Borrowing Unit Holders**") will receive credit to their Capital Account for the amount of their respective Capital Contribution Loan. The Capital Contribution Loan will bear interest at the Prime Rate plus five percent (5%) and while such Capital Contribution Loan is outstanding, all distributions or payments to the Borrowing Unit Holders are entitled to receive under either Section 5 or Section 11 hereunder, will be paid to the Class A.2 Unit Holder and will be credited first to accrued interest and then to the principal balance of the Capital Contribution Loan until the Capital Contribution Loan is paid in full. Any distributions that the Borrowing Unit Holders are entitled to but which are paid to the Class A.2 Unit Holder pursuant hereto will reduce the Capital Accounts of the Borrowing Unit Holders as if such distribution had been made directly to the Borrowing Unit Holder. The balance Capital Contribution Loan will be payable in full on the earlier of (i) sale of the Project or (ii) the dissolution of the Company.

(b) A Unit Holder who is responsible to make an Additional Capital Contribution or a Cost Overrun Contribution is referred to as a "**Responsible Unit Holder**".

(c) In the event a Responsible Unit Holder fails to make any Additional Capital Contribution when due and such failure continues for a period of ten (10) days after notice from the Company to said Responsible Unit Holder (the "**Default**") (such Responsible Unit Holder(s) being referred to as the "**Defaulting Unit Holder(s)**"), the Defaulting Unit Holder(s) shall be in default under this Agreement and, while such Default continues, the Management Committee, without prejudice to any other right of the Company, may elect in the sole and absolute discretion of the Management Committee: (i) not to pay the Defaulting Unit Holder(s) any distribution pursuant to **Section 5** of this Agreement to which the Defaulting Unit Holder(s) would otherwise be entitled and in lieu thereof to apply any undistributed amounts theretofore or

thereafter distributable to the Defaulting Unit Holder(s) pursuant to **Section 5** towards the obligation of such Defaulting Unit Holder(s) to make such Additional Capital Contribution; and (ii) for purposes of any provision of this Agreement providing for the consent or the action of Members or the Managers to deem the Defaulting Unit Holder(s) not to be a Member or a Manager, if applicable. In addition to the foregoing, if the Default continues in existence for a thirty (30) day period, the Management Committee, in its sole and absolute discretion, may elect to pursue the following additional remedies: (i) issue to the Member(s) who actually made the required Additional Capital Contributions, additional Membership Units in the Company in such number as is determined by the Management Committee, in its sole and absolute discretion, and dilute only the Membership Percentage of the Defaulting Unit Holder(s); or (ii) to sue the Defaulting Unit Holder(s) to collect the unpaid amount of any such Additional Capital Contribution or Cost Overrun Contributions (together with interest thereon from the date such contribution was due at the lower of (A) Prime Rate plus three (3) percentage points or (B) the highest lawful rate in the State of Delaware), plus any collection expenses incurred by the Company, including, but not limited to, the reasonable fees and disbursements of counsel to the Company. For purposes of this **paragraph (c)**, the term Management Committee shall be deemed to exclude any Manager who is also a Defaulting Unit Holder.

(d) It is specifically recognized and understood that the provisions of this **Section 3.10** may only be enforced by the Management Committee and in no way will the provisions of this **Section 3.10** be deemed to expand the liability of the Unit Holders to creditors of or other third parties dealing with the Company.

**3.11 GUARANTEE OF MORTGAGE LOAN.** In the event the Lender requires a guaranty to be executed with respect to the Mortgage Loan, including any guaranty of recourse obligations, the Class A.1, Class A.2 and Class B Members, or such other Affiliates of such Members satisfactory to the Lender, will provide such guaranty.

#### **SECTION 4 ALLOCATIONS**

**4.1 ALLOCATIONS.** After giving effect to the special allocations set forth in **Appendix "B"** hereto (which is hereby incorporated in full by reference), Profits and Losses for any fiscal year shall be allocated to the Unit Holders as follows:

(a) Profits for any fiscal year shall be allocated to the Unit Holders in the following order and priority:

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

(ii) The balance, if any, to the Unit Holders pro rata in accordance with their Membership Percentages. For purposes of this **Section 4.1(a)(ii)** the Membership Percentage of any Unit Holder shall be computed by taking into account all of the Class B Units then held by any Class B Unit Holder, regardless of whether the same are vested.

(b) Losses for any fiscal year shall be allocated to the Unit Holders in the following order and priority:

(i) First, pro rata among the Unit Holders (based on Capital Account balances) as necessary to cause the Capital Account balances of each such Unit Holder to equal zero; and

(ii) The balance, if any, to the Unit Holders pro rata in accordance with their Membership Percentages. For purposes of this **Section 4.1(b)(ii)** the Membership Percentage of any Unit Holder shall be computed by taking into account all of the Class B Units then held by any Class B Unit Holder, regardless of whether the same are vested.

## SECTION 5 DISTRIBUTIONS

**5.1 NET AVAILABLE CASH.** Subject to **Section 5.3** hereof, Net Available Cash shall be distributed to the Unit Holders in proportion to their Membership Percentages at such times and in such amounts as the Management Committee shall determine. For purposes of this **Section 5.1** and **Section 5.3** the Membership Percentage of any Unit Holder shall be computed by taking into account only the Vested Units then held by any Class B Unit Holder.

**5.2 AMOUNTS WITHHELD.** All amounts withheld pursuant to the Code or any provision of state or local law with respect to any payment or distributions by the Company to the Unit Holders shall be treated as amounts distributed to the Unit Holders pursuant to this **Section 5** for all purposes under this Agreement. The Management Committee may allocate any such amounts among the Unit Holders in any manner that is in accordance with applicable law.

**5.3 TAX DISTRIBUTIONS.** Notwithstanding any other provision herein to the contrary, so long as the Company is treated as a partnership for federal income tax purposes, the Company shall distribute to the Unit Holders within 15 days after the end of each March, May, August and December, to the extent that funds are legally available therefor and would not impair the liquidity of the Company with respect to working capital, capital expenditures, debt service, or reserves, and would not be prohibited under any credit facility to which the Company or any Subsidiary is a party, an aggregate amount of cash (a "**Tax Distribution**") in respect of such period which in the good faith estimation of the Management Committee equals the product of (x) the aggregate amount of all taxable income allocable to the Unit Holders in respect of such period (determined without regard to adjustments under Section 734(b), if applicable), multiplied by (y) the combined maximum U.S. federal, state and local income tax rate to be applied with respect to such taxable income (calculated by using the highest maximum combined marginal U.S. federal, New York State and local income tax rates, but taking into account any reduced rate applicable to any special class of income such as capital gains and dividends and taking into account the federal tax deduction applicable to state and local taxes for such period (making an appropriate adjustment for any rate changes that take place during such period). Each Tax Distribution shall be distributed among such Unit Holders on a pro rata basis according to the allocation of the Company's taxable income for such period (determined without regard to adjustments under Section 734(b), if applicable). The Management Committee shall be entitled to adjust subsequent Tax Distributions up or down to reflect any variation between its prior estimation of quarterly Tax Distributions and the Tax Distributions that would have been computed under this **Section 5.3** based on subsequent information. In the event that the funds legally available for any Tax Distribution to be made hereunder are insufficient to pay the full amount of the Tax Distribution that would otherwise be required under this **Section 5.3**, the reduced amount of such Tax Distribution shall be distributed to the Unit Holders on a pro rata



basis (according to the amounts that would have been distributed to each Unit Holder pursuant to this **Section 5.3** if legally available funds existed in a sufficient amount to make such Distribution in full). At any time thereafter when additional funds of the Company are legally available for distribution, such funds shall be immediately distributed to the Unit Holders on a pro rata basis (according to the amounts that would have been distributed to each Unit Holder pursuant to this **Section 5.3** if legally available funds would have existed in a sufficient amount to make such Tax Distribution in full). Each Tax Distribution pursuant to this **Section 5.3**, to the extent a Unit Holder is entitled to such Tax Distribution by virtue of taxable income allocated to such Unit Holder by virtue of **Section 4** hereof, shall be treated as an advance to such Unit Holder of amounts to which they are otherwise entitled under, and shall reduce the amount of any other Distributions to such Unit Holder pursuant to, **Section 5.1**.

**5.4 DISTRIBUTIONS IN KIND.** Distributions of property shall be valued at the Gross Asset Value of the property, net of any liability assumed by the distributee Unit Holder(s) in connection with such distribution and any indebtedness to which such property is subject as determined by the Management Committee in good faith using reasonable discretion.

**5.5 SET-OFF.** To the extent permitted by applicable law, the Company may set-off against and reduce any distributions payable under this **Section 5** by any *bona fide* amounts actually owing from a Unit Holder to the Company.

## SECTION 6 MANAGEMENT

### 6.1 MANAGEMENT COMMITTEE.

(a) The management of the Company shall be vested in a committee of Managers (the “**Management Committee**”) designated by the Class A.1 and A.2 Members. The number of Managers shall be two (2) unless otherwise provided herein, with the Class A.1 Member being entitled to appoint one (1) Manager and the Class A.2 Member being entitled to appoint one (1) Manager. Paulus has been designated by the Class A.1 Member and C. Breuer has been appointed by the Class A.2 Member as the current Managers of the Company (the “**Current Managers**”). Each Current Manager shall serve as a Manager until he resigns, is removed, dies or is otherwise unable or unwilling to serve. If, at any time, a Class does not have any then members, the Manager appointed by such Class (and any Designated Successor Manager of such resigning Manager) shall be deemed to have resigned.

(b) A Manager may be removed at any time, with or without cause, by unanimous vote of the Class of Members which appointed such Manager. Such removal shall be effective upon delivery of written notice thereof to the Company.

(c) Each Current Manager shall have the right to designate a replacement Manager (a “**Designated Successor Manager**”). The initial designations of the Designated Successor Manager for each Manager is set forth on **Exhibit “F”** hereto. A Current Manager shall have the right, exercisable at any time while such Person is serving as a Manager, to change his Designated Successor Manager, in which event the Company shall amend **Exhibit “F”** to reflect such change. Such change in the Designated Successor Manager shall only be effective when the Current Manager delivers written notice of the same to the Company.

(d) In the event any Current Manager, resigns, is removed, dies or is unwilling or unable to serve as such (the “**Resigning Manager**”), such Current Manager’s Designated

Successor Manager shall automatically become a Manager replacing the Resigning Manager. If there is no Designated Successor Manager, or if the Designated Successor Manager is unable or unwilling to serve, the Members of the Class originally designating such Resigning Manager shall, by Majority Vote thereof, promptly designate a successor Manager (a “**Successor Manager**”).

(e) A Designated Successor Manager may be removed at any time, with or without cause, by Majority Vote of the Members of the Class originally designating such Manager.

(f) Except as set forth in **Section 6.4** hereof, all actions requiring the approval of the Management Committee shall require the majority vote of all then members of the Management Committee with each Manager being entitled to cast one (1) vote (or a fraction of one vote) for each Membership Unit held by such Manager (or by the Member who selected such Manager). For avoidance of doubt, the number of votes each Manager is entitled to cast as of the date hereof is set forth on **Exhibit “C”** hereto.

## **6.2 AUTHORITY OF THE MANAGERS.**

(a) Except to the extent otherwise provided herein, the Management Committee shall have the sole and exclusive right to manage the business of the Company, to make all decisions regarding those matters and to perform all other acts and activities customary to or incidental to the management of the Company’s business, excepting only those acts and things as to which approval by the Members is expressly required by this Agreement or which are required by the Act (but only to the extent the same cannot be waived by the Act).

(b) In no way limiting the foregoing, the Management Committee shall have the authority to make any and all elections for federal, state and local tax purposes including, without limitation, any election, if permitted by applicable law: (i) to adjust the basis of Company Property pursuant to Code Sections 754, 734(b) and 743(b) or the comparable provisions of state or local law, in connection with transfers of interests in the Company and Company distributions; (ii) to extend the statute of limitations for assessment of tax deficiencies against Unit Holders with respect to adjustments to the Company’s federal, state or local tax returns; and (iii) to represent the Company and the Unit Holders before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company and the Unit Holders in their capacity as Unit Holders and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Unit Holders with respect to such tax matters or otherwise affect the rights of the Company or the Unit Holders. Paulus is specifically authorized to act as the “**Tax Matters Partner**” under the Code and in any similar capacity under state or local law until such time, if ever, that the Management Committee designates in writing a different individual to serve as the Tax Matters Partner.

**6.3 RIGHT TO RELY ON MANAGER.** Any Person dealing with the Company may rely upon a certificate signed by any Manager as to:

(a) the identity of any Manager or Unit Holder and/or the identity of any individual authorized to represent a Manager;

(b) the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by a Manager or which are in any other manner germane to the affairs of the Company;

(c) the Persons who are authorized to execute and deliver any instrument or document on behalf of the Company; or

(d) any act or failure to act by the Company or any other matter whatsoever involving the Company or any Unit Holder.

#### **6.4 DAY TO DAY MANAGEMENT; BUDGET; CONSTRUCTION MANAGER.**

(a) Paulus is hereby appointed as the manager in charge of the day to day management of the Company and the Project and shall have the authority to execute such contracts, agreements and other documents on behalf of the Company in connection therewith, except contracts or agreements to be entered into in connection with or resulting from a Major Decision which shall require the approval of both Managers.

(b) All Major Decisions proposed to be taken by the Company require the prior approval of both Managers. No Manager shall take any action on behalf of a Major Decision with respect to a proposed Major Decision unless and until such Major Decision has been approved by both Managers. Each of the following constitutes a “**Major Decision**” for purposes of this Agreement:

(i) the borrowing of any money, except for the Mortgage Loan and trade debt incurred in the ordinary course of business, or amending the terms and condition of the Mortgage Loan;

(ii) granting any mortgage, security interest or other lien on the Property, except in connection with the Mortgage Loan;

(iii) subjecting all or any part of the Project to condominium status;

(iv) selling all or any part of the Project;

(v) modifying the Management Agreement;

(vi) seeking or consenting to any change in the zoning or other land use regulations affecting the Project or to any of the permits or approvals granted thereunder;

(vii) rebuilding or reconstructing the improvements on the Project if they are substantially damaged by a fire or other casualty, except to the extent required by the Mortgage;

(viii) file any lawsuit or other procedures;

(ix) acquiring any real property (other than the Project) or any interest in any entity;

(x) making any alterations to the Project except as provided in the Renovation and Development Budget or making any material change to the Renovation and Development Budget or the Renovation Plans;

(xi) changing the Company’s accounting method either for financial or tax reporting purposes;

(xii) incurring any obligation which would exceed the applicable annual line item in the Initial Operating Budget or any Annual Plan by more than ten percent (10%) of such annual line item or which would cause the total of all annual line items in the Initial Operating Budget or any Annual Plan to be exceeded by more than five percent (5%); provided,

however, that if any emergency arises which threatens imminent harm to the Project or injury to persons and prior communication with the other Manager with respect to such emergency is not practicable, Paulus may expend such funds as may reasonably be necessary to avert such harm or injury as long as he gives notice to the other Manager on the next business day after such expenditure of the nature of such emergency and provides such additional information as the other Manager may reasonably request in connection therewith;

(xiii) dissolving the Company; or

(xiv) causing the Company to make any filing under the Federal Bankruptcy Code, to make any assignment for the benefit of creditors or any comparable filing, or to acquiesce in an involuntary bankruptcy proceeding.

(c) Attached to this Agreement as **Exhibit "D"** is a budget for the renovation, rehabilitation and development of the Project (the "**Renovation and Development Budget**"). The Members hereby approve such Renovation and Development Budget, and Paulus shall cause the Company to perform the renovations and rehabilitations of the Project and operate within the Renovation and Development Budget as required herein.

(d) Attached hereto as **Exhibit "H"** is the initial budget for the Project (the "**Initial Operating Budget**"). Prior to the end of each fiscal year, Paulus shall prepare or caused to be prepared the following budgets for the next fiscal year which shall be approved by the Managers (the "**Annual Plan**"):

(i) A capital expenditure budget outlining a program of capital expenditures for the next fiscal year.

(ii) An operating budget setting forth an estimate of operating revenue and operating expenses for the next fiscal year.

(iii) A projection of cash receipts and disbursements based upon the proposed operating and capital expenditure budgets, together with recommendations as to use of projected cash flow in excess of short term operating requirements and/or as to the sources and amounts of additional cash flow that may be required to meet operating requirements and capital expenditures.

Each such Annual Plan shall be presented to and voted upon by the Management Committee within thirty (30) days of such budget being presented. In the event the Management Committee shall be unable to agree on a particular Annual Plan, the Annual Plan for the previous year shall remain in place for the year under consideration until such time as a new budget is approved with each expense line item within such Annual Plan being increased only by an amount equal to the cost of living increase for the prior year.

(e) The Company shall contact with Hueber Breuer Construction Company, Inc. as the at-risk construction manager (the "**Project Construction Manager** ") for the renovation of the Project pursuant to a construction management agreement in the form attached as **Exhibit "I"** (the "**Construction Management Agreement**"). The Construction Management Agreement will provide that the Project Construction Manager will agree to pay or reimburse the Company for any Cost Overruns in excess of the Total Project Costs. Payments made by the Project

Construction Manager under this provision will be considered to be made outside of the Company as part of a “turn-key” development and construction obligation of the Project Construction Manager, and such payments and advances shall not be considered a loan or advance to the Company or an additional Capital Contribution to the Company, nor shall the Project Construction Manager be entitled to any Membership Units, Membership Unit equivalents or any other form of equity or interest in the Company by virtue of such payment, contribution or action, nor shall the Project Construction Manager be entitled to any other form of recovery in connection with such payments or advances.

#### **6.5 DUTIES AND OBLIGATIONS OF THE MANAGERS.**

(a) The Managers shall cause the Company to conduct its business and operations separate and apart from that of any Unit Holder or Manager or any Affiliates thereof, including, without limitation: (i) segregating Company assets and not allowing funds or other assets of the Company to be commingled with the funds or other assets of, held by, or registered in the name of, any Unit Holder or Manager or any Affiliate thereof; (ii) maintaining books and financial records of the Company separate from the books and financial records of any Unit Holders or Manager or any Affiliates thereof, and observing all Company procedures and formalities, including, without limitation, maintaining minutes of Company meetings and acting on behalf of the Company only pursuant to due authorization of the Members; (iii) causing the Company to pay its liabilities from assets of the Company; and (iv) causing the Company to conduct its dealings with third parties in its own name and as a separate and independent entity.

(b) The Managers shall take all actions which may be necessary or appropriate: (i) for the continuation of the Company’s valid existence as a limited liability company under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Members or to enable the Company to conduct the business of the Company; and (ii) for the accomplishment of the Company’s purposes, in accordance with the provisions of this Agreement and applicable laws and regulations.

(c) The Managers shall have a fiduciary duty to conduct the affairs of the Company in the best interests of the Company and of the Members, including the safekeeping and use of all of the Company Property for the exclusive benefit of the Company whether or not in the immediate possession or control of the Managers and shall not employ or permit another to employ Company Property except for the benefit of the Company.

#### **6.6 INDEMNIFICATION OF THE MANAGERS.**

(a) No Manager of the Company shall be liable to the Company or its Unit Holders for monetary damages for any act or omission in such person’s capacity as a Manager, except for: (i) acts or omissions which the Manager knew at the time of the acts or omissions were clearly in conflict with the interests of the Company; (ii) any transaction from which the Manager derived an improper personal benefit; or (iii) acts or omissions occurring prior to the date of this Agreement. If the Act is amended to authorize action further eliminating or limiting the liability of managers, then the liability of the Managers shall be eliminated or limited to the fullest extent permitted by the Act as so amended. Any repeal or modification of the governing sections of the Act shall not adversely affect the right or protection of a Manager existing immediately before such repeal or modification.

(b) The Company shall indemnify each Manager and Member to the fullest extent permitted or required by the Act, as amended from time to time. The Company may advance expenses incurred by a Manager or Member upon the approval of the disinterested Managers and the receipt by the Company of an undertaking by such Manager or Member to reimburse the Company unless it shall ultimately be determined that such Manager or Member is entitled to be indemnified by the Company against such expenses. The Company may also indemnify its employees and other representatives or agents up to the fullest extent permitted under the Act or other applicable law, provided that the indemnification in each such situation is first approved by the Management Committee.

(c) The indemnification provided by this Agreement shall: (i) not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, agreement, Majority Vote of the Members holding Class A Units (exclusive of any Membership Units held by any Manager under consideration, if applicable) or disinterested Managers, or otherwise, both as to action in official capacities and as to action in another capacity while holding such office; (ii) continue as to a person who ceases to be a Manager or Member; (iii) inure to the benefit of the estate, heirs, executors, administrators or other successors of an indemnitee; and (iv) not be deemed to create any rights for the benefit of any other Person.

#### **6.7 COMPENSATION AND EXPENSES OF MANAGERS.**

(a) Each Manager may charge the Company for any reasonable expenses incurred in connection with the Company business provided such reimbursement has been approved by the Management Committee.

(b) Except as otherwise set forth in this Agreement, no Manager shall receive any fees or other compensation for serving as a Manager, unless such fees or other compensation are approved by Majority Vote of the Members holding Class A Units. However, each Manager (if such Manager is also a Member) shall be entitled to the distributions and allocations provided for elsewhere in this Agreement.

(c) The management company which is owned by Paulus shall be entitled to receive the fees set forth in the Management Agreement.

#### **6.8 OPERATING RESTRICTIONS.**

(a) No rebates, kickbacks, or reciprocal arrangements may be received or entered into by any Manager, nor may any Manager participate in any business arrangement which would circumvent this Agreement.

(b) Subject to any approval requirements, the signature of any one (1) of the Managers shall be sufficient to convey title to any Property owned by the Company or to execute any promissory notes, trust deeds, mortgages or other instruments of hypothecation, and the Unit Holders agree that a copy of this Agreement may be shown to the appropriate parties in order to confirm the same. The Unit Holders further agree that, except as otherwise provided herein, the signature of any one (1) of the Managers shall be sufficient to execute any documents necessary to effectuate any provision of this Agreement.

(c) The Management Committee may at any time and from time to time enter into contracts and agreements with any Member or Manager or any Affiliate of a Member or

Manager for the furnishing or leasing of goods or services, or the loaning of money to the Company. Any such contract or agreement shall be subject to the following conditions:

(i) Any such agreement or contract shall be fully and promptly disclosed to the Members and shall be embodied in a written document which precisely describes the subject matter thereof and all compensation to be paid pursuant thereto; and

(ii) The compensation, fee, price, charge or other consideration to be paid pursuant thereto shall be comparable to and competitive with that of any other Person rendering comparable services, selling or leasing comparable goods, or binding funds which would reasonably be available to the Company.

**6.9 OFFICERS.** The Management Committee may, at any time and from time to time, designate one or more Persons as officers of the Company. Such Persons shall have such titles and responsibilities and shall be entitled to such compensation as the Management Committee shall, in its discretion, determine. Any such Person may be removed by the Management Committee at any time, with or without cause.

#### **6.10 MEETINGS OF THE MANAGEMENT COMMITTEE.**

(a) The Management Committee shall not be required to hold regular meetings. Special meetings of the Management Committee may be called by any Manager. Notice of each such special meeting shall be given to each Manager by telephone, telecopy, telegram, electronic means (*i.e.*, e-mail) or similar method (in each case, notice shall be given at least thirty-six (36) hours before the time of the meeting) or sent by first class mail (in which case, notice shall be given at least five (5) days before the meeting), unless a longer notice period is established by the Management Committee. Each such notice shall state: (i) the time, date, place (which shall be at the principal place of business of the Company unless otherwise agreed to by all Managers) or other means of conducting such meeting; and (ii) the purpose of the meeting to be so held. No actions, other than those specified in the notice, may be considered at any special meeting unless unanimously approved by the Managers. Any Manager may waive notice of any meeting in writing before, at, or after such meeting. The attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting, except when a Manager attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not properly called.

(b) Any action required to be taken at a meeting of the Managers, or any action that may be taken at a meeting of the Managers, may be taken at a meeting held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting.

(c) Notwithstanding anything to the contrary in this **Section 6.10**, the Managers may take without a meeting any action that may be taken by the Managers under this Agreement if such action is approved by Managers holding not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Managers entitled to vote thereon were present and voted.

#### **6.11 DEADLOCK PROVISIONS.**

(a) The Members recognize that given the actions specified in **Section 6.4** hereof must be unanimously approved by the Management Committee, there is a possibility of deadlock

from time to time - that is to say the failure of a Manager to give his approval or consent to any matter specified in **Section 6.4** requiring the approval or consent of all the Managers (an “**Impasse**”). In the event of an Impasse, the Managers shall, for a thirty (30) day period, attempt in good faith to resolve such Impasse (the “**Resolution Period**”). The Resolution Period can be extended (or shortened) by unanimous agreement of the Managers. If at the end of the Resolution Period, an agreement has not been reached, the remaining provisions of this **Section 6.11** shall apply.

(b) If at the end of the Resolution Period, the Impasse has not been resolved, either Class A Member (the “**Electing Member**”) may invoke the buy-sell provisions of this **Section 6.11** by the giving of written notice (the “**Election Notice**”) to the other Class A Member (the “**Notice Member**”) within fifteen days of the end of the Resolution Period. In order to be valid, the Election Notice must: (i) state an amount as to the proposed fair market value (the “**Deemed Value**”) of each Membership Unit; (ii) specify the proposed payment terms of the purchase price (the “**Specified Payment Terms**”); and (iii) be timely delivered to the Notice Member. If the decision giving rise to the Impasse is a decision specified in **Section 6.4(b)(iv)** (*i.e.*, a decision involving a Sale of the Company), and if an offer has been received by an Independent Third Party then in such event the Deemed Value of each Membership Unit will be equal to the purchase price offered per Membership Unit by such Independent Third Party in the event of sale of Membership Units or the amount per Membership Unit each Unit Holder will receive as a result of the Sale of the Company, and the Specified Payment Terms will be the payment terms specified by such Independent Third Party.

(c) The giving of an Election Notice shall constitute an irrevocable offer by the Electing Member to either: (i) purchase all, but not less than all, of the Membership Units owned by the Notice Member at the Deemed Value per Membership Unit and on the Payment Terms; or (ii) sell all, but not less than all, of the Membership Units owned by the Electing Member to the Notice Member at the Deemed Value per Membership Unit and on the Payment Terms. Once given, an Election Notice shall be irrevocable unless such revocation is consented to in writing by the Notice Member.

(d) For a period of forty five (45) days following the day on which the Election Notice is given (the “**Election Period**”) the Notice Member shall have the option to either: (i) purchase all, but not less than all, of the Membership Units owned by the Electing Member at the Deemed Value per Membership Unit and on the Specified Payment Terms; or (ii) sell all, but not less than all, of the Membership Units owned by the Notice Member to the Electing Member at the Deemed Value per Membership Unit and on the Specified Payment Terms. The election (the “**Exercise Notice**”) must be given in writing on or before the end of the Election Period. Once given, the Exercise Notice shall be irrevocable unless such revocation is consented to in writing by the Electing Member. If the Notice Member does not give an Exercise Notice on or before the end of the Election Period, the Notice Member shall be deemed to have irrevocably elected to sell each and all of the Membership Units owned by the Notice Member to the Electing Member at the Deemed Value per Membership Unit payable in accordance with the Specified Payment Terms.

(e) The closing of the purchase and sale of the Membership Units shall occur on a date and time mutually agreeable to the Electing Member and the Notice Member which, unless otherwise agreed to, shall occur within ninety (90) days of the end of the Election Period. The closing shall take place at such place as the Electing Member and the Notice Member shall



mutually agree or, failing such agreement, at the offices of the Company. At the closing, the parties shall execute and deliver such documents and instruments of conveyance as may be necessary or appropriate to effectuate the closing of the sale of the Membership Units.

**6.12 LIMITATIONS ON THE AUTHORITY OF THE MANAGERS.** Notwithstanding anything contained herein to the contrary, the Managers do not, without the consent of the Investor Member, have any authority to:

(a) sell, refinance or otherwise dispose of the assets of the Company, grant or refinance any mortgage or other indebtedness of the Company, permit a disposition of the Property within the meaning of Section 50 of the Code during the HTC Compliance Period or take any action or fail to take any action that would cause a Recapture Event;

(b) supplement, replace, renew, materially amend, cancel or terminate this Agreement or any of the Construction Loan Documents;

(c) incur debt in excess of \$50,000 in the aggregate at any one time outstanding on the general credit of the Company or encumber any assets of the Company;

(d) acquire any real property in addition to the Property;

(e) initiate any Event of Bankruptcy on behalf of the Company;

(f) make application(s) for or accept any grant funds on behalf of the Company regardless of the source of the grant;

(g) pledge or assign any assets of the Company, including the Investor Member's Capital Contribution or the proceeds thereof;

(h) cause the Company to settle, compromise, mediate or otherwise relinquish any claim (actual or prospective), or to release, waive or diminish any material Company's rights in any litigation or arbitration matter involving a claim in excess of \$10,000;

(i) change the nature of the Company's business;

(j) dissolve and wind up the Company;

(k) permit the merger or termination of the Company;

(l) issue additional interests in the Company, modify the Investor Member's interest in the Company, or admit additional members to the Company;

(m) permit a sale or transfer of any membership interest or economic interest in the Company or permit a sale or transfer of the direct or indirect ownership interests in the Company; (n) during the HTC Compliance Period, take any action that causes or is likely to cause the Building to be de-listed from the National Register of Historic Places or certified as noncontributing to the historic district in which it is located, as applicable;

(o) undertake any rehabilitation, repairs or other work on the Building inconsistent with the Secretary's Standards;

(p) construct any new or replacement capital improvements on the Property which would cause a Recapture Event, substantially alter the Property or its use or which are at a cost in excess of \$100,000 in a single Company Fiscal Year or such lower amount as required by any Institutional Lender, except (i) replacements, repairs, and remodeling in the ordinary course of business or under emergency conditions, (ii) reconstruction paid for from insurance proceeds, or (iii) as and to the extent provided for in an approved Renovation and Development Budget, if any;

(q) take any action or fail to take any action that would prevent the Historic Tax Credits from being passed through to the Investor Member pursuant to the Master Lease;

(r) resign or withdraw as a Manager; or

(s) amend the Construction Management Agreement.

#### **6.13 SPECIAL MANAGER REMOVAL RIGHTS OF THE INVESTOR MEMBER.**

(a) Notwithstanding anything contained herein to the contrary and subject to any required approval of the provider of the Mortgage Loan, the Investor Member shall have the right to remove the Managers and replace them with an affiliate of the Investor Member upon the occurrence of and during the continuance of any of the following (each a "**Material Default**"):

(i) for any intentional misconduct, negligence, malfeasance, fraud, act outside the scope of its authority, breach of its fiduciary duty, or, provided the same has or reasonably may have a material, adverse impact on the Company, the Investor Member or the Property, any failure to exercise reasonable care with respect to any matter in the discharge of its duties and obligations as Manager; or

(ii) upon the occurrence of any of the following:

(A) the Manager has violated any other provision of this Agreement, applicable law or other requirements applicable to the Property, provided the same has a material, adverse impact on the Company, the Investor Member or the Property;

(B) the Manager by its actions or inactions has caused the Mortgage Loan or any other Loan to go into default, which default is not cured within the periods set out in the documents evidencing such loan;

(C) the Manager has conducted its own affairs or the affairs of the Company in such manner as would either (1) cause the Company to fail to qualify as a limited liability company under the Act; (2) cause the termination of the Company for federal income tax purposes; (3) cause the Company to be treated for federal income tax purposes as an association, taxable as a corporation; or (4) cause a Recapture Event;

(D) an Event of Bankruptcy has occurred with respect to the Company or any Managing Member; or

(E) the managing member of the Investor Member has been removed.

(b) The Investor Member will give notice to all Members of its determination of a Material Default. The Manager will have thirty (30) days after receipt of such notice to cure any default or other reason for such removal; provided, however, that if upon the expiration of said thirty (30) day period, the Manager has not cured such Material Default and, if in the reasonable judgment of the Investor Member, (i) the Manager has made reasonable progress towards cure, and (ii) the Material Default was not capable of being cured within said thirty (30) day period, then unless and to the extent the nature of the Material Default is such that there is a likelihood of material loss, liability or prejudice to the Investor Member or its members from any such delay in removal, the Manager has thirty (30) additional days in which to cure any such Material Default, in which event it will remain as Manager. If the Material Default is not susceptible to cure or if, at the end of thirty (30) days, the Manager has not cured any Material Default, the Manager will cease to be a Manager and the powers and authorities conferred on it as Manager under this Agreement will cease and the membership interest of such Manager (if the Manager is then a Member) will be converted to a non-voting investor membership interest with no right or ability to vote upon or consent to, among other things, any management or operational decisions, except to the minimum extent required by the Act. Notwithstanding any provision of this Agreement to the contrary, in connection with a Material Default, the Investor Member has the right to convert any portion of its membership interest to a Managing Member interest and assign such interest to a Person selected by the Investor Member and admit such Person to the Company. Upon its admission to the Company, such Person will become a Manager.

(c) In the event that the Manager is removed as aforesaid, then:

(i) it will be and will remain liable for all obligations and liabilities hereunder that accrued before such removal became effective. Any fees which have been earned by the Manager before such removal became effective will remain payable by the Company in accordance with the provisions of this Agreement, offset by damages owed by the Manager resulting from the Material Default and resulting removal; and

(ii) notwithstanding anything to the contrary herein, any distributions permitted or required to be made by the Company to the Manager will instead be made directly to the Investor Member until such time as the Investor Member and the **[Master Tenant Investor Member]** have each been made whole for any and all losses, costs, damages (including attorneys' fees and costs) caused by the Material Default and the resulting removal.

## SECTION 7

### ROLE OF MEMBERS; VOTING RIGHTS; MEETINGS; COVENANTS

**7.1 RIGHTS OR POWERS.** No Member shall be entitled to vote on any matter affecting the management or control of the Company or its business and affairs except with respect to those

matters specifically requiring a vote of the Members pursuant to this Agreement and except for those matters specifically reserved for a member vote in the Act and which cannot be waived by the Act. It is the intention of the Members to hereby waive, to the maximum extent permitted by the Act, the right to vote on any and all matters except for those matters with respect to which the right to vote has been specifically granted to the Members pursuant to this Agreement.

**7.2 VOTES.** Each Member holding Class A Units shall be entitled to cast one (1) vote (or fraction of a vote) for each Membership Unit (or fraction of a Membership Unit) then held by such Class A Member on all matters properly submitted to a vote of the Members. Except as otherwise provided in this Agreement: (i) a matter shall not be submitted to a vote of the Class A Members unless first approved by the Management Committee; and (ii) any action which requires the approval of the Members shall be deemed approved if the action receives a Majority Vote of the Members holding Class A Units. Each Class B Unit Holder hereby acknowledges that he is not entitled to vote on any matters related to the Company and that the right to vote is vested solely in the Members holding Class A Units. Any reference in this Agreement to a vote of the Members is intended to and shall be deemed to mean a vote of solely the Members holding Class A Units.

### **7.3 MEETINGS OF THE MEMBERS.**

(a) The Company shall not be required to hold an annual meeting of the Members. Special meetings of the Members may be called by any Manager and shall be called upon the written request of any Class A Member or Class A Members holding more than ten percent (10%) of the then outstanding Class A Units. The call shall state the location of the meeting and the nature of the business to be transacted. Notice of any such meeting shall be given to all Members not less than three (3) business days nor more than thirty (30) days prior to the date of such meeting. Members holding Class A Units may participate in such meeting either in person, by proxy or by means of conference telephone or similar communications equipment by means of which all Persons participating in such meeting can hear each other. Such participation shall constitute presence in person at such meeting. A Class A Member may waive advance notice of such meeting. Whenever the vote or consent of the Class A Members is permitted or required under the Agreement, such vote or consent may be given at a meeting of the Class A Members or may be given in accordance with the procedure prescribed in this **Section 7.3**.

(b) For purposes of determining the Class A Members entitled to vote on, or to vote at, any meeting of the Class A Members or any adjournment thereof, the Management Committee may fix, in advance, a date as the record date for any such determination. Such date shall not be more than thirty (30) days nor less than ten (10) days before any such meeting.

(c) Each Class A Member may authorize any Person or Persons to act for such Member by proxy on all matters in which such Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Member or his attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member executing the same.

(d) Each meeting of Members shall be conducted by the Managers or such other individual Person as the Managers deem appropriate.

(e) Notwithstanding the above, the Company may take any action contemplated under this Agreement without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken shall be signed by Class A Members holding not less than the minimum number of Class A Units that would be necessary to authorize or take such action at a meeting at which all of the Members entitled to vote thereon were present and voted. Each such consent shall be dated, be in writing and be delivered to the office of the Company, its principal place of business or to a Manager. Delivery may be made by hand, or by certified or registered mail, return receipt requested.

**7.4 WITHDRAWAL.** Except as otherwise expressly permitted by this Agreement, each Unit Holder hereby covenants and agrees not to: (i) withdraw or attempt to withdraw from the Company; or (ii) exercise any power under the Act to dissolve the Company.

**7.5 PARTITION.** Each Unit Holder hereby irrevocably waives any right he may have to maintain any action for partition with respect to any Property of the Company.

**7.6 OTHER INSTRUMENTS.** Each Unit Holder hereby agrees to execute and deliver to the Company within five (5) days after receipt of a written request therefor, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Management Committee deems necessary, useful or appropriate to comply with any laws, rules or regulations or as may be required by any Institutional Lender.

**7.7 INSURANCE.** The Members hereby acknowledge that the Company may obtain life insurance from time to time to assist the Company in meeting its obligations or allowing the Company to purchase Membership Units hereunder. Each Member hereby agrees to submit to any physical examination reasonably requested by the Management Committee in connection with obtaining any such insurance.

## **SECTION 8 BOOKS AND RECORDS**

**8.1 BOOKS AND RECORDS.** The Company shall keep adequate books and records at its place of business, setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company and shall maintain all records required to be maintained by the Act. The books of the Company shall be kept on the accrual basis. Any Member or any Member's designated representative shall have the right, at any reasonable time and at the Member's own expense, to have access to and inspect and copy the contents of such books or records. Notwithstanding the above, the Management Committee may, in its sole discretion, prevent a Member from access to any information the Management Committee reasonably believes is in the nature of trade secrets or any other information the disclosure of which the Management Committee reasonably believes is not in the best interests of the Company or its business or which the Company is required by law or agreement to keep confidential. Within a reasonable period after the end of each Company fiscal year, each Member shall be furnished with an annual report containing a balance sheet as of the end of such fiscal year, statements of income, Members' equity, changes in financial position and cash flow and any necessary tax information for the year then ended. Necessary tax information shall be delivered to each Member as soon as practicable after the end of each Company fiscal year.

## SECTION 9 AMENDMENTS

### 9.1 AMENDMENTS.

(a) Amendments to this Agreement may only be proposed by a Manager. Following such proposal, the Management Committee shall submit to the Members a verbatim statement of any proposed amendment. The Management Committee shall seek the written vote of the Class A Members on the proposed amendment or shall call a meeting in accordance with **Section 7.3** hereof to vote thereon and to transact any other business that the Management Committee may deem appropriate. For purposes of obtaining a written vote, the Management Committee may require a response from each Class A Member within a reasonable specified time, but not less than fifteen (15) days. Failure to respond in such time period shall constitute a vote in favor of such amendment.

(b) Notwithstanding **Section 9.1(a)** hereof:

(i) This Agreement shall not be amended without the consent of each Member adversely affected if such amendment would: (A) modify the limited liability of a Member; (B) increase the obligation of any Member to make contributions; (C) allow the obligation of a Member to make a contribution to be compromised by less than unanimous consent; (D) decrease the affirmative vote or consent required for any action set forth herein requiring the vote of the Members; or (E) except as otherwise permitted hereby (*e.g.*, as a result of the admission of an Additional Member) alter the interest of a Member in Profits, Losses, other items or any Company distribution.

(ii) This Agreement may be amended by the Management Committee without the consent of any of the Members: (A) to add to the representations, duties or obligations of the Management Committee or surrender any right or power granted to the Management Committee herein for the benefit of the Members; (B) to cure any ambiguity, to correct or supplement any provision hereof which may be inconsistent with any other provisions hereof, or to make any other provision with respect to matters or questions arising under this Agreement not inconsistent with the intent of this Agreement; (C) to change any provision of this Agreement required to be so changed by the staff of the Securities and Exchange Commission or other federal agency or by a state "Blue Sky" commissioner or similar official, which change is deemed by such commissioner, agency or official to be for the benefit or protection of the Members; and/or (D) to reflect any action taken by the Management Committee pursuant to any authority expressly provided to the management Committee in this Agreement (*e.g.*, an increase in the number of Membership Units pursuant to **Section 3.1** hereof, or the admission of a new Member pursuant to **Section 3.5** hereof, provided that no amendment shall be adopted pursuant to this **Section 9.1(b)(ii)** unless the adoption thereof does not violate **Section 9.1(b)(i)** hereof.

## SECTION 10 TRANSFERS OF MEMBERSHIP UNITS; CO-SALE RIGHTS; SALE OF COMPANY

**10.1 RESTRICTION ON TRANSFERS.** Except as otherwise permitted by this Agreement, no Unit Holder shall Transfer all or any portion of his Membership Units without the consent of the Management Committee (exclusive of any member of the Management Committee that is the proposed Transferring Unit Holder). Any Transfer or attempted Transfer by a Unit Holder in violation of the preceding sentence shall be null and void and of no effect whatsoever. Each

Member hereby acknowledges the reasonableness of the restrictions on Transfer imposed by this Agreement in view of the Company purposes and the relationship of the Members and agrees that the restrictions on Transfer contained herein shall be specifically enforceable. Each Member hereby further agrees to hold the Company and each Member (and each Member's successors and assigns) wholly and completely harmless from any cost, liability or damage (including, without limitation, any incremental tax liability and attorneys' fees and expenses and costs of enforcing this indemnity) incurred by any such indemnified Persons as a result of a Transfer or any attempted Transfer in violation of this Agreement. Nothing herein contained shall prohibit either Paulus, Braxton or Losty, either during their lifetimes or on death, from Transferring all or any part of his Membership Units to each other or to a member of their Family. Any such transferee shall automatically be admitted as a Member and shall be assigned to the Class to which the transferor was assigned.

**10.2 CONDITIONS TO TRANSFERS.** In the event a Transfer is permitted by the Management Committee, such Transfer (other than pursuant to a Sale of the Company) shall not be effectuated unless and until the following conditions are satisfied:

(a) The transferor (or his personal representative, as the case may be) and the transferee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate, in the opinion of counsel to the Company, to effect such Transfer and to confirm the agreement of the transferee to be bound by the provisions of this **Section 10**.

(b) If requested by the Management Committee, the transferor (or his personal representative, as the case may be) shall furnish to the Company an opinion of counsel, which opinion shall be satisfactory to the Management Committee, that the Transfer will not cause the Company to terminate for federal income tax purposes.

(c) The transferor (or his personal representative, as the case may be) and the transferee shall furnish the Company with the transferee's taxpayer identification number, sufficient information to determine the transferee's initial tax basis in the Membership Units Transferred, and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns.

(d) Either: (i) the Membership Units being Transferred shall be registered under the Securities Act of 1933, as amended, and any applicable state securities laws; or (ii) the transferor (or his personal representative, as the case may be) shall, if requested by the Management Committee, provide an opinion of counsel, which opinion of counsel shall be satisfactory to the Management Committee, to the effect that such Transfer is exempt from all applicable registration requirements and that such Transfer will not violate any applicable laws regulating the Transfer of securities.

(e) The transferor (or his personal representative, as the case may be) shall provide an opinion of counsel, which opinion shall be reasonably satisfactory to the Management Committee, to the effect that such Transfer will not cause the Company to be deemed to be an "investment company" under the Investment Company Act of 1940.

(f) The Company shall be reimbursed by the transferor for all reasonable costs and expenses incurred by the Company (including attorneys' fees) in connection with the Transfer.

**10.3 PROHIBITED TRANSFERS.** Any purported Transfer of a Membership Unit that is not permitted hereunder shall be null and void and of no force or effect whatsoever, provided that, if the Company is required to recognize a Transfer that is not permitted hereunder (or if the Company, in its sole discretion, elects to recognize a Transfer that is not permitted hereunder), the Membership Units Transferred shall be strictly limited to the transferor's rights to allocations and distributions as provided by this Agreement with respect to the transferred Membership Units, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy the debts, obligations or liabilities for damages that the transferor or transferee of such Membership Units may have to the Company. In the case of a Transfer or attempted Transfer of Membership Units that is not permitted hereunder, the parties engaging or attempting to engage in such Transfer shall be liable to indemnify and hold harmless the Company and the Managers and Members from all cost, liability and damage that any of such indemnified Persons may incur (including, without limitation, incremental tax liability and lawyers' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

**10.4 RIGHT OF FIRST REFUSAL.** In addition to the other limitations and restrictions set forth in this **Section 10**, no Member shall Transfer all or any portion of his Membership Units (the "**Offered Units**") unless such Member (the "**Seller**") first offers to sell the Offered Units pursuant to the terms of this **Section 10.4**.

(a) No Transfer may be made under this **Section 10.4** unless the Seller has received a bona fide written offer (the "**Purchase Offer**") from a Person (the "**Purchaser**") to purchase the Offered Units for a purchase price denominated and payable in United States dollars at closing or according to specified terms, with or without interest. The Purchase Offer shall be in writing signed by the Purchaser and shall be irrevocable for a period ending no sooner than the day following the end of the Offer Period, as hereinafter defined.

(b) Prior to making any Transfer that is subject to the terms of this **Section 10.4**, the Seller shall give to the Company and each other Member written notice (the "**Offer Notice**") which shall include a copy of the Purchase Offer and an offer (the "**Firm Offer**") to sell the Offered Units to the remaining Members of Class A, if any, (the "**Class Offerees**") for the price equal to the lower of (i) the price set forth in the Purchase Offer or (ii) an amount determined pursuant to **Section 10.6** hereof (the "**Offer Price**"), payable according to the same terms as (or more favorable terms than) those contained in the Purchase Offer, provided that the Firm Offer shall be made without regard to the requirement of any earnest money or similar deposit required of the Purchaser prior to closing, and without regard to any security (other than the Offered Units) to be provided for any deferred portion of the Offer Price (the "**Payment Terms**").

(c) The Firm Offer shall be irrevocable for a period ending at 11:59 P.M., local time at the Company's principal place of business, on the later of: (i) the date the Purchase Offer expires; or (ii) the forty-five (45<sup>th</sup>) day following the date all parties are notified of the determination of the Offer Price (the "**Class Offer**").

(d) The Class Offerees shall have thirty (30) days from the date the Members are notified of the Offer Price during which to either accept or reject the Firm Offer (the "**Class**



**Offer Period**”). Each Class Offeree may accept the Firm Offer as to all or any portion of the Offered Units, by giving written notice of such acceptance to the Seller, the Management Committee and each other Class Offeree which notice shall indicate the maximum number of Offered Units such Class Offeree is willing to purchase. In the event the Class Offerees (the **“Accepting Class Offerees”**), in the aggregate, accept the Firm Offer with respect to all of the Offered Units, the Firm Offer shall be deemed to be accepted and each such Accepting Class Offeree shall be deemed to have accepted that portion of the Offered Units that corresponds to the ratio of the Offered Units such Accepting Class Offeree indicated a willingness to purchase to the aggregate number of the Offered Units all Accepting Class Offerees indicated a willingness to purchase. If the Accepting Class Offerees do not accept the Firm Offer as to all of the Offered Units during the Class Offer Period, the Firm Offer shall be deemed to be rejected in its entirety.

(e) In the event the Class Offerees reject or are deemed to have rejected the Firm Offer, or if there are no Class Offerees, the Firm Offer shall automatically be deemed made to the Company at the Offer Price and on the Payment Terms. The Company shall have fifteen (15) days from the expiration of the Class Offer Period during which to either accept or reject the Firm Offer (the **“Remaining Offer Period”**). The Company may accept the Firm Offer as to all but not less than all of the Offered Units by giving written notice of such acceptance to the Seller. In the event the Company accepts the Firm Offer with respect to all of the Offered Units, the Firm Offer shall be deemed accepted. If the Company does not accept the Firm Offer as to the all of the Offered Units within the Remaining Offer Period, the Firm Offer shall be deemed rejected in its entirety. The decision of the Company whether to accept the offer shall be made by the Management Committee (exclusive of any member of the Management Committee that is the Seller)

(f) In the event the Firm Offer is accepted in the manner hereinabove provided, the closing of the sale of the Offered Units shall take place within thirty (30) days after the Firm Offer is accepted.

(g) In the event the Firm Offer is not accepted in the manner hereinabove provided, the Seller may sell the Offered Units to the Purchaser at any time within sixty (60) days after the last day of the Offer Period, provided that such sale shall be made on terms no more favorable to the Purchaser than the terms contained in the Purchase Offer, and provided further, that such sale complies with all other terms, conditions, and restrictions of this Agreement that are applicable to sales of Membership Units and are not expressly made inapplicable to sales occurring under this **Section 10.4**. In the event the Offered Units are not sold within said sixty (60) days after the last day of the Offer Period, the Offered Units may not be sold until the terms and conditions contained in this **Section 10.4** have again been met.

#### **10.5 ADVERSE ACT PURCHASE; DEATH.**

(a) Upon the occurrence of an Adverse Act with respect to a Unit Holder (the **“Adverse Unit Holder”**), such Adverse Unit Holder shall automatically be deemed to have offered to sell each and all of his Membership Units to the Company on the terms and conditions contained in this **Section 10.5** and **Sections 10.6** and **10.7** hereof. The Management Committee (exclusive of the Adverse Unit Holder if the Adverse Unit Holder is a member of the Management Committee) shall have ninety (90) days from the determination of the purchase price in accordance with **Section 10.6** hereof during which to accept or reject the deemed offer to

sell (the “**Option Period**”). During the Option Period, the Adverse Unit Holder shall cease to have any rights as a Member and a Manager, if applicable, and shall not be entitled to vote on any matters to be determined by the Members or the Management Committee, if applicable. The Membership Units of the Adverse Unit Holder shall be excluded in determining whether a particular quorum requirement has been satisfied or whether the requisite approval of an action or decision has been obtained. In the event the Company fails to exercise its right to purchase the Adverse Unit Holder’s Membership Units within the Option Period, the specific event giving rise to the Company’s right of election shall be deemed not to have occurred, the Adverse Unit Holder shall thereafter have all of the rights of a Member and a Manager, if applicable, and the Adverse Unit Holder shall be entitled to his allocable share of distributions during the Option Period.

(b) Francher agrees, on behalf of himself and his personal representatives, that upon his death, his personal representatives shall automatically be deemed to have offered to sell each and all of his Membership Units to the Company on the terms and conditions contained in this **Section 10.5** and **Sections 10.6** and **10.7** hereof. The Management Committee may exercise the option at any time before the end of the Option Period.

(c) In the event the Company exercises its right to purchase the Adverse Unit Holder’s Membership Units, the closing of the purchase and sale shall occur at such time and place as determined by the Management Committee; provided, however, in no event shall the closing take place later than one hundred twenty (120) days from the date the Company exercises its option to purchase the Adverse Unit Holder’s Membership Units.

**10.6 PURCHASE PRICE.** For purposes of this **Section 10**, the purchase price shall be determined by multiplying the number of Membership Units being sold (which shall include in the case of a Class B Unit Holder only such Class B Unit Holder’s Vested Units) by the Net Equity Per Membership Unit as of the Valuation Date).

**10.7 PAYMENT OF PURCHASE PRICE.** In the event of the purchase of Membership Units pursuant to **Section 10.5** hereof, the purchase price shall be paid as follows:

(a) There shall be paid in cash at the closing an amount equal to ten percent (10%) of the purchase price; and

(b) The balance of the purchase price shall be evidenced by a promissory note from the Company (the “**Purchase Note**”). The Purchase Note shall bear interest at the Prime Rate in effect on the closing date and shall be paid in twenty (20) equal quarterly installments of principal and interest on an amortized basis. The first installment on the Purchase Note shall be due and payable on the first (1st) day of the fourth (4th) month following the month during which the closing occurs (together with interest from the date of the closing to the first (1st) day of the month following the month during which the closing occurs). The Purchase Note shall permit the prepayment thereof, either in whole or in part, at any time or from time to time, without penalty. The Purchase Note shall contain a provision requiring the mandatory prepayment of the entire amount due thereunder upon the sale by the Company of all or substantially all of its assets or upon such time as the Members immediately after the purchase and/or their Affiliates collectively own less than fifty percent (50%) of the Membership Units owned by all Members. If required by any Institutional Lender with which the Company does business on the date of the closing, the Purchase Note shall be subordinate to any existing indebtedness due and owing to such Institutional Lender and the Unit Holder’s personal

representative shall execute any documentation reasonably requested to evidence such subordination including, without limitation, an inter-creditor agreement. Payment of the Purchase Note shall be solely the responsibility of the Company. The selling Unit Holder or the selling Unit Holder's personal representative (as the case may be) shall have no recourse with respect to the Purchase Note against any Manager or any of the remaining Members. Neither the Company nor any of the remaining Members shall be required to give any security for the payment of the Purchase Note.

(c) The Company may offset any amounts due pursuant to this **Section 10.7** against any amounts due the Company by the selling Unit Holder.

**10.8 TRANSFER DOCUMENTS.** Whenever a Unit Holder shall sell all or any portion of his or her Membership Units to the Company or another Member, the selling Unit Holder and the purchaser shall each execute such documents and instruments as may be necessary or appropriate to confirm the Transfer of the Membership Units.

**10.9 RIGHTS OF UNADMITTED ASSIGNEES.**

(a) A Person who acquires one or more Membership Units, but who is not admitted as a Member with respect to such Membership Units in accordance with this Agreement, shall be entitled only to allocations and distributions with respect to such Membership Units in accordance with this Agreement (the "**Economic Rights**"), shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to participate in the management of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement (collectively, the "**Non-Economic Rights**").

(b) In the event of a Transfer of Membership Units to a Person who is not admitted as a Member with respect to such Membership Units, the transferor shall automatically be deemed to have sold, assigned and conveyed to the Company all of the Non-Economic Rights associated with the Membership Units transferred.

(c) Any Person who is the Assignee of any Membership Units as herein permitted and who is not admitted as a Member with respect to such Membership Units and who desires or who shall be required to make a further assignment of any such Membership Units shall be subject to all of the provisions of this **Section 10** to the same extent and in the same manner as any Unit Holder desiring to make a Transfer of any Membership Units.

**10.10 ADMISSION OF ASSIGNEES AS MEMBERS.** Subject to the other provisions of this **Section 10**, a Transferee of any Membership Units may be admitted to the Company as a Member with respect to such Membership Units only upon satisfaction of the conditions set forth below:

(a) All of the non-transferring Managers consent to such admission, which consent may be given or withheld in the sole and absolute discretion of such Managers. If there are no such Managers, the Members holding Class A Units (exclusive of any Member Transferring such Membership Units), by Majority Vote thereof, must consent to such admission, which consent may be given or withheld in the sole and absolute discretion of such Members;

(b) The transferee becomes a party to this Agreement as a Member and executes such documents and instruments as the Management Committee may reasonably request

(including, without limitation, amendments to the Articles) as may be necessary or appropriate to confirm such transferee as a Member in the Company and such transferee's agreement to be bound by the terms and conditions of this Agreement;

(c) The transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the transferee as a Member with respect to the Transferred Membership Units; and

(d) If the transferee is not an individual of legal majority, the transferee provides the Company with evidence satisfactory to counsel for the Company of the authority of the transferee to become a Member and to be bound by the terms and conditions of this Agreement.

**10.11 LEGEND.** Each Unit Holder hereby agrees that the following legend may be placed upon any counterpart of this Agreement, the Articles, or any other document or instrument evidencing ownership of Membership Units:

The Membership Units represented by this document have not been registered under any securities laws and the transferability of such Membership Units is restricted. Such Membership Units may not be sold, assigned or transferred, nor will any assignee, vendee, transferee or endorsee thereof be recognized by the issuer as having acquired any such Membership Units for any purposes, unless (1) a registration statement under the Securities Act of 1933, as amended, with respect to such Membership Units shall then be in effect and such transfer has been qualified under all applicable state securities laws, or (2) the availability of an exemption from such registration and qualification shall be established to the satisfaction of counsel to the Company.

The Membership Units represented by this document are subject to further restriction as to their sale, transfer, hypothecation, or assignment as set forth in the Operating Agreement and agreed to by each Member. Said restriction provides, among other things, that no vendee, transferee, Assignee or endorsee of a Unit Holder shall have the right to become a Member with respect to such transferred Membership Units without the consent of the Management Committee which consent may be given or withheld in the sole and absolute discretion of the Management Committee.

**10.12 DISTRIBUTIONS AND ALLOCATIONS IN RESPECT TO TRANSFERRED MEMBERSHIP UNITS.** If any Membership Units are Transferred during any fiscal year in compliance with the provisions of this **Section 10**, Profits, Losses, each item thereof, and all other items attributable to the Transferred Membership Units for such fiscal year shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during such fiscal year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Management Committee. Neither the Company nor any Manager shall incur any liability for making allocations and distributions in accordance with the provisions of this

**Section 10**, whether or not any Manager or the Company has knowledge of any Transfer of ownership of any Membership Units.

**10.13 SALE OF THE COMPANY; ALLOCATION OF SALE PROCEEDS.** Anything contained in this Agreement or otherwise to the contrary notwithstanding, in connection with any Sale of the Company, the net proceeds available to all Unit Holders (after payment of all expenses of such sale, all liabilities of the Company and establishing reasonable reserves as determined by the Management Committee) shall be allocated among all Unit Holders entitled to participate as if such net proceeds were to be distributed to such Unit Holders in accordance with **Section 11.2** of this Agreement.

## **SECTION 11 DISSOLUTION AND WINDING UP**

**11.1 DISSOLUTION.** The Company shall dissolve upon the first to occur of any of the following events (each a “**Liquidating Event**”):

- (a) The sale by the Company of all or substantially all its Property;
- (b) The vote of the Management Committee and the Majority Vote of the Members holding Class A Units to dissolve the Company;
- (c) The happening of any other event that makes it unlawful, impossible or impractical to carry on the business of the Company; or
- (d) A complete cessation of the Company’s business.

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

**11.2 WINDING UP.** Upon dissolution of the Company, the Management Committee or court appointed trustee if there is no Manager shall take full account of the Company’s liabilities and assets. The assets and Properties of the Company shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed in the following order:

- (a) First, to the payment and discharge of all of the Company’s debts and liabilities (other than to Unit Holders), including the establishment of any necessary reserves;
- (b) Second, to the payment and discharge of all of the Company’s debts and obligations to Unit Holders; and
- (c) Thereafter, to the Unit Holders in accordance with their Capital Accounts after giving effect to all contributions, distributions and allocations for all periods.

**11.3 COMPLIANCE WITH TIMING REQUIREMENTS OF REGULATIONS.** In the event the Company is “liquidated” within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this **Section 11** (if such liquidation constitutes a dissolution of the Company) or **Section 5** hereof (if it does not) to the Unit Holders who have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2). If any Unit Holder has a deficit balance in his Capital Account (after giving effect to all contributions,

distributions and allocations for all fiscal years, including the fiscal year such liquidation occurs) such Unit Holder shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or any other Person.

**11.4 ESTABLISHMENT OF TRUST.** In the discretion of the Management Committee, a pro-rata portion of the distributions that would otherwise be made to the Unit Holders pursuant to **Section 11.2** hereof may be distributed to a trust established for the benefit of the Unit Holders for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Management Committee arising out of or in connection with the Company. The assets of any such trust shall be: (a) distributed to the Unit Holders from time to time, in the reasonable discretion of the Management Committee, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Unit Holders pursuant to this Agreement; or (b) withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company provided that such withheld amounts shall be distributed to the Unit Holders as soon as practicable.

**11.5 RIGHTS OF UNIT HOLDERS.** Except as otherwise provided in this Agreement, each Unit Holder shall look solely to the assets of the Company for the return of his Capital Contribution and shall have no right or power to demand or receive property other than cash from the Company. No Unit Holder shall have priority over any other Unit Holder as to the return of his Capital Contributions, distributions, or allocations.

**11.6 DEEMED DISTRIBUTION AND RECONTRIBUTION.** Notwithstanding any other provision of this **Section 11**, in the event the Company is liquidated within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g) but no Liquidating Event has occurred, the assets and the Property of the Company shall not be liquidated, the Company's debts and other liabilities shall not be paid or discharged and the Company's affairs shall not be wound up. Instead, solely for federal income tax purposes, the Company shall be deemed to have contributed its assets and Properties in kind to a new limited liability company in exchange for an interest in such company and, immediately thereafter, the Company will be deemed to liquidate by distributing such interests in the new company to the Members.

## **SECTION 12 REPRESENTATIONS AND WARRANTIES**

**12.1 REPRESENTATIONS AND WARRANTIES OF THE MEMBERS.** Each Member hereby, represents, warrants and acknowledges to each of the other Members as follows:

(a) The Member has the full power, legal capacity and authority to enter into this Agreement and to perform his obligations hereunder. This Agreement has been duly executed and delivered by the Member and (assuming the due authorization, valid execution and delivery hereof by each of the other Members) is a legal, valid and binding obligation of such Member, enforceable against such Member in accordance with its terms, except (i) as the same may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles relating to

or affecting the enforcement of creditors' rights, and (ii) that the granting of specific performance is subject to the discretion of a court of equity;

(b) Neither the execution, delivery or performance of this Agreement by the Member nor the performance by the Member of his obligations hereunder (i) will result in any material breach of or default by the Member under any provision of any contract or agreement of any kind to which the Member is a party, or by which the Member or to which any property or asset of the Member is subject, (ii) is prohibited by, or requires the Member to obtain or make any consent, authorization, approval, registration or filing under, any statute, law, ordinance, regulation, rule, judgment, decree or order of any court or governmental agency, board, bureau, body, department or authority, or of any other person, (iii) will cause any acceleration of maturity of any note, instrument or other obligation to which the Member is a party or by which the Member is bound or with respect to which the Member is an obligor or guarantor, or (iv) will result in the creation or imposition of any security interest or other lien, or give to any other person any interest or right (including any right of termination or cancellation) in or with respect to, any of the properties, assets, business, agreements or contracts of the Member;

(c) There are no actions, suits, proceedings or investigations, either at law or in equity, or before any commission or other administrative authority in any United States or foreign jurisdiction, of any kind now pending or threatened or proposed against the Member regarding any business being conducted by the Member. Neither the Member nor any of the Member's properties or assets are subject to any judicial or administrative judgment, order, decree or restraint;

(d) The Member is not in violation of any law, rule or regulation, or any order, judgment or decree, in any case applicable to the Member or by which any of such Member's properties or assets are bound or affected;

(e) The Member has filed all foreign, federal, state and local tax returns that are required to be filed by such Member and has paid all taxes shown as due on such returns as well as all other taxes, assessments and governmental charges that are due and payable;

(f) The Member is acquiring the Membership Units for the Member's own account and not for the account of others. The Membership Units are not being acquired with a view to their distribution and the Member has no present intent of reselling or otherwise distributing the Membership Units. The Member was not formed for the purpose of making an investment in the Company;

(g) The Member has been advised that the Membership Units have not and shall not be registered under the Securities Act or any applicable state securities laws and, therefore, cannot be resold unless such Membership Units are registered under the Securities Act and all applicable state securities laws or unless exemptions from registration are available;

(h) Neither the Company nor anyone else has made any representation or warranty as to the period of time the Member shall be required to own the Membership Units. The Member is aware that the Membership Units may have to be held by the Member for an indefinite period of time;

(i) No state or other governmental authority has made any finding or determination relating to the fairness or substantive merit of an investment in the Company;

(j) The Member has, either alone or with such Member's Personal Representative (as that term is defined in Rule 501(h) of the Securities Act of 1933) such knowledge and experience in financial and business matters that such Member is capable of evaluating the merits and risks of an investment in the Company;

(k) The Member is aware that an investment in the Company is highly speculative and is capable of bearing the economic risk of such investment; and

(l) The Company has made available to such Member, a reasonable time prior to such Member's acquisition of any Membership Units, the opportunity to ask questions and receive adequate answers concerning the terms and conditions of such acquisition and the Company and to request and obtain any information which the Company possesses or can acquire without unreasonable effort or expense regarding the Company or investment.

**12.2 EFFECT OF BREACH.** Each Unit Holder hereby acknowledges and agrees that a material breach of any representation or warranty contained herein or in any other agreement between a Unit Holder and the Company by a Unit Holder shall constitute an Adverse Act by such Unit Holder.

### SECTION 13 MISCELLANEOUS

**13.1 NOTICES.** Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be delivered personally to the Person or to an officer of the Person to whom the same is directed, or sent by regular, registered, or certified mail, or by recognized overnight carrier, addressed as follows: if to the Company, to the Company at the address set forth in **Section 2.4** hereof, or to such other address as the Management Committee may from time to time specify by notice to the Members; if to a Manager, to such Manager at the address set forth in **Exhibit "C"** hereto or to such other address as a Manager may from time to time specify by notice to the Company; and if to a Unit Holder, to such Member at the address set forth on **Exhibit "A"** hereto or to such other address as such Member may from time to time specify by notice to the Company. Any such notice shall be deemed to be delivered, given and received for all purposes as of the date (i) actually received, if delivered personally or if sent by regular mail or overnight carrier or (ii) as of the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, if sent by registered or certified mail, postage and charges prepaid.

**13.2 BINDING EFFECT.** Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, legatees, legal representatives, successors, transferees and assigns.

**13.3 CONSTRUCTION.** It is the intention of the parties that every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party (notwithstanding any rule of law requiring an agreement to be for or against the drafting party), it being understood that the parties to this Agreement are sophisticated and have had adequate opportunity and means to retain counsel to represent their respective interests and to otherwise negotiate the provisions of this Agreement.



**13.4 HEADINGS.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

**13.5 SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

**13.6 INCORPORATION BY REFERENCE.** Every exhibit, schedule and other appendix attached to this Agreement and referred to herein is hereby incorporated in this Agreement by reference.

**13.7 ADDITIONAL DOCUMENTS.** Each Unit Holder, upon the request of any Manager, agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

**13.8 VARIATION OF PRONOUNS.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require.

**13.9 DELAWARE LAW.** This Agreement, and any matter or dispute arising out of, in connection with or related to this Agreement, of any type or nature, shall be construed in accordance with, subject to and governed by the internal laws of the State of Delaware without giving effect to any conflicts of laws or other provisions which might result in the application of laws other than the internal laws of the State of Delaware. Each Unit Holder hereby agrees that the federal and state courts located within Onondaga County, New York shall have the exclusive jurisdiction to determine any and all disputes arising out of or in connection with this Agreement and hereby irrevocably consents to the personal and subject matter jurisdictions of such court with respect thereto.

**13.10 COUNTERPART EXECUTION; SIGNATURES.** This Agreement may be executed in any number of counterparts with the same effect as if all of the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement. Signatures received by facsimile or by electronic mail shall be deemed original signatures for all purposes of this Agreement.

**13.11 SPECIFIC PERFORMANCE.** The parties acknowledge that they will be irreparably harmed in the event any of the provisions of this Agreement are violated and that the damages that may result therefrom will be difficult, if not impossible, to calculate. Should any dispute arise concerning any matter provided for in this Agreement, the parties agree that an injunction may be issued restraining any of the foregoing events pending the resolution of the controversy. In the event of any controversy concerning any right or obligation of a party, such right or obligation shall be enforceable in a court of equity by a decree of specific performance. Any such remedy, however, shall be cumulative and not exclusive, and shall be in addition to any other remedies which the parties hereto may have.

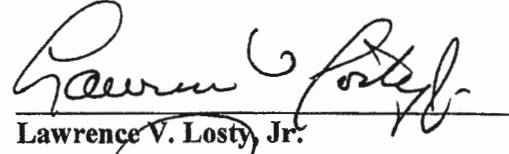
**13.12 WAIVER OF JURY TRIAL. EACH UNIT HOLDER HEREBY IRREVOCABLY WAIVES, ON BEHALF OF HIMSELF AND HIS OR ITS HEIRS, BENEFICIARIES, PERSONAL REPRESENTATIVES, EXECUTORS, ADMINISTRATORS, SUCCESSORS AND ASSIGNS, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT SUCH PERSON MAY HAVE TO A TRIAL BY**

**JURY IN RESPECT OF ANY MATTER, DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH UNIT HOLDER HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER UNIT HOLDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER UNIT HOLDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT SUCH UNIT HOLDER AND THE OTHER UNIT HOLDER HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION.**

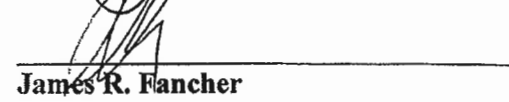
**13.13 ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes any previous understanding whether oral or written.

**[Remainder of Page Intentionally Left Blank; Signature Page Follows]**

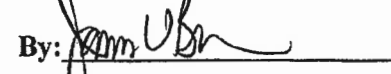
IN WITNESS WHEREOF, the parties have entered into this Second Amended and Restated Operating Agreement as of the date first above set forth.

  
Lawrence V. Losty, Jr.

  
Matthew R. Paulus

  
James R. Fancher

Braxton Capital, LLC

By: 

RE Dietz Building Master Tenant, LLC

By: RE Dietz Building MTMM, LLC

By:   
Matthew Paulus, Authorized Signatory

*Signature Page to  
Second Amended and Restated Operating Agreement of Bradford & Euclid, LLC*

**EXHIBIT "A"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
**MEMBERS**

**Class A.1**

**Name**

Matthew R. Paulus

**Address**

511 Bradford Parkway  
Syracuse, New York 13224

**Class A.2**

**Name**

Braxton Capital, LLC

**Address**

148 Berwyn Avenue  
Syracuse, New York 13210

**Class B**

**Name**

James R. Fancher

**Address**

222 Hancock Lane  
Syracuse, New York 13207

Lawrence V. Losty, Jr.

111 Harriet Street  
Syracuse, New York 13219

**Class C**

**Name**

RE Dietz Building Master Tenant, LLC

**Address**

225 Wilkinson Street  
Syracuse, New York 13204

**EXHIBIT "B"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
**MEMBERSHIP UNITS**

<u>Name</u>	<u>Class A.1</u> <u>Units</u>	<u>Class A.2</u> <u>Units</u>	<u>Class B</u> <u>Units</u>	<u>Class C</u> <u>Units</u>	<u>Capital</u> <u>Account</u>
Lawrence V. Losty, Jr.			2,880		
Matthew R. Paulus	7,200				
James R. Fancher			720		
Braxton Capital, LLC		7,200			
RE Dietz Master Tenant, LLC					
Total	<u>7,200</u>	<u>7,200</u>	<u>3,600</u>	<u>2,000</u> <u>2,000</u>	

**EXHIBIT "C"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
**CURRENT MANAGERS**

<u>Name</u>	<u>Address</u>	<u>Votes</u>
Charles F. Breuer	5089 Reiss Circle Fayetteville, New York 13066	7,200
Matthew R. Paulus	511 Bradford Parkway Syracuse, New York 13224	7,200

**EXHIBIT "D"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
  
**RENOVATION AND DEVELOPMENT BUDGET**



PROJECT: Dietz Building Development  
 OWNER: Paulus Development Co.  
 ARCHITECT: Walton Architectural Group

8/24/2016

DIVISION #	DIVISION NAME/DESCRIPTION	LOW SUB BID	NEW SCOPE ITEMS/ ALLOW	TOTAL
TWO	<b>DEMOLITION</b>			
	Apex Proposal	\$343,000		\$343,000
	Garage - Sawcut Concrete Fdn Wall			inc
	Garage - Sawcut Masonry Fdn Wall			inc
	Garage - Demo Opening for Overhead Door / Masonry			inc
	Brick removal for steel connection 8/53.00)			inc
	12 square duct in stair landing floor			inc
	4 Window removal/infill for 2hr separation			inc
	Boiler Exhaust Opening 7' x 1'			inc
	Grate Removal in Lobby			inc
Abscope Abatement Proposal	\$70,000		\$70,000	
LEAD REMEDIATION - HB Allowance		\$15,000	\$15,000	
<b>TOTAL DIVISION #2</b>				<b>\$428,000</b>
THREE	<b>CONCRETE</b>			
	Paragon Budget Proposal: Tunnel		\$110,000	\$110,000
	(Detail 3/53.02)		\$14,400	\$14,400
	(Detail 5/55.01)		\$800	\$800
	(Interior SOG at courtyard entrance (Detail 5/55.04)		\$22,130	\$22,130
	(8" Interior foundation wall at courtyard entrance (Detail 5/55.04)		\$5,500	\$5,500
	(Lobby ceiling floor infills)		\$2,000	\$2,000
	(Lobby Pit Infill)		\$1,500	\$1,500
	(Basement Entrance)		\$5,000	\$5,000
	(Housekeeping Pads)		\$7,200	\$7,200
	(Detail 4/A6.06)		\$1,630	\$1,630
	Entry Slabs		\$4,000	\$4,000
	Stairs		\$8,300	\$8,300
	Infills at Elevators		\$8,600	\$8,600
Roof Slab Infills at Chimneys		\$3,600	\$3,600	
Topping Slabs at Elevator Openings		\$2,200	\$2,200	
Concrete Slab Repair / Patch		\$6,000	\$6,000	
<b>TOTAL DIVISION #3</b>				<b>\$202,860</b>
FOUR	<b>MASONRY</b>			
	Remlap Quote			\$560,000
	Garage - CMU Walls			inc
	Exterior Masonry			inc
	Limestone Band			inc
	Masonry Shaft Walls			inc
	Field Stone Piers (Previously in Site #)			inc
	Exterior Wall Rebuilding on Column Line 2.4		\$8,000	\$8,000
	Temp Protection/Potential Shoring of 1 Story Roof		\$5,000	\$5,000
	Subtotal New Masonry			\$573,000
	<b>MASONRY RESTORATION</b>			
	Driscoll Masonry Quote	\$147,000		\$147,000
	Driscoll Masonry: Paint Removal Loading Dock & East Courtyard		\$10,450	\$10,450
	Restoration of 1-story 1812 bldg			inc
	Restoration at Loading Dock			inc
	Brick Infills			inc
	Masonry at Elevator Openings			inc
	Restore Jambes at new garage entrance			inc
Window Sill Restoration		\$11,100	\$11,100	
Repainting Allowance		\$30,000	\$30,000	
Brick Restoration at Roof Parapet		\$4,800	\$4,800	
Steel Strapping at Roof/Brick Corbel		\$8,000	\$8,000	
Heritage Masonry Proposal: New Terra Cotta Cap	\$22,680		\$22,680	
Replace Existing Terra Cotta Cap		\$5,000	\$5,000	
Subtotal Masonry Restoration			\$239,030	
<b>TOTAL DIVISION #4</b>				<b>\$812,030</b>
FIVE	<b>STRUCT STEEL / MISC METAL</b>			
	Rauhl & Sons Quote	\$289,350		\$289,350
	Garage - Parking Garage Structural Support at Openings			inc
	Exterior Wall Structural Steel Wood Attachments			inc
	New Entry Steel			inc
	Roof Top Equipment Support Steel			inc
	Framing & Deck at Elevators			inc
	Lintels			inc
	Additional Structural Steel for Canopies			inc
	Interior Railings at Elevator Entrance in Basement			inc
	Misc Interior Railings and Gates			inc
	Site Railing at Ramps			inc
	Railings at Steps			inc
	Stair Railings (4 Towers)			inc
	Railings at Retaining Walls			inc
	Stairs & Railing at North Loading Dock			inc
Mitchell Metals: Entry Canopies w/ Cables		\$10,000	\$10,000	
Entry Canopy Freight & Installation		\$7,500	\$7,500	
Wrought Iron Fence & Gate		\$22,160	\$22,160	
<b>TOTAL DIVISION #5</b>				<b>\$329,010</b>
SIX	<b>WOOD AND PLASTICS</b>			
	Garage - Radiant Heat Prep (Insulation)		\$2,400	\$2,400
	Repair Infill Existing Penetrations		\$7,500	\$7,500
	Repair Existing Wood Floor Framing at Perimeter		\$39,000	\$39,000
	Wall Blocking		\$2,800	\$2,800
	LVL Support for Mechanical Equipment - Detail 1/51.02 & 2/51.02		\$3,700	\$3,700
	Roof Deck Repairs (1500sf x \$13 Material Only)		\$19,500	\$19,500
	Roof Blocking		\$3,500	\$3,500
	2 - 60" Mechanical Doghouse at roof		\$1,540	\$1,540
Wood Base (at drywall partitions only)		\$72,000	\$72,000	
Door Casing/Trim		\$46,000	\$46,000	



	Window Casing/Trim (Included With Window Order)		\$23,680	\$23,680
	Window Sills		\$20,500	\$20,500
	<b>TOTAL DIVISION #6</b>			<b>\$242,120</b>
SEVEN	<b>THERMAL / MOISTURE PROTECTION</b>			
	Apple Roofing EPDM Roof Proposal (Includes Deck Replacement Labor)	\$649,750		\$649,750
	Canopy Roof		\$2,800	\$2,800
	Canopy Metal Panel		\$8,000	\$8,000
	Caulking / Sealant Interior		\$10,000	\$10,000
	Fire Penetrations/ Sealant		\$5,000	\$5,000
	Heritage Masonry Quote: Waterproof Tunnel	\$14,200		\$14,200
Metal Panel Installation @ courtyard		\$7,500	\$7,500	
	<b>TOTAL DIVISION #7</b>			<b>\$697,250</b>
EIGHT	<b>DOORS</b>			
	BR Johnson Material Quote: Doors, Frames, Hardware - Material & Labor	\$330,000		\$330,000
	Wayne Dalton Quote: Overhead Doors	\$14,000		\$14,000
	Refurbish Existing Fire Doors		\$10,000	\$10,000
	Aluminum Storefront & Entrances		\$39,000	\$39,000
	Subtotal Doors & Windows			<b>\$393,000</b>
	<b>WINDOWS</b>			
	Interior Glazing		\$5,000	\$5,000
	Finger Lakes Glass Quote: Shower Glass (ADD \$41,400 for Shower Door)	\$31,798		\$31,798
	Erie Material Quote - Windows (Materials)	\$1,094,616		\$1,094,616
	ViewTech Proposal for Window Installation	\$198,000		\$198,000
	Refurbish Existing Windows		\$2,200	\$2,200
	Detail for translucent panels		\$4,000	\$4,000
Restore Reglaze Existing Window		\$6,600	\$6,600	
Subtotal Windows			<b>\$1,342,214</b>	
	<b>TOTAL DIVISION #8</b>			<b>\$1,735,214</b>
NINE	<b>FRAMING</b>			
	General Interiors Quote: Basement, Floors 2,3,4	\$1,482,545		\$1,482,545
	General Interiors Quote: Exterior Wall Framing/Sheathing/ Air Barrier	\$133,155		\$133,155
	General Interiors Quote: First Floor Framing	\$102,390		\$102,390
	Subtotal Framing			<b>\$1,716,090</b>
	<b>FLOORING</b>			
	Concrete Floor Prep & Finish		\$15,000	\$15,000
	5/8" Plywood/Floor Prep		\$30,000	\$30,000
	Sposato Budget # (LVT Budget # \$3.50/sft * 95,000)	\$338,500		\$338,500
	Henderson Johnson Gycrete Proposal	\$297,000		\$297,000
	Subtotal 2-4 Flooring			<b>\$680,500</b>
	<b>CERAMIC TILE</b>			
	Dura Rock		\$35,000	\$35,000
	CSM Tile Quote: Waterproofing, Shower Pans, Shower Walls, & Floor Tile, Thresholds		\$259,015	\$259,015
	CSM Quote: Ceramic Tile Wainscot Walls		\$36,600	\$36,600
	Sposato Budget: Kitchen Tile		\$54,440	\$54,440
	Subtotal Ceramic			<b>\$385,055</b>
	<b>1ST FLOOR PREMIUM FINISHES</b>			
	1st Floor: Ceramic Tile in Bathrooms (CSM Tile Quote)		\$12,650	\$12,650
	1st Floor: Corridor Wood Floor Refinishing Budget		\$8,000	\$8,000
	1st Floor: Tenant Space 105 & 107 Wood Floor Refinishing Budget		\$29,520	\$29,520
	1st Floor: Carpet & Base in Management Office		\$870	\$870
	1st Floor: Concrete Floor Sealing & Buffing		\$2,000	\$2,000
	1st Floor - Concierge Desk		\$18,000	\$18,000
	1st Floor - Toilet Partitions (Alexander Mitchell P&I)		\$7,200	\$7,200
	1st Floor - Premium Finishes		\$42,500	\$42,500
	Subtotal 1st Floor Finishes			<b>\$120,740</b>
	<b>PAINT</b>			
	Garage - Paint		\$72,700	\$72,700
	Paint		\$389,100	\$389,100
	Clean Existing Interior Brick		\$40,000	\$40,000
	Prep and Paint Stair & Railings		\$33,000	\$33,000
	Garage Stripping		\$7,500	\$7,500
Subtotal Paint			<b>\$542,300</b>	
	<b>TOTAL DIVISION #9</b>			<b>\$3,444,685</b>
TEN	<b>SPECIALTIES</b>			
	Building Signage Allowance (Painted)		\$20,000	\$20,000
	Interior Signage		\$8,000	\$8,000
	Wire Shelving		\$25,000	\$25,000
	Alexander Mitchell & Son Quote (Provide Only)		\$55,100	\$55,100
	HB Specialties Labor		\$18,000	\$18,000
	Fire Extinguisher Cabinets		\$3,800	\$3,800
Mailboxes		\$8,000	\$8,000	
	<b>TOTAL DIVISION #10</b>			<b>\$137,900</b>
ELEVEN	<b>EQUIPMENT</b>			
	Electric Cook Top		\$50,600	\$50,600
	Dishwasher		\$44,500	\$44,500
	Refrigerator		\$97,900	\$97,900
	Over Range Microwave		\$31,200	\$31,200
	Dryer		\$50,600	\$50,600
	Washer		\$50,600	\$50,600
Loading Dock bumpers		\$500	\$500	
	<b>TOTAL DIVISION #11</b>			<b>\$925,900</b>
TWELVE	<b>FURNISHINGS</b>			
	Window Covering - Full length thermal, Manual.		\$50,000	\$50,000
	Metzger: Kitchen & Vanity Cabinets	\$214,700	\$74,820	\$289,520
	Metzger: Granite Tops	\$76,000	\$30,000	\$106,000
	<b>AMENITY ROOMS</b>			
	Furnishings 1st Floor		\$50,000	\$50,000
Furnishings Amenity Rooms		\$50,000	\$50,000	
Gym Equipment		\$40,000	\$40,000	
	<b>TOTAL DIVISION #12</b>			<b>\$585,520</b>
FOURTEEN	ELEVATORS - Schindler Proposal	\$220,000		
	<b>TOTAL DIVISION #14</b>			<b>\$220,000</b>

	<b>EARTHWORK AND SITE DEVELOPMENT</b>			
	Lan-Co Proposal	\$605,906		\$605,906
	Demo - Asphalt Removal, Loading Dock, Jacobsen Ramp, Electric Building			Inc
	Erosion Control			Inc
	Earthwork			Inc
	Earthwork Garage - Retaining Wall, Footer, Footer Under Drive Lane			Inc
	Earthwork Garage- New Slab & Subbase at Drive Through			Inc
	Storm System			Inc
	Asphalt Paving			Inc
	Granite & Concrete Curbs		\$9,500	\$9,500
	Concrete - Garage Ramp Slab for Pex			Inc
	Concrete - Sidewalks/Stairs/ Site Pads			Inc
	Concrete - Ramps/Retaining Walls			Inc
	Concrete - Monument Sign & Sign		\$8,000	\$8,000
	Concrete - Stone Pier Foundations		\$6,000	\$6,000
	Concrete - Decorative Fence		\$15,600	\$15,600
	Gas Service			Inc
	Sanitary Service			Inc
	Water Service Domestic / Fire			Inc
	Road Cut / Permits		\$15,000	\$15,000
	Electrical Underground Service (does not include Nat. Grid work or fee)		\$6,400	\$6,400
	National Grid Electrical/Gas Service Design and Planner Fees		\$4,000	\$4,000
	<b>LANDSCAPING</b>			Inc
	Pavers		\$44,960	\$44,960
	Plantings		\$15,000	\$15,000
	Topsoil			Inc
	Seeding			Inc
	<b>TOTAL DIVISION #32</b>			<b>\$730,366</b>
			<b>SUB TOTAL BUILDING CONSTRUCTION</b>	<b>\$9,890,855</b>
TWENTY-ONE	Dwyer Fire Protection	\$288,500		\$288,500
	<b>TOTAL DIVISION #21</b>			<b>\$288,500</b>
TWENTY-TWO	LaFrance Plumbing Proposal	\$900,100		\$900,100
	<b>TOTAL DIVISION #22</b>			<b>\$900,100</b>
TWENTY-THREE	Century Heating Proposal	\$2,025,000		\$2,025,000
	<b>TOTAL DIVISION #23</b>			<b>\$2,025,000</b>
TWENTY-FOUR	Demco Electric Proposal	\$2,005,000		\$2,005,000
	Tele/Data			\$50,000
	Access Control/Security			\$125,000
	<b>TOTAL DIVISION #24</b>			<b>\$2,180,000</b>
			<b>SUB TOTAL MEP CONSTRUCTION</b>	<b>\$5,399,600</b>
JACOBSEN RUGS	<b>JACOBSEN RUGS TENANT FIT OUT</b>			
	Demolition			Inc. Inc.
	Rauilii Quote: Steel Angle Base 400LF		\$3,500	\$3,500
	General Interiors Quote: Framing,Drywall,ACT		\$15,000	\$15,000
	Blocking		\$150	\$150
	Cabinets		\$4,550	\$4,550
	Tube Platforms		\$1,500	\$1,500
	Wood Base & top cap		\$1,400	\$1,400
	Floor Refinishing Light Sand & Poly		\$28,000	\$28,000
	LVT		\$1,225	\$1,225
	Vinyl Base		\$220	\$220
	Seal & Patch Storage Areas		\$800	\$800
	Ceramic Tile Back Spash		\$300	\$300
	Doors		\$3,000	\$3,000
	Finger Lakes Glass Quote: Relocate Existing Aluminum Doors		\$4,000	\$4,000
	Paint Walls & Trim		\$6,000	\$6,000
	Fire Protection			Inc
	Plumbing		\$1,150	\$1,150
	Century Heating Quote: HVAC		\$35,200	\$35,200
	Demco Electric Quote: Electrical		\$34,800	\$34,800
	<b>TOTAL JACOBSEN RUGS</b>			<b>\$140,795</b>
			<b>SUBTOTAL OF CONSTRUCTION &amp; MEP</b>	<b>\$15,425,250</b>
	GENERAL CONDITIONS / REQUIREMENTS			\$811,262
	WINTER HEAT		\$75,000	\$75,000
	GENERAL LIABILITY INS @ .7%			\$107,977
			<b>SUB TOTAL - CONSTRUCTION</b>	<b>\$16,419,489</b>
	CONTINGENCY 5%			\$820,974
	CONSTRUCTION MANAGER FEE - 2.75%			\$451,536
			<b>TOTAL CONSTRUCTION COSTS</b>	<b>\$17,692,000</b>

**EXHIBIT "E"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
**RENOVATION PLANS**



6/3/2016  
 Revised 6/23/2016  
 Revised 7/5/2016  
 Revised 7/8/2016  
 Revised 7/12/2016  
 Revised 7/22/2016  
 Revised 7/27/2016

DIETZ CURRENT DRAWING LOG

Drawing #	Drawing Title	For Construction		Latest Drawing Revision Date
		Drawing Date		
<b>Architectural</b>				
A0.00	COVER SHEET			
A0.01	General Project Information	5/9/2016		
A0.01	NYS Building Code Notes	5/9/2016		
A0.20	Basement Floor Plan - Demolition	5/31/2016		6/17/2016
A0.20A	Basement Floor Plan - Demolition Alternate	5/31/2016		
A0.21	First Floor Plan - Demolition	5/31/2016		
A0.22	Partial First Floor Plan - Demolition	5/31/2016		
A0.23	Second Floor Plan - Demolition	5/31/2016		
A0.24	Third Floor Plan - Demolition	5/31/2016		
A0.25	Fourth Floor Plan - Demolition	5/31/2016		
A0.26	Main Roof Plan - Demolition	5/31/2016		
A0.27	North & East Elevation - Existing	5/31/2016		
A0.28	South & West Elevation - Existing	5/31/2016		
A0.29	North & East Courtyard Section - Existing	5/31/2016		
A0.30	South & West Courtyard Section - Existing	5/31/2016		
A1.00	Basement Floor Plan	5/9/2016	6/17/2016	6/30/2016
A1.01	First Floor Plan	5/9/2016		6/30/2016
A1.02	Second Floor Plan	5/9/2016	7/8/2016	7/22/2016
A1.03	Third Floor Plan	5/9/2016		7/22/2016
A1.04	Fourth Floor Plan	5/9/2016		7/22/2016
A1.05	Main Roof Plan	5/9/2016		
A1.06	Single Story Storage - 1st Floor Plan	5/9/2016		
A1.07	Overall Roof Plan Layout	5/9/2016		
A2.00	Basement Reflected Ceiling	5/9/2016		6/17/2016
A2.01	First Floor Reflected Ceiling Plan	5/9/2016		6/17/2016
A2.02	Second Floor Reflected Ceilings	5/9/2016		6/17/2016
A2.03	Third Floor Reflected Ceiling Plan	5/9/2016		6/17/2016
A2.04	Fourth Floor Reflected Ceiling Plan	5/9/2016		6/17/2016
A2.05	Typical Apartment Reflected Ceiling Plans	5/9/2016		6/17/2016
A2.06	Typical Apartment Reflected Ceiling Plans	5/9/2016		6/17/2016
A2.07	Typical Apartment Reflected Ceiling Plans	5/9/2016		6/17/2016
A2.08	Typical Apartment Reflected Ceiling Plans	5/9/2016		6/17/2016
A2.09	Typical Apartment Reflected Ceiling Plans	5/9/2016		6/17/2016
A3.00	North & East Elevation	5/9/2016		
A3.01	South & West Elevation	5/9/2016		
A3.02	North & East Courtyard Section	5/9/2016		
A3.03	South & West Courtyard Section	5/9/2016		
A4.00	North, East & South Wall Sections	5/9/2016		7/22/2016
A4.01	South, West & Courtyard Wall Sections	5/9/2016		7/22/2016
A4.02	Misc Exterior Details & Sections	5/9/2016		
A4.03	Misc Exterior Details & Sections	5/9/2016	6/2/2016	
A4.04	Typical Roof Details	5/9/2016		
A5.00	Apartment Layout Plans	5/9/2016		7/12/2016
A5.01	Apartment Layout Plans	5/9/2016		7/12/2016
A5.02	Apartment Layout Plans	5/9/2016		7/12/2016
A5.03	Apartment Layout Plans	5/9/2016		7/12/2016
A5.04	Apartment Layout Plans	5/9/2016		7/12/2016
A5.05	First Floor Residence Lobby & Common Area	5/9/2016		
A5.10	Enlarged Bath Plans			7/22/2016
A5.11	Enlarged Kitchen Plans			7/22/2016
A6.00	Elevator #01 (SE) - Plans	5/9/2016		6/22/2016
A6.01	Stair/Elevator #2 (NE) - Plans	5/9/2016		6/22/2016
A6.02	Stair/Elevator #3 (NW) - Plans	5/9/2016		6/22/2016
A6.03	Stair/Elevator Shaft #4 (SW) - Plans	5/9/2016		6/22/2016
A6.04	Elevator #01 & 02 - Sections	5/9/2016		6/22/2016
A6.05	Elevator #3 - Section	5/9/2016		6/22/2016
A8.00	Door, Frame & Hardware Schedule	5/9/2016	6/30/2016	
A8.01	Door, Frame & Hardware Schedule	5/9/2016	6/30/2016	
A8.02	Door & Frame Types	5/9/2016	6/30/2016	
A8.03	Door Frame Jamb & Head Details	5/9/2016		
A8.04	Interior Miscellaneous Details	5/9/2016		
A8.05	Exterior Window Types, Elevations and Details	5/9/2016		
A8.06	First Floor Residence Common Area	5/9/2016		
A8.07	First Floor Public Toilet Rooms, Plans & Elevations	5/9/2016		
A8.08	First Floor Public Toilet Rooms, Plans & Elevations	5/9/2016		
A8.09	2nd Floor Residence Common Area	5/9/2016		
A8.10	3rd Floor Residence Common Area	5/9/2016		
A8.11	4th Floor Residence Common Area	5/9/2016		
A8.12	Apartment Kitchen Layouts	5/9/2016		
A8.13	Entrance Canopy Details	5/9/2016		
A8.14	1st Floor Residential Common Area Elevations	5/9/2016		
A9.00	Finish Schedule			7/22/2016
<b>VIP DRAWINGS - JACOBSEN RUGS</b>				
G-001	Cover Sheet	4/29/2016		
G-002	General Code Information	4/29/2016		
G-101	Code Plan - Floor 01	4/29/2016		
A-101	Floor Plan - Floor 01	4/29/2016		
A-141	Reflected Ceiling Plan - Floor 01	4/29/2016		
A-401	Enlg Plan, Elev, Sects, & Details	4/29/2016		
A-601	Door Types, Schedules, & Details	4/29/2016		
<b>IPD DRAWINGS</b>				
C0.01	Cover Sheet	5/9/2016		
<b>STRUCTURAL</b>				
S.100	General Notes	5/9/2016		7/8/2016
S.101	Partial Plans	5/9/2016		7/8/2016
S.102	Partial Plans	5/9/2016		7/8/2016
S2.01	Partial Plans		6/17/2017	6/29/2017

S3.00	Wall Elevations and Plan				6/29/2017			
S3.01	Wall Sections and Details				6/29/2017			
S3.02	Wall Sections and Details				6/29/2017			
S.501	Details	5/9/2016					7/8/2016	
S.502	Details	5/9/2016					7/8/2016	
S5.04	Elevations,Details, Sections							
<b>FIRE PROTECTION</b>								
F0.01	General Information	5/9/2016						
FP7.01	Riser Diagram	5/9/2016						
<b>PLUMBING</b>								
P0.01	General Information	5/9/2016						
P1.01	Lower Level Plan - New Work	5/9/2016						
P1.01A	Lower Level Plan - New Work (Alternate)	5/9/2016						
P1.02	1st Floor Plan - New Work	5/9/2016						
P1.03	2nd Floor Plan - New Work	5/9/2016						
P1.04	3rd Floor Plan - New Work	5/9/2016						
P1.05	4th Floor Plan - New Work	5/9/2016						
P1.06	Roof Plan - New Work	5/9/2016						
P3.01	Riser Diagrams	5/9/2016						
P3.02	Riser Diagrams	5/9/2016						
P4.01	Typical Apartment Plans	5/9/2016						
P4.02	Typical Apartment Plans	5/9/2016						
P5.01	Details	5/9/2016						
P6.01	Schedules	5/9/2016						
<b>MECHANICAL</b>								
M0.01	General Information	5/9/2016						
M00.01	1st Floor Plan - Demolition	5/9/2016					7/8/2016	
M1.01	Lower Level Plan - New Work	5/9/2016						
M1.02	1st Floor Plan - New Work	5/9/2016					7/8/2016	
M1.03	2nd,3rd, & 4th Floor Plan - New Work	5/9/2016					7/8/2016	
M1.04	Roof Plan - New Work	5/9/2016						
M3.01	Ductwork Riser Diagram	5/9/2016						
M4.01	Typical Apartment Plans	5/9/2016						
M4.02	Typical Apartment Plans	5/9/2016						
M4.03	Typical Apartment Plans	5/9/2016						
M4.04	Boiler Room Plan	5/9/2016						
M5.01	Details	5/9/2016						
M5.02	Details	5/9/2016						
M6.01	Schedules	5/9/2016						
MEP6.02	MEP Schedule	5/9/2016						
M7.01	Heat Pump Loop System Schematic	5/9/2016					7/8/2016	
M7.02	Heating Water System Riser Diagram	5/9/2016						
M7.03	Heating Water System Riser Diagram	5/9/2016						
<b>ELECTRICAL</b>								
E0.01	General Information	5/9/2016						
E0.02	Specifications	5/9/2016						
E1.01	Lower Level Plan - Power & Systems	5/9/2016						
E1.02	1st Floor Plan - Power & Systems	5/9/2016					7/8/2016	
E1.03	2nd Floor Plan - Power & Systems	5/9/2016						
E1.04	3rd Floor Plan - Power & Systems	5/9/2016						
E1.05	4th Floor Plan - Power & Systems	5/9/2016						
E1.06	Roof Plan - Power & Systems	5/9/2016						
E2.01	Lower Level Plan - Lighting	5/9/2016	6/21/2016					
E2.02	1st Floor Plan - Lighting	5/9/2016	6/21/2016				7/8/2016	
E2.03	2nd Floor Plan - Lighting	5/9/2016	6/21/2016					
E2.04	3rd Floor Plan - Lighting	5/9/2016	6/21/2016					
E2.05	4th Floor Plan - Lighting	5/9/2016	6/21/2016					
E4.01	Typical Apartment Plans	5/9/2016						7/19/2016
E4.02	Typical Apartment Plans	5/9/2016						7/19/2016
E4.03	Boiler Room Plan	5/9/2016						
E4.04	Partial Roof Plan	5/9/2016	6/21/2016					
E5.01	Power Riser Diagram	5/9/2016						
E5.02	Details & Diagrams	5/9/2016						
E5.03	Details & Diagrams	5/9/2016						
E5.04	Site Details	5/9/2016						
E6.01	Schedules	5/9/2016	6/21/2016				7/8/2016	7/19/2016
ES1.01	Electric Site Plan	5/9/2016						
<b>SITE</b>								
L-0	Cover Page	5/9/2016	5/24/2016	6/16/2016			7/6/2016	
L-1	Site Demolition Plan	5/9/2016	5/24/2016				7/6/2016	
L-2	Erosion & Sediment Control Plan	5/9/2016	5/24/2016			7/1/2016	7/6/2016	
L-3	Grading Plan	5/9/2016	5/24/2016	6/16/2016		6/24/2016	7/6/2016	
L-4	Layout Plan	5/9/2016	5/24/2016	6/15/2016			7/6/2016	
L-5	Site Details	5/9/2016	5/24/2016			6/24/2016	7/6/2016	7/26/2016
L-6	Site Details	5/9/2016	5/24/2016				7/6/2016	
L-7	Site Details	5/9/2016	5/24/2016				7/6/2016	
L-8	Utility Details	5/9/2016	5/24/2016				7/6/2016	
Property Survey		5/9/2016	5/24/2016					
L-10	Site Cross Section			6/15/2016			7/6/2016	

**EXHIBIT "F"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
**DESIGNATED SUCCESSOR MANAGERS**

<b>CLASS</b>	<b>DESIGNATED SUCCESSOR MANAGER</b>
CLASS A.1	CHRISTOPHER M. PAULUS
CLASS A.2	J. ANDREW BREUER

**EXHIBIT "G"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
**FORM OF MANAGEMENT AGREEMENT**

## MANAGEMENT AGREEMENT

This **MANAGEMENT AGREEMENT** (this "Agreement") is made as of the 25<sup>TH</sup> day of August, 2016, by and between **BRADFORD & EUCLID, LLC**, a Delaware limited liability company, with offices at 225 Wilkinson Street, Syracuse, New York 13204 (hereinafter referred to as "Owner") and **PAULUS DEVELOPMENT COMPANY, LLC**, a New York limited liability company with offices at 225 Wilkinson Street, Syracuse, New York 13204 (hereinafter referred to as "Agent").

### WITNESSETH:

**WHEREAS**, Owner is the ground lessee of the property known as the RE Dietz Building (hereinafter referred to as the "Building" or the "Property") located at 225 Wilkinson Street, Syracuse, New York 13204;

**WHEREAS**, Owner, as the ground lessee, has all requisite power and authority to execute and deliver, and to perform all of its obligations under, this Agreement;

**WHEREAS**, Agent is affiliated with an entity owning a direct interest in Owner; and

**WHEREAS**, Owner desires to engage the services of Agent to exclusively operate, manage, maintain, lease and retenant the Property on Owner's behalf, and to pay compensation to Agent for and on behalf of such services.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Owner and Agent agree as follows:

1. Owner hereby employs Agent, as an independent contractor, to exclusively operate, manage, maintain, lease and retenant the Property upon the terms and conditions hereinafter set forth, for the period commencing on the date set forth above and ending January 31, 2019, and thereafter this Agreement shall automatically extend for successive one (1) year periods unless this Agreement is sooner terminated as provided for herein. Such operation, management, maintenance, leasing and retenanting shall include, without limitation, the following services:
  2. To market and offer to lease residential and commercial space within the Property on behalf of Owner, and to prepare, negotiate and execute such leases on behalf of Owner as the Owner's managing agent. Agent has the right to use a leasing staff consisting of leasing representatives, tenant coordination, market research, computer aided design personnel and equipment, attorneys and other personnel and equipment for such leasing services; and/or to hire any and all outside attorneys, consultants and contractors in connection therewith as Agent deems necessary or advisable.
    - a. To endeavor to obtain governmental approvals and third party consents required for any commercial leasing and retenanting of the Property; and to hire any and all outside attorneys, consultants and contractors in connection therewith as Agent deems necessary or advisable.



- b. To provide supervision and management in connection with all construction, repair and maintenance work at the Property (both for tenant spaces and otherwise); and to hire any and all outside consultants and contractors in connection therewith as Agent deems necessary or advisable.
  - c. To provide general services of all types including without limitation accounting, management, construction, supervision and legal services in connection with any leasing, retreating, construction, rehabilitation or renovation of the Property.
  - d. To display signs within or on the Property indicating Paulus Development Company, LLC is the Agent of the Property.
3. Agent, in accepting such employment, agrees:
- a. To use due diligence in the operation, management, maintenance, leasing and retreating of the Property, and to furnish the services of its organization for such purposes.
  - b. To collect for account of Owner funds owing to Owner derived from leases, operating agreements, licenses, parking fees, and other auxiliary income for the Property or otherwise accruing to Owner in relation to the Property, deposit same in a segregated account in the name of Owner, and to pay disbursements as authorized herein from such funds.
  - c. To render monthly statements of receipts, expenses and charges for the preceding month. In the event the disbursements shall be in excess of the sums collected by Agent, Owner hereby agrees to pay such excess within five (5) business days after receipt of Agent's written demand therefor.
  - d. To deposit all receipts collected for Owner (less any sums properly deducted or otherwise provided for herein) in a separate account (the "Gross Income Account") in a banking institution, licensed by State or Federal banking authorities, chosen by Agent and approved by Owner subject to and in accordance with any financing arrangements that may apply to Owner, in a separate account from Agent's other accounts. Agent will not be held liable in the event of bankruptcy or failure of such depository.
  - e. To inform Owner promptly of the occurrence of any material adverse event impacting the Property, including, without limitation, the occurrence of a material casualty or the filing of a legal document setting out or claiming an actual or alleged material potential liability of the Owner or the Property.
  - f. To administer leases and occupancy agreements (including legal services in connection therewith), institute and prosecute actions to remove tenants and recover possession, to sue for and recover rent and other sums due and to institute and prosecute any other action relating to the Property. Owner shall have the right to approve all such settlements, compromises and releases which involve the payment by Owner. Owner shall pay or cause to be paid to Agent all External Costs (as hereinafter define) in connection with the foregoing.

- g. To employ, supervise, direct and discharge any and all employees required for the on-site operation and on-site management of the Property.
- h. To maintain the Property and all common areas thereof, including without limitation, the following:
  - i. To make, or cause to be made, and supervise, minor repairs and alterations, which in the aggregate cost less than Ten Thousand and 00/100 Dollars (\$10,000.00); and
  - ii. To purchase supplies required for the operation and maintenance of the Property and pay all bills therefor and to report promptly to Owner, with written confirmation thereof, any conditions at the Property requiring the attention of Owner.
- i. To prepare, negotiate and enter into contracts for the furnishing of electricity, gas, fuel, water, telephone lines, music, window cleaning, rubbish hauling, and other utilities and services as Agent shall deem advisable for the operation, management, maintenance, leasing and retenuing of the Property. Owner agrees to assume all obligations under any contract so entered into at the termination of this Agreement. Where practicable, Agent shall make reasonable efforts to include in any such contract, that it may be cancelled by Agent at any time and for any reason or for no reason on thirty (30) days' notice to the other party to the contract. No contract shall be for a period greater than one year unless first approved by Owner. If Owner is a general partnership or Owner owns other assets in addition to the Property, then any contracts that Agent enters into on behalf of Owner shall be non-recourse to Owner unless Owner agrees otherwise.
- j. To pay from Owner's funds, any mortgage or Owner indebtedness, and to secure in such amounts and with such insurers as Agent deems appropriate, and in accordance with the requirements set forth in the leases and in any mortgage, fire, liability, rent, all risk, difference of conditions, workmen's compensation, employee's liability and other casualty or risk insurance.
- k. To pay from Owner's funds, the real property taxes, special assessments and other property taxes, if any, levied or assessed on the Property. Agent agrees to annually review all tax assessments on the Property and recommend to Owner such action as Agent may deem proper in connection therewith. Agent further agrees to retain outside counsel to represent Owner, in any proceedings instituted by Owner contesting or appealing the assessed valuation of any property taxes. Owner shall pay or cause to be paid to Agent all External Costs in connection with the foregoing and all Internal Costs (as hereinafter defined) in connection with any proceedings instituted by Owner contesting or appealing the assessed valuation of any property taxes.
- l. To conduct for the leasing or orderly maintenance and/or to participate in general advertising or promotional events for the Property.
- m. To endeavor to fulfill Owner's obligations under tenant leases and any mortgage with respect to the operation of the Property.

- n. To prepare and submit to Owner for Owner's approval an annual operating budget for the Property, such annual operating budget to include any applicable budgeted expenses for leasing or deferred maintenance costs that are not otherwise covered by a budget previously approved by Owner. Thereafter, with respect to the then current annual operating budget, Agent shall obtain approval from Owner of any variances of 5% or more for any discretionary expense individual line item of \$25,000 or more.

4. Owner agrees as follows:

- a. To pay Agent for services required under this Agreement a management fee equal to four percent (4%) of collections ("Management Fee"); said collections being all monies received from the tenants or occupants of the Property from whatever source derived; provided however that no Management Fee shall be payable with respect to any proceeds from the sale of the Property, amounts received in settlement of real property tax certiorari proceedings, proceeds from the refinancing of the Property, insurance proceeds or condemnation awards ("Adjusted Gross Collections"). Such payments are to be made monthly, in advance, on the first day of each month during the term of this Agreement based upon the actual Adjusted Gross Collections for the preceding month. An adjustment shall be made within ninety (90) days after the end of each year to ensure that, based on Adjusted Gross Collections actually received for that year, no more than four percent (4%) of Adjusted Gross Collections was paid as the annual Management Fee. Notwithstanding the above, Agent shall not be paid a Management Fee less than five thousand dollars (\$5,000.00) for services required under this Agreement commencing on July 1, 2016.
- b. To pay Agent a leasing fee ("Leasing Fee") equal to six percent (6%) of the Aggregate Rental Income for a new or renewal lease with a Commercial Tenant in the Property. The Aggregate Rental Income shall mean the total minimum rent, percentage rent, taxes, insurance, common area, marketing, heating, venting and cooling, compactor or trash, parking or other fees or monies defined in a lease with a Commercial Tenant but excluding the monies for energy, water or gas. A Commercial Tenant shall mean any use occupying square footage at the Property excluding any residential units or apartment occupants as evidenced by an executed lease. The Leasing Fee shall be paid as follows:
  - i. fifty percent (50%) paid after the date a lease is executed with a Commercial Tenant; and
  - ii. fifty percent (50%) paid after the date a Commercial Tenant opens within the Property

5. Owner and Agent agree as follows with respect to the payment of fees and other amounts under this Agreement:

- a. Within ten (10) days after Owner's receipt of an invoice therefor, Owner shall pay Agent any and all amounts payable by Owner pursuant to this Agreement with respect to which a time for payment is not otherwise provided in this Agreement.


- b. All fees payable to Agent hereunder are in addition to, and not a substitute for, external fees payable to outside brokers, attorneys, consultants and contractors (“External Costs”). Without limiting the foregoing, it is expressly acknowledged that the Leasing Fee payable pursuant to paragraph 3 (b) is exclusive of brokerage commissions that may be payable to third parties in connection therewith, it being understood that any such brokerage commissions shall be an expense of Owner.
6. Owner agrees, to the fullest extent allowed by law, to indemnify and save the Agent, its agents, officers, directors and employees, harmless from and against any liability, judgments, damages, costs and expense in connection with the performance by Agent of its obligations under this Agreement, including without limitation the operation, management, maintenance, leasing and retensing of the Property as provided under this Agreement, and from liability or injuries suffered by any employee or other person whomsoever arising out of the performance by Agent of its obligations under this Agreement, including without limitation the operation, management, maintenance, leasing and retensing of the Property, including without limitation reasonable attorneys’ fees; provided however that Owner shall have no obligation to indemnify or save Agent or its agents, officers, directors and employees harmless from any such liability, judgments, damages, costs and expense to the extent such results from the willful misconduct or gross negligence of Agent or its agents, officers, directors or employees; and to carry, at Owner’s expense, all necessary public liability insurance to adequately protect the interest of the parties hereto, which policies shall be so written as to protect Agent in the same manner and to the same extent that they protect Owner, naming Agent as co-insured. Agent shall not be liable for any error in judgment or for any mistake of fact or law or for anything which it may do or fail to do except in case of willful misconduct or gross negligence.
7. This Agreement may be terminated by either party upon thirty (30) days’ notice to the other party subsequent to one of the following events: (a) the event of any sale of the Property, (b) a transfer to an unaffiliated party or parties which results in a change of more than to fifty percent (50%) of the ownership interests in Owner, (c) a foreclosure of the Property, (d) Agent becomes insolvent and (e) the effective date of the removal of the Matthew Paulus member (or entity representing the ownership held by Matthew Paulus) pursuant to the terms of that certain LLC operating agreement of Owner (as the same may be amended, the “Bradford & Euclid, LLC Operating Agreement”)
8. In the event that all or substantially all of the Property shall be damaged or destroyed, taken by eminent domain, condemnation or deed in lieu thereof, and Owner shall not elect to continue to operate the remaining Property, then, at the sole option of Owner, this Agreement shall terminate not less than thirty (30) days after notice to Agent.
9. Nothing herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of employer and employee, of partnership, or of joint venture between the parties hereto; it being understood and agreed that neither the method of computation of compensation or any other provision shall create any relationship between the parties hereto other than as Owner and Agent, said Agent being an independent contractor.
10. This Agreement sets forth the entire agreement between the Parties relating to the Property and all prior agreements relative thereto that are not contained herein or therein are terminated.

11. This Agreement or any part of it may not be changed, altered, modified, eliminated, terminated or extended orally or by any agreement between the parties, unless such agreement is in writing and signed by the parties hereto.
12. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
13. This Agreement may not be assigned by either party without the written consent of the other; provided, however, that this Agreement may be assigned by Agent to an entity (or an entity controlled by such entity) that: (i) acquires all of Matthew Paulus member's (or entity representing the current ownership held by Matthew Paulus) interest in Owner pursuant to the Bradford & Euclid, LLC Operating Agreement and (ii) the assignee hereunder is a "Qualified Manager". A Qualified Manager shall mean (a) a reputable and experienced professional management company, having, together with its Affiliates, under management, at least two hundred fifty (250) apartment units or dwellings comprising an aggregate of at least two hundred thousand (250,000) square feet of gross leasable area, and (b) such other entity provided that prior to an assignment, Agent obtains Owner's prior written consent to such Person, which consent shall not be unreasonably withheld.
14. This Agreement shall be governed and construed in accordance with the laws of the State of New York. The place of trial, should any action between Owner and Agent arise, shall be Onondaga County, New York.
15. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become a binding Agreement when one or more of the counterparts have been signed by each of the parties and delivered to the other party. Signatures delivered by facsimile or electronically shall be deemed original signatures for all purposes of this Agreement.

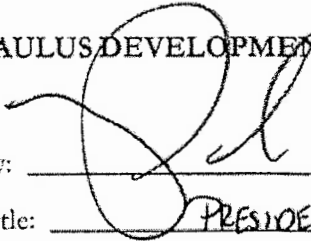
*[Remainder of Page Intentionally Left Blank, Signature Page Follows]*

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

BRADFORD & EUCLID, LLC

By:   
Title: Manager

PAULUS DEVELOPMENT COMPANY, LLC

By:   
Title: PRESIDENT

**EXHIBIT "H"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
**INITIAL OPERATING BUDGET**

**BRADFORD & EUCLID, LLC**  
**INITIAL OPERATING BUDGET VARIANCE REPORT**

	FINAL BUD 6/1/16-12/31/16
<b>PROJECT INCOME</b>	
COMMERCIAL RENT	44,397
COMMERCIAL RECOVERIES	4,017
APARTMENT RENT	-
PARKING INCOME	-
OTHER INCOME	-
<b>TOTAL INCOME</b>	<b>48,413</b>
<b>OPERATING EXPENSES</b>	
TAXES	11,322
INSURANCE	6,363
UTILITIES	12,319
WATER	349
MARKETING	-
<b>TOTAL OPERATING COSTS</b>	<b>30,353</b>
<b>COMMON AREA EXPENSE</b>	
PAYROLL	8,000
GENERAL & ADMINISTRATION	1,104
REPAIRS & MAINTENANCE	9,125
CONTRACT SERVICES	2,099
<b>SUB-TOTAL CAE</b>	<b>20,328</b>
MANAGEMENT FEE	30,000
<b>TOTAL CAE EXPENSES</b>	<b>50,328</b>
<b>TOTAL EXPENSES</b>	<b>80,681</b>
<b>CASH FLOW BEFORE DEBT SERVICE</b>	<b>(32,268)</b>
<b>OTHER NON-MANAGEMENT</b>	
GROUND LEASE	82,892
DEVELOPMENT COSTS	1,731,766
<b>TOTAL NON-MANAGEMENT</b>	<b>1,814,658</b>
<b>NET CASH FLOW</b>	<b>(1,846,926)</b>
<b>SOURCES &amp; USES</b>	
BEGINNING CASH BALANCE	52,585
DUE TO/FROM PARTNERS	(43,932)
DUE TO/FROM SYRACUSE BUSINESS CENTER	(37,383)
HISTORIC TAX CREDIT CONTRIBUTIONS	1,531,319
<b>ENDING CASH BALANCE</b>	<b>(344,337)</b>
<b>PARTNER CALL / (DISTRIBUTION)</b>	
PAULUS CALL/ (DISTRIBUTION)	-
BRAXTON CALL/(DISTRIBUTION)	400,000
LOSTY CALL/ (DISTRIBUTION)	-
FANCHER CALL/(DISTRIBUTION)	15,713
<b>TOTAL PARTNER CALLS / (DISTRIBUTIONS)</b>	<b>415,713</b>
<b>NET CASH AVAILABLE</b>	<b>71,377</b>



**BRADFORD & EUGLID, LLC  
INITIAL OPERATING BUDGET  
DEVELOPMENT BUDGET**

	PREVIOUS EXPENSES*	DEVELOPMENT EXPENSE BUDGET							2016
		ACTUAL		FORECAST					
		June	Jul	Aug	Sep	Oct	Nov	Dec	
<b>CONSTRUCTION COSTS</b>									
Assessment	9,217.50	-	-	-	-	-	-	-	-
Pre-Construction Services	10,392.88	-	-	-	82,500.00	-	-	-	82,500.00
City of Syracuse Permit Fee	-	-	-	-	-	-	-	-	-
<b>SUB-TOTAL</b>	<b>5,100.00</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>82,500.00</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>82,500.00</b>
<b>PROFESSIONAL FEES</b>									
Architectural	84,200.00	7,200.00	5,000.00	306.00	326,721.70	-	-	-	339,227.70
Mechanical, Engineering & Plumbing	23,000.00	-	-	-	232,000.00	-	-	-	232,000.00
Structural	-	-	-	-	35,000.00	-	-	-	35,000.00
Landscape Architect	1,399.00	-	-	2,975.29	2,750.71	-	-	-	5,726.00
Jacobsen Rugs Permit Plans	-	-	-	-	13,500.00	-	-	-	13,500.00
Legal	24,836.86	50,000.00	-	525.00	112,666.49	-	-	9,500.00	172,691.49
Accounting	6,587.00	5,000.00	-	-	38,063.00	-	-	-	43,063.00
Other									
Bank Engineer Report (Plan & Cost)	-	-	-	-	4,800.00	-	-	-	4,800.00
Bank Construction Inspections	-	-	-	-	-	1,000.00	1,000.00	1,000.00	3,000.00
Bank Environmental Review	1,975.00	-	-	-	-	-	-	-	-
Grant Management (ESD)	-	-	-	-	1,000.00	-	500.00	-	1,500.00
Mercury Public Affairs, LLC	15,179.03	-	-	-	-	-	-	-	-
<b>SUB-TOTAL</b>	<b>157,176.89</b>	<b>62,200.00</b>	<b>5,000.00</b>	<b>3,806.29</b>	<b>766,501.90</b>	<b>1,000.00</b>	<b>1,500.00</b>	<b>10,500.00</b>	<b>850,508.19</b>
<b>CLOSING AND OTHER FEES</b>									
Financing Costs									
CPC Commitment Fee Construction (1%)	-	-	-	96,215.00	96,215.00	-	-	-	192,430.00
Pension Fund Rate Lock Fee	-	-	-	-	162,500.00	-	-	-	162,500.00
Bank Appraisal (Cushman & Wakefield)	12,500.00	-	-	-	-	-	-	-	-
CPC Legal Fees Construction Loan	-	-	-	-	25,000.00	-	-	-	25,000.00
CPC Legal Fees Permenant Loan	-	-	-	-	-	-	-	-	-
Title/Recording/IDA									
Syracuse Industrial Development Agency	1,000.00	-	-	-	193,430.00	-	-	-	193,430.00
Title Insurance/ Recording Fees/Misc	-	-	-	-	100,000.00	-	-	-	100,000.00
Administrative Requirements	8,757.59	-	-	-	3,875.20	250.00	-	289.62	4,414.82
Grant & Historical Tax Credit Fees	4,050.00	-	-	-	-	-	-	50.00	50.00
Other									
National Grid Planner Fee	-	-	-	-	25,000.00	-	-	-	25,000.00
City of Syracuse - Stormwater Fee	-	-	-	-	5,000.00	-	-	-	5,000.00
SONYMA Application Fee	-	-	-	16,250.00	-	-	-	-	16,250.00
CPC Survey	-	-	-	-	500.00	-	-	-	500.00
<b>SUB-TOTAL</b>	<b>26,307.59</b>	<b>-</b>	<b>-</b>	<b>112,465.00</b>	<b>611,520.20</b>	<b>250.00</b>	<b>-</b>	<b>339.62</b>	<b>724,574.82</b>
<b>CARRYING COSTS</b>									
Insurance	-	-	19,090.50	-	30,673.50	-	-	-	49,764.00
Marketing & Leasing	999.02	-	-	-	14,659.01	2,730.00	3,640.00	3,390.00	24,419.01
<b>SUB-TOTAL</b>	<b>999.02</b>	<b>-</b>	<b>19,090.50</b>	<b>-</b>	<b>45,332.51</b>	<b>2,730.00</b>	<b>3,640.00</b>	<b>3,390.00</b>	<b>74,183.01</b>
<b>GRAND TOTAL</b>	<b>\$ 189,583.50</b>	<b>\$ 62,200.00</b>	<b>\$ 24,090.50</b>	<b>\$ 116,271.29</b>	<b>\$ 1,505,854.61</b>	<b>\$ 3,980.00</b>	<b>\$ 5,140.00</b>	<b>\$ 14,229.62</b>	<b>\$ 1,731,766.02</b>

\*Expenses incurred prior to 6/1/16

**EXHIBIT "I"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
**CONSTRUCTION MANAGEMENT AGREEMENT**



**ConsensusDocs®**  
BUILDING A BETTER WAY

**ConsensusDocs® 500**  
**STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND**  
**CONSTRUCTION MANAGER**  
**(Where the CM is At-Risk)**

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**ENDORSEMENT.** This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. The organizations endorsing this document believe it represents a fair allocation of risk and responsibilities of all project participants.

Endorsing organizations recognize that this document must be reviewed and adapted to meet specific needs and applicable laws. This document has important legal and insurance consequences, and it is not intended as a substitute for competent professional services and advice. Consultation with an attorney and an insurance or surety adviser is strongly encouraged. Federal, State and Local laws may vary with respect to the applicability or enforceability of specific provisions in this document. **CONSENSUSDOCS SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASERS ASSUME ALL LIABILITY WITH RESPECT TO THE USE OF THIS DOCUMENT, AND CONSENSUSDOCS AND ANY OF THE ENDORSING ORGANIZATIONS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM SUCH USE.** For additional information, please contact ConsensusDocs, 2300 Wilson Blvd, Suite 300, Arlington, VA 22201, 866-925-DOCS (3627), [support@consensusdocs.org](mailto:support@consensusdocs.org) or [www.ConsensusDocs.org](http://www.ConsensusDocs.org).



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# ConsensusDocs® 500

## STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER (Where the CM is At-Risk)



### TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
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4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
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7. COMPENSATION AND GUARANTEED MAXIMUM PRICE
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12. SUSPENSION, NOTICE TO CURE, AND TERMINATION
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14. MISCELLANEOUS
15. CONTRACT DOCUMENTS

### ARTICLE 1 AGREEMENT

Job Number: 15-432

Account Code: [ ]



This Agreement is made this 28<sup>th</sup> Day of August in the year 2016, by and between the

OWNER  
Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Mr. Mathew Paulus, Manager  
Email: Mathew@paulusdevco.com  
PH: 202-302-5919

and the

CONSTRUCTION MANAGER  
Hueber-Breuer Construction Co. Inc.  
148 Berwyn Avenue  
Syracuse, NY 13205  
-and-  
PO Box 515  
Syracuse, NY 13205-0515  
PH: 315-476-7517

Tax identification number (TIN) 06-163-9378

for services in connection with the following

PROJECT,  
Rehabilitation and Conversion of R.E. Dietz Factory to  
Residential/Mixed Use Property

Property Location: 225-303 Wilkinson Street and Leavenworth  
Avenue, Syracuse, New York

Notice to the Parties shall be given at the above addresses.

The Design Professional is  
Walton Architectural Group PC  
225 Wilkinson Street, Suite 106  
Syracuse, NY 13204-2450  
PH: 315-472-0779

IPD Engineering & IPD Structural  
One Webster's Landing,  
Syracuse New York 13202

Empire Landscape Architects, PLLC,  
674 Shackham Road  
Fabius, NY 13063

## ARTICLE 2 GENERAL PROVISIONS

2



ConsensusDocs® 500 – Standard Agreement and General Conditions Between Owner and Construction Manager (CM-At-Risk) \*2011, Revised 2016. THIS DOCUMENT MAY HAVE BEEN MODIFIED. The ConsensusDocs technology platform creates a redline comparison to the standard language which the purchaser of this contract is authorized to share for review purposes. Consultation with legal and insurance counsel are strongly encouraged. You may only make copies of finalized documents for distribution to parties in direct connection with this contract. Any other uses are strictly prohibited.

2.1 RELATIONSHIP OF PARTIES The Parties each agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing.

2.1.1 The Construction Manager shall furnish construction administration and management services and use the Construction Manager's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.2 The Construction Manager represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.1.3 Neither the Construction Manager nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in this Agreement unless authorized in writing by the Owner's Representative.

2.1.4 The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, subcontractors, subconsultants or others for whom they may be liable, to secure preferential treatment.

2.2 DESIGN PROFESSIONAL The Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work, The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided.

2.2.1 The Owner shall obtain from the Design Professional either a license for the Construction Manager and Subcontractors to use the design documents prepared by the Design Professional or ownership of the copyrights for such design documents, and shall indemnify and hold harmless the Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

## 2.3 DEFINITIONS

2.3.1 "Agreement" means this ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and Construction Manager, as modified, and exhibits and attachments made part of this agreement upon its execution.

The following attached exhibits are a part of this Agreement:  
Amendment #1

2.3.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.3 A "Change Order" is a written order signed by the Owner and the Construction Manager after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of



Substantial Completion or Date of Final Completion, including substitutions proposed by the Construction Manager and accepted by the Owner.

2.3.4 The "Contract Documents" consist of this Agreement, the existing Contract Documents listed in section 15.1, drawings, specifications, addenda issued and acknowledged prior to execution of this Agreement, information furnished by the Owner pursuant to subsection 3.15.4, and modifications issued in accordance with this Agreement.

2.3.5 "Contract Time" is the period between the Date of Commencement and the Final Completion.

2.3.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.3.7 The "Construction Manager" is the person or entity identified in ARTICLE 1 and includes the Construction Manager's Representative.

2.3.8 "Date of Commencement" is as set forth in section 6.1.

2.3.9 "Day" means a calendar day.

2.3.10 "Defective Work" is any portion of the Work that that does not conform with the Contract Documents.

2.3.11 "Design Professional" means the licensed architect or engineer, and its consultants, retained by the Owner to perform design services for the Project.

2.3.12 "Final Completion" occurs on the date when the Construction Manager's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Construction Manager.

2.3.13 "Interim Directed Change" is a change to the Work directed by the Owner pursuant to section 9.2.

2.3.14 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Construction Manager must comply that are enacted as of the Agreement date.

2.3.15 A "Material Supplier" is a person or entity retained by the Construction Manager to provide material and equipment for the Work.

2.3.16 "Others" means other contractors, material suppliers, and persons at the Worksite who are not employed by the Construction Manager, or Subcontractors.

2.3.17 "Overhead" means (a) payroll costs and other compensation of the Construction Manager's employees in the Construction Manager's principal and branch offices; (b) general and administrative expenses of the Construction Manager's principal and branch offices including charges against the Construction Manager for delinquent payments, and costs related to the correction of defective work; and (c) the Construction Manager's capital expenses, including interest on capital used for the Work.

2.3.18 "Owner" is the person or entity identified in ARTICLE 1 and includes the Owner's Representative.



2.3.19 The "Owner's Program" is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.3.20 The "Parties" are collectively the Owner and the Construction Manager.

2.3.21 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which the Construction Manager is to perform Work under this Agreement. It may also include construction by the Owner or Others.

2.3.22 The "Schedule of the Work" is the document prepared by the Construction Manager that specifies the dates on which the Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

2.3.23 "Subcontractor" is a person or entity retained by the Construction Manager as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or Others.

2.3.24 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Construction Manager.

2.3.25 A "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor or another Subsubcontractor to perform a portion of the Subcontractor's Work.

2.3.26 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

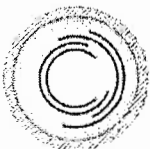
2.3.27 "Work" means the construction and services necessary or incidental to fulfill the Construction Manager's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

2.3.28 "Worksite" means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

### 3.1 GENERAL RESPONSIBILITIES

3.1.1 The Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents.





3.1.2 The Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the Construction Manager shall not be liable to the Owner for damages resulting from compliance with such instructions unless the Construction Manager recognized and failed to timely report to the Owner any error, inconsistency, omission, or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences, or procedures.

3.1.3 The Construction Manager shall perform Work only within locations allowed by the Contract Documents, Laws, and applicable permits.

### 3.2 CONSTRUCTION PERSONNEL AND SUPERVISION

3.2.1 The Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, the Construction Manager shall notify the Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so the Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, the Construction Manager shall name a different superintendent for the Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

3.2.2 The Construction Manager shall be responsible to the Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.

3.2.3 The Construction Manager shall permit only fit and skilled persons to perform the Work. The Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, the Construction Manager shall immediately reassign the person on receipt of the Owner's written notice to do so.

3.2.4 CONSTRUCTION MANAGER'S REPRESENTATIVE The Construction Manager's authorized representative is Greg Dopko. The Construction Manager's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. If the Construction Manager changes its representative or their authority, the Construction Manager shall immediately notify the Owner in writing.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in the Construction Manager's work.

3.3.1 PRELIMINARY EVALUATION The Construction Manager shall provide a preliminary evaluation of the Owner's Program and report such findings to the Owner and the Design Professional.

3.3.2 CONSULTATION The Construction Manager shall schedule and attend regular meetings with the Owner and Design Professional. The Construction Manager shall consult with the Owner and Design Professional regarding site use and improvements and the selection of materials, building systems, and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.



**3.3.3 SCHEDULE OF THE WORK** When Project requirements have been sufficiently identified, the Construction Manager shall prepare a preliminary Schedule of the Work for the Design Professional's review and the Owner's approval. The Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of the Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, the Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicates that milestone dates contained in prior Schedules of the Work will not be met, the Construction Manager shall notify and make recommendations to the Owner. If the Project is to be completed in phases, the Construction Manager shall make recommendations to the Owner and Design Professional regarding the phased issuance of the drawings and specifications.

### **3.3.4 ESTIMATES**

**3.3.4.1** When the Owner has sufficiently identified the Owner's Program and other Project requirements and the Design Professional has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Design Professional and approval of the Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques.

**3.3.4.2** When schematic or preliminary design documents have been completed by the Design Professional and approved by the Owner, the Construction Manager shall prepare for the review of the Design Professional and approval of the Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable detail, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Construction Manager.

**3.3.4.3** When design development documents or documents of comparable detail have been completed by the Design Professional and approved by the Owner, the Construction Manager shall prepare a further detailed estimate with supporting data for review by the Design Professional and approval by the Owner. During the preparation of the drawings and specifications, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Construction Manager.

**3.3.4.4** If any estimate submitted to the Owner exceeds previously approved estimates, the Construction Manager shall notify and make recommendations to the Owner.

**3.3.5 CONSTRUCTION DOCUMENT REVIEW** The Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact the Construction Manager's ability to perform the Work in an expeditious and economical manner. The Construction Manager shall issue a report to the Design Professional and Owner for their review and action as appropriate. In addition, the Construction Manager shall promptly report to the Owner and the Design Professional any errors or omissions which it discovers in the drawings and specifications.

**3.3.6 TEMPORARY FACILITIES** The Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by the Construction Manager, its Subcontractors, Subsubcontractors, and Material Suppliers.



**3.3.7 LONG-LEAD ITEMS** The Construction Manager shall recommend to the Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. The Construction Manager shall help expedite the delivery of long-lead-time items.

**3.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS** The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Design Professional a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. The Owner shall promptly reply in writing to the Construction Manager if the Owner or Design Professional know of any objection to a subcontractor. The Owner may designate specific persons or entities from whom the Construction Manager shall solicit bids.

**3.3.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION** The Construction Manager shall consult with the Owner regarding equal employment opportunity and affirmative action programs.

**3.3.10 CONSULTANTS** The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.

**3.3.11 PERMITS** The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Construction Manager.

**3.3.12 OTHER PRECONSTRUCTION SERVICES** The Construction Manager shall provide such other preconstruction services as are agreed upon by the Parties and identified in an attached exhibit to this Agreement.

#### **3.4 GUARANTEED MAXIMUM PRICE (GMP)**

**3.4.1** At such time as the Owner and Construction Manager agree the drawings and specifications are sufficiently complete, the Construction Manager shall prepare and submit to the Owner in writing a GMP. The GMP proposal shall include the sum of the estimated cost of the Work, the Construction Manager's Fee, the clarifications and assumptions upon which it is based, allowances, and reasonable contingencies, but shall not include compensation for Preconstruction Services. The Construction Manager does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

**3.4.2 BASIS OF GUARANTEED MAXIMUM PRICE** The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

**3.4.2.1** a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

**3.4.2.2** a list of allowances and a statement of their basis;

**3.4.2.3** a list of the assumptions and clarifications made by the Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;



3.4.2.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.4.2.5 a schedule of applicable alternate prices;

3.4.2.6 a schedule of applicable unit prices;

3.4.2.7 a statement of any work to be self-performed by the Construction Manager.

3.4.3 The Construction Manager shall meet with the Owner and Design Professional to review the GMP. If the Owner or Design Professional discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP. The Owner shall then give prompt written approval of the GMP.

3.4.4 The Owner shall cause the Design Professional to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to the Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by the Owner, Construction Manager, and Design Professional. The Construction Manager shall promptly notify the Owner and Design Professional if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

3.4.5 If the Contract Documents are not complete at the time the GMP proposal is submitted to the Owner, the Construction Manager shall provide in the GMP for further development of the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Document.

3.4.6 If this Agreement is executed prior to establishment of the Guaranteed Maximum Price and its acceptance by the Owner, then the GMP and its basis shall be set forth in Amendment 1.

3.4.7 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. The Construction Manager's overhead and profit for the allowances shall be included in the GMP, but not in the allowances. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

3.4.8 FAILURE TO ACCEPT THE GMP PROPOSAL Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Construction Manager, the GMP Proposal shall not be effective. If the Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, the Owner shall have the right to:

3.4.8.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by the Construction Manager, the GMP Proposal shall be deemed accepted in accordance with subsection 3.4.6;

3.4.8.2 direct the Construction Manager to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or



3.4.8.3 terminate the Agreement for convenience in accordance with section 12.4. In the absence of a GMP the Parties may establish a Date of Substantial Completion or a Date of Final Completion.

3.4.9 PRE-GMP WORK Prior to the Owner's acceptance of the GMP Proposal, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the Owner may specifically authorize in writing.

### 3.5 COOPERATION WITH WORK OF OWNER AND OTHERS

3.5.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, clean up, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.5.2 If the Owner elects to perform work at the Worksite directly or by Others, the Construction Manager and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Construction Manager, the Owner, and Others shall adhere to the revised Schedule of the Work.

3.5.3 With regard to the work of the Owner and Others, the Construction Manager shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Construction Manager's Work with theirs.

3.5.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Construction Manager shall give the Owner prompt, written notification of any defects the Construction Manager discovers in their work which will prevent the proper execution of the Work. The Construction Manager's obligations in this subsection do not create a responsibility for the work of Owner or Others, but are for the purpose of facilitating the Work. If the Construction Manager does not notify the Owner of defects interfering with the performance of the Work, the Construction Manager acknowledges that the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

### 3.6 CONSTRUCTION SERVICES AND ADMINISTRATION

3.6.1 Prior to commencing the Work, the Construction Manager shall examine and compare the drawings and specifications with information furnished by the Owner that are considered Contract Documents, relevant field measurements made by the Construction Manager, and any visible conditions at the Worksite affecting the Work.

3.6.2 Should, the Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, the Construction Manager shall promptly report them to the Owner. It is recognized, however, that the Construction Manager is not acting in the capacity of a licensed



design professional, and that the Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with applicable laws, building codes, or regulations. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

3.6.3 The Construction Manager shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless the Construction Manager knowingly fails to report a recognized problem to the Owner.

3.6.4 The Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of the Construction Manager's reports described in the three preceding subsections.

3.6.5 **COST REPORTING** The Construction Manager shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Construction Manager shall maintain a complete set of all books and records prepared or used by the Construction Manager with respect to the Project. The Construction Manager's records supporting its performance and billings under this Agreement shall be current, complete, and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall be afforded access to all of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. The Construction Manager shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.6.5.1 The Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy.

### 3.7 MATERIALS FURNISHED BY THE OWNER OR OTHERS

3.7.1 If the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Construction Manager shall be the responsibility of the Construction Manager and may be deducted from any amounts due or to become due the Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

### 3.8 TESTS AND INSPECTIONS

3.8.1 The Construction Manager shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in subsection 3.8.3, the Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents,



required certificates of testing, approval, or inspection shall be secured by the Construction Manager and promptly delivered to the Owner.

3.8.2 If the Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, the Construction Manager shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at the Owner's expense except as provided in the subsection below.

3.8.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the Construction Manager, the Construction Manager shall be responsible for costs of correction and retesting.

### 3.9 WORKMANSHIP

3.9.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

### 3.10 WARRANTY

3.10.1 The Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the Owner's request, the Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or Others, or abuse. The Construction Manager's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, the Construction Manager's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty.

3.10.4 The Construction Manager shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties shall be listed in an attached exhibit to this Agreement. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in the section immediately below. After that period the Construction Manager shall provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers for such extended warranties.

### 3.11 CORRECTION OF WORK WITHIN ONE YEAR



3.11.1 If prior to Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, the Owner shall promptly notify the Construction Manager in writing. Unless the Owner provides written acceptance of the condition, the Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the Owner discovers and does not promptly notify the Construction Manager or give the Construction Manager an opportunity to test or correct Defective Work as reasonably requested by the Construction Manager, the Owner waives the Construction Manager's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Construction Manager.

3.11.3 If the Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due the Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner.

3.11.4 The Construction Manager's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, the Owner discovers any Work which the Owner considers Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Construction Manager and allow the Construction Manager an opportunity to correct the Work if the Construction Manager elects to do so. If the Construction Manager elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner and shall complete the correction of Work within a mutually agreed timeframe. If the Construction Manager does not elect to correct the Work, the Owner may have the Work corrected by itself or Others, and, if the Owner intends to seek recovery of those costs from the Construction Manager, the Owner shall promptly provide the Construction Manager with an accounting of the correction costs it incurs.

3.11.5 If the Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, the Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Construction Manager's other obligations under the Contract Documents.

3.11.7 Prior to final payment, at the Owner's option and with the Construction Manager's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

### 3.12 CORRECTION OF COVERED WORK





3.12.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Construction Manager shall pay the costs of uncovering and replacement.

3.12.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Construction Manager to uncover the Work for the Owner's observation. In this circumstance the Work shall be replaced at the Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

### 3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PRECAUTIONS AND PROGRAMS The Construction Manager shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with Laws.

3.13.2 The Construction Manager shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in the Work; and (c) property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Worksite.

3.13.3 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE The Construction Manager's Worksite Safety Representative is Ralph Orlandella, who shall act as the Construction Manager's authorized safety representative with a duty to prevent accidents. If no individual is identified in this subsection, the safety representative shall be the Construction Manager's Representative. The Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When the Construction Manager is required to file an accident report with a public authority, the Construction Manager shall furnish a copy of the report to the Owner.

3.13.4 The Construction Manager shall provide the Owner with copies of all notices required of the Construction Manager by law or regulation. The Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.13.5 Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent acts or omissions of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, shall be promptly remedied by the Construction Manager. With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss; or (b) accept the damage or loss.

3.13.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Construction Manager's safety program, may require the Construction Manager to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Construction Manager does not adopt corrective measures, the Owner may perform them and deduct their cost from the GMP. The Construction Manager agrees to make no claim for damages,



or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on the Construction Manager's compliance with the Owner's reasonable request.

**3.14 EMERGENCIES** In an emergency affecting the safety of persons or property, the Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9.

### **3.15 HAZARDOUS MATERIALS**

**3.15.1** A Hazardous Material is any substance or material identified now or in the future as hazardous under Laws or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. The Construction Manager shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

**3.15.2** If after commencing the Work, Hazardous Material is discovered at the Worksite, the Construction Manager shall be entitled to immediately stop Work in the affected area. The Construction Manager shall promptly report the condition to the Owner, the Design Professional, and, if required, the governmental agency with jurisdiction.

**3.15.3** The Construction Manager shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

**3.15.4** The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work. The Construction Manager shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

**3.15.5** If the Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Construction Manager shall be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion.

**3.15.6** To the extent permitted by section 6.6 and to the extent not caused by the negligent acts or omissions of the Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, the Owner shall defend, indemnify, and hold harmless the Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against any and all direct claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Owner.

### **3.15.7 MATERIALS BROUGHT TO THE WORKSITE**



3.15.7.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Construction Manager, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Construction Manager and made available to the Owner, Subcontractors, and Others.

3.15.7.2 The Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.15.7.3 To the extent permitted under section 6.6 and to the extent not caused by the negligent acts or omissions of the Construction Manager, its agents, officers, directors, and employees, the Owner shall defend, indemnify and hold harmless the Construction Manager, its agents, officers, directors, and employees, from and against claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Construction Manager in accordance with the Contract Documents.

3.15.7.4 This section shall survive the completion of the Work or any termination of this Agreement.

### 3.16 SUBMITTALS

3.16.1 The Construction Manager shall submit to the Owner and the Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with subsection 4.6.1. The Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, the Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. The Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Neither the Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, the Construction Manager agrees upon request to submit in a timely fashion to the Design Professional and the Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Owner.

3.16.2 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.16.3 The Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the



procedures of ARTICLE 9 are followed. Approval does not relieve the Construction Manager from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to the Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.

3.16.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Construction Manager obtains approvals required under the Contract Documents for substitutions. All such substitutions shall be promptly memorialized in a Change Order no later than seven (7) Days following approval by the Owner and, if applicable, Design Professional provide for an adjustment in the Contract Price or Contract Time.

3.16.6 The Construction Manager shall prepare and submit to the Owner (Designate only one)

(X) final marked-up as-built drawings

3.17 DESIGN DELEGATION If the Contract Documents specifically require the Construction Manager to procure design services, the Owner shall specify all required performance and design criteria. The Construction Manager shall not be responsible for the adequacy of such performance and design criteria. As permitted by the laws, rules and regulations in the jurisdiction where the Project is located, the Construction Manager shall procure such services and any certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of the Construction Manager's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by the Construction Manager's design professional.

### 3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT The Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Construction Manager shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the unknown condition shall be determined as provided in ARTICLE 9.

### 3.19 PERMITS AND TAXES

3.19.1 The Construction Manager shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of the Owner pursuant to section 4.4, shall



obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. The Construction Manager shall provide to the Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.19.2 The Construction Manager shall pay all applicable taxes enacted when bids are received or negotiations concluded for the Work provided by the Construction Manager.

3.19.3 The GMP shall be adjusted for additional costs resulting from Laws enacted after the date of this Agreement, including taxes.

3.19.4 If, in accordance with the Owner's direction, the Construction Manager claims an exemption for taxes, the Owner shall indemnify and hold the Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by the Construction Manager as a result of any such action.

### 3.20 CUTTING, FITTING, AND PATCHING

3.20.1 The Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others.

3.20.2 Cutting, patching, or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

### 3.21 CLEANING UP

3.21.1 The Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.21.2 If the Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Construction Manager in the next payment period.

3.22 ACCESS TO WORK The Construction Manager shall facilitate the access of the Owner, its Design Professional, and Others to Work in progress.

3.23 COMPLIANCE WITH LAWS The Construction Manager shall comply with all Laws at its own costs. The Construction Manager shall be liable to the Owner for all loss, cost, or expense attributable to any acts or omissions by the Construction Manager, its employees, subcontractors, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to the Owner is given and advance approval by appropriate authorities, including the Owner, is received.

3.24 CONFIDENTIALITY Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, the Construction Manager shall treat as confidential and not disclose to third persons, except Subcontractors, Subsubcontractors, and as is necessary for the performance of the Work, or use for its own benefit, any of the Owner's confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the



Construction Manager or which the Construction Manager may acquire in connection with the Work. The Owner shall treat as confidential information all of the Construction Manager's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Construction Manager shall each specify those items to be treated as confidential and shall mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, the Construction Manager or Owner, as the case may be, shall promptly notify the other party to permit that party's legal objection, if necessary.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Any information or services to be provided by the Owner shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Prior to commencement of the Work and thereafter at the written request of the Construction Manager, the Owner shall provide the Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to the Construction Manager's commencing or continuing the Work. The Construction Manager shall be notified prior to any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Construction Manager in laying out the Work;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Laws; and

4.3.3 any other information or services requested in writing by the Construction Manager which are required for the Construction Manager's performance of the Work and under the Owner's control.

4.4 BUILDING PERMIT, FEES AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of the Construction Manager pursuant to section 3.19.1, the Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving the Construction Manager's written request, the Owner shall provide the Construction Manager with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop



notices. This information shall include the Owner's real property interests in the Worksite and the record legal title.

**4.6 CONTRACT DOCUMENTS** Unless otherwise specified, the Owner shall provide a reasonable number of hard copies of the Contract Documents to the Construction Manager without cost.

**4.6.1 ELECTRONIC DOCUMENTS** If the Owner requires that the Owner, Design Professional, and Construction Manager exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional and Construction Manager shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software and services; (d) acceptable formats, transmission methods and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

**4.7 OWNER'S REPRESENTATIVE** The Owner's Representative is Mathew Paulus. The Owner's Representative shall be fully acquainted with the Project, and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or the representative's authority, the Owner shall immediately notify the Construction Manager in writing.

**4.8 OWNER'S CUTTING AND PATCHING** Cutting, patching, or altering the Work by the Owner or Others shall be done with the prior written approval of the Construction Manager, which approval shall not be unreasonably withheld.

**4.9 OWNER'S RIGHT TO CLEAN UP** In case of a dispute between the Construction Manager and Others with regard to respective responsibilities for cleaning up at the Worksite, the Owner may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

**4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK** With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Construction Manager incurs additional costs or is delayed due to such loss or damage, the Construction Manager shall be entitled to an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services.

## ARTICLE 5 SUBCONTRACTS

**5.1 SUBCONTRACTORS** The Work not performed by the Construction Manager with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a lump sum basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor.

**5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**



5.2.1 Promptly after the execution of this Agreement, the Construction Manager shall provide the Owner, and, if directed, the Design Professional with a written list of the proposed subcontractors and significant Material Suppliers. If the Owner has a reasonable objection to any proposed subcontractor or material supplier, the Owner shall notify the Construction Manager in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If the Owner has reasonably and promptly objected, the Construction Manager shall not contract with the proposed Subcontractor or Material Supplier, and the Construction Manager shall propose another acceptable Subcontractor or Material Supplier to the Owner. An appropriate Change Order shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Construction Manager agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's or Material Supplier's portions of the Work.

#### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by the Construction Manager to the Owner, subject to the prior rights of any surety, provided that:

5.4.1.1 this Agreement is terminated by the Owner pursuant to sections 12.3 or 12.4; and

5.4.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Construction Manager in writing, and assumes all rights and obligations of the Construction Manager pursuant to each subcontract agreement.

5.4.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

### ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement is September 1, 2016.

6.1.1 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. The Owner and the Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment 1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment 1. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence for this Agreement.





6.1.3 Unless instructed by the Owner in writing, the Construction Manager shall not knowingly commence the Work before the effective date of insurance to be provided by the Construction Manager or the Owner as required by the Contract Documents.

## 6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting the first application for payment, the Construction Manager shall submit to the Owner and, if directed, the Design Professional a Schedule of the Work showing the dates on which the Construction Manager plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner. The Construction Manager shall comply with the approved Schedule of the Work, unless directed by the Owner to do otherwise or the Construction Manager is otherwise entitled to an adjustment in the Contract Time. The Construction Manager shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

6.2.2 The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. The Owner may require the Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes increase the Construction Manager's costs or time, the GMP or the Dates of Substantial or Final Completion shall be equitably adjusted.

## 6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If the Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Construction Manager, the Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of the Construction Manager include, but are not limited to, the following: (a) acts or omissions of the Owner, the Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by the Owner pending dispute resolution or suspension by the Owner under section 12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Construction Manager; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics, (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The Construction Manager shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if the Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, the Construction Manager shall be entitled to an equitable adjustment in the GMP subject to section 6.6.

6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, the Construction Manager shall provide prompt written notice to the Owner of the cause of such delays after the Construction Manager first recognizes the delay. The Owner and the Construction Manager agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If the Construction Manager requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in the section above, the Construction Manager shall give the Owner written notice of the claim in accordance with section 9.4. If the Construction Manager causes delay in the completion of the Work, the Owner shall



be entitled to recover its additional costs subject to section 6.6. The Owner shall process any such claim against the Construction Manager in accordance with ARTICLE 9.

**6.5 MONITORING PROGRESS AND COSTS** Following acceptance by the Owner of the GMP, the Construction Manager shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. The Construction Manager will provide written reports to the Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

**6.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES** Except for damages mutually agreed upon by the Parties as liquidated damages in section 1.1 and excluding losses covered by insurance required by the Contract Documents, the Owner and the Construction Manager agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. The Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following items of damages are excluded from this mutual waiver: [\_\_\_\_\_].

6.6.1 The Owner and the Construction Manager shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

## ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 The Owner shall compensate the Construction Manager for Work performed on the following basis:

7.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.1.2 the Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in section 7.4.

7.2 The compensation to be paid shall be limited to the GMP established in Amendment 1, as the GMP may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

**7.3 CONSTRUCTION MANAGER'S FEE** The Construction Manager's Fee shall be as follows, subject to adjustment as provided in section 7.4: 2.75% added to the Cost Of The Work as detailed in Article 8.

**7.4 ADJUSTMENT IN THE CONSTRUCTION MANAGER'S FEE** Adjustment in the Construction Manager's Fee shall be made as follows: 2.75% added to the Cost Of The Work as detailed in Article 8.



7.4.1 for changes in the Work as provided in ARTICLE 9, the Construction Manager's Fee shall be adjusted as follows: 2.75% added to the Cost Of The Work as detailed in Article 8.

7.4.2 for delays in the Work not caused by the Construction Manager, except as provided in section 6.3, there shall be an equitable adjustment in the Construction Manager's Fee to compensate the Construction Manager for increased expenses; and

7.4.3 if the Construction Manager is placed in charge of managing the replacement of an insured or uninsured loss, the Construction Manager shall be paid an additional fee in the same proportion that the Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION The Construction Manager shall be compensated for Preconstruction Services as follows: Owner shall pay to Construction Manager \$75,000 for Pre-Construction Services provided by Construction Manager the Date of Commencement

## ARTICLE 8 COST OF THE WORK

8.1 The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in this article. This payment shall be in addition to the Construction Manager's Fee stipulated in section 7.3.

### 8.2 COST ITEMS

8.2.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work.

8.2.2 Salaries of the Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

Project Executive :	\$115 per hour
Project Manager	\$95 per hour
Scheduling/Estimator	\$70 per hour
.Project Coordinator	\$64 per hour
Project Superintendent	\$77 per hour
Accounting Support	\$64 per hour
Safety Manager	\$76 per hour

8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under the Construction Manager's standard personnel policy, insofar as such costs are paid to employees of the Construction Manager who are included in the Cost of the Work pursuant to subsections .1 and .2 immediately above.

8.2.4 Reasonable transportation, travel, hotel and moving expenses of the Construction Manager's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage, and handling.



8.2.6 Payments made by the Construction Manager to Subcontractors for work performed under this Agreement.

8.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Construction Manager.

8.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Construction Manager or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Construction Manager or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.2.9 Cost of the premiums for all insurance and surety bonds which the Construction Manager is required to procure or deems necessary, and approved by the Owner including any additional premium incurred as a result of any increase in the GMP.

8.2.10 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work for which the Construction Manager is liable.

8.2.11 Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights.

8.2.12 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a one year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from the Construction Manager's negligence.

8.2.13 All costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.14 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing costs and services, postage, express delivery charges, data transmission, telephone service, and computer-related costs at the Worksite to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

8.2.15 All water, power, and fuel costs necessary for the Work.

8.2.16 Cost of removal of all nonhazardous substances, debris, and waste materials.

8.2.17 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.18 Legal, mediation, and arbitration fees and costs, other than those arising from disputes between the Owner and the Construction Manager, reasonably and properly resulting from the Construction Manager's performance of the Work.

8.2.19 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Construction Manager's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents.



8.3 DISCOUNTS All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

## ARTICLE 9 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directed Change.

### 9.1 CHANGE ORDER

9.1.1 The Construction Manager may request or the Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

9.1.2 For changes in the Work, the Owner and the Construction Manager shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM The Construction Manager shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion until a Change Order has been executed or a written Interim Directed Change has been issued.

### 9.2 INTERIM DIRECTED CHANGES

9.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Construction Manager on the adjustment, if any, in the GMP or the Date of Substantial Completion or Date of Final Completion.

9.2.2 The Owner and the Construction Manager shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of an Interim Directed Change. As the changed Work is performed, the Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the Owner, the Owner shall pay the Construction Manager fifty percent (50%) of its estimated cost to perform the Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 7.

9.2.3 When the Owner and the Construction Manager agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directed Changes on which the



Owner and Construction Manager have reached agreement on GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

### 9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 a mutually accepted, itemized lump sum;

9.3.1.2 if an increase or decrease cannot be agreed to as set forth in subsections .1 through .3 above, and the Owner issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the GMP, the Construction Manager's Fee shall be adjusted accordingly. In case of a net decrease in the GMP, the Construction Manager's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Construction Manager shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Construction Manager, such unit prices shall be equitably adjusted.

9.3.3 If the Owner and the Construction Manager disagree as to whether work required by the Owner is within the scope of the Work, the Construction Manager shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations.

9.3.4 If the Owner issues a written order for the Construction Manager to proceed, the Construction Manager shall perform the disputed work and the Owner shall pay the Construction Manager fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. The Construction Manager's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

9.4 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in subsection 6.3.2 and section 6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, the Construction Manager shall give the Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Owner's failure to so respond shall be deemed a denial of the Construction Manager's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, the Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, the Owner shall respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.



9.5 CHANGES IN LAW Notwithstanding the Construction Manager's obligations to comply with all laws, if any changes in Laws, including taxes, which were not reasonably anticipated and then enacted after either the date of this Agreement or the date a GMP Proposal is accepted by the Owner and set forth in Amendment 1, whichever occurs later, the GMP, estimated Cost of the Work, and the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted by Change Order.

9.6 INCIDENTAL CHANGES The Owner may direct the Construction Manager to perform incidental changes in the Work, upon concurrence with the Construction Manager that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The Owner shall initiate an incidental change in the Work by issuing a written order to the Construction Manager. Such written notice shall be carried out promptly and is binding on the Parties.

## ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, the Construction Manager shall prepare and submit to the Owner a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

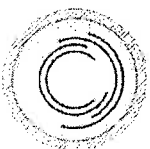
### 10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS The Construction Manager shall submit to the Owner and, if directed, the Design Professional a monthly application for payment no later than the tenth (10th[\_\_\_\_]) Day of the calendar month for the preceding thirty (30) Days. The Construction Manager's applications for payment shall be itemized and supported by the Construction Manager's schedule of values and any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directed Changes. The Owner shall pay the amount otherwise due on any payment application, as certified by the Design Professional, no later than twenty (20) Days after the Construction Manager has submitted a complete and accurate payment application, or such shorter time period as required by applicable state statute. The Owner may deduct from any progress payment amounts that may be retained pursuant to subsection 10.2.4.

10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by the Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the Worksite.

### 10.2.3 LIEN WAIVERS AND LIENS

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by the Owner, as a prerequisite for payment, the Construction Manager shall provide partial lien and claim waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the completed Work. Such waivers shall be conditional upon



payment. In no event shall the Construction Manager be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS If the Owner has made payments in the time required by this article, the Construction Manager shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If the Construction Manager fails to take such action on a lien, the Owner may cause the lien to be removed at the Construction Manager's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE From each progress payment made prior to Substantial Completion, the Owner may retain ten percent (10%), of the amount otherwise due after deduction of any amounts as provided in section 10.3, and in no event shall such percentage exceed any applicable statutory requirements. If the Owner chooses to use this retainage provision, then:

10.2.4.1 after the Work is fifty percent (50%) complete, the Owner shall withhold no additional retainage and shall pay the Construction Manager the full amount due on account of subsequent progress payments;

10.2.4.2 the Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.3 the Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which the Owner has accepted. In lieu of retainage, the Construction Manager may furnish a retention bond or other security interest acceptable to the Owner, to be held by the Owner.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Construction Manager is responsible under this Agreement:

10.3.1 the Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing builders risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by the Construction Manager to the Owner or Others to whom the Owner may be liable;

10.3.3 the Construction Manager's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner;

10.3.4 Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and





10.3.7 uninsured third-party claims involving the Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Construction Manager furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY If for any reason not the fault of the Construction Manager the Construction Manager does not receive a progress payment from the Owner within seven (7) Days after the time such payment is due, then the Construction Manager, upon giving seven (7) Days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Construction Manager has been received, including interest for late payment. The GMP and Dates of Substantial or Final Completion shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay, and start-up.

#### 10.6 SUBSTANTIAL COMPLETION

10.6.1 The Construction Manager shall notify the Owner and, if directed, the Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by the Owner without excessive interference in completing any remaining unfinished Work. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of its Design Professional, shall promptly compile a list of items to be completed or corrected so the Owner may occupy or use the Work or designated portion for its intended use. The Construction Manager shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, the Construction Manager shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of the Owner and Construction Manager for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Construction Manager to the Owner and, if directed, to the Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon the Owner's written acceptance of the Certificate of Substantial Completion, the Owner shall pay to the Construction Manager the remaining retainage held by the Owner for the Work described in the Certificate of Substantial Completion less a sum equal to two hundred percent



(200%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Owner and Construction Manager as necessary to achieve Final Completion. Uncompleted items shall be completed by the Construction Manager in a mutually agreed upon timeframe. The Owner shall pay the Construction Manager monthly the amount retained for unfinished items as each item is completed.

## 10.7 PARTIAL OCCUPANCY OR USE

10.7.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. The Construction Manager shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy.

## 10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from the Construction Manager that the Work is complete and ready for final inspection and acceptance, the Owner, with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

10.8.2 When the Work is complete, the Construction Manager shall prepare for the Owner's written acceptance a final application for payment stating that to the best of the Construction Manager's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to the Construction Manager within twenty (20) Days after the Construction Manager has submitted an application for final payment, including submissions required under subsection 10.8.4, and a Certificate of Final Completion has been executed by the Owner and Construction Manager.

10.8.4 Final payment shall be due on the Construction Manager's submission of the following to the Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by the Construction Manager or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the Construction Manager shall submit to the Owner and, if directed, the Design Professional the written



consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by section 10.8.

10.8.6 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless the Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

## ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

### 11.1 INDEMNITY

To the fullest extent permitted by law, Hueber-Breuer Construction Co. Inc (“Construction Manager”) agrees to indemnify, defend and hold harmless Bradford & Euclid, LLC (“Owner”), all applicable additional Indemnitees, if any, their officers, directors, agents, employees and partners (hereinafter collectively “Indemnitees”) from and against any and all claims, suits, damages, liabilities, professional fees, including attorneys’ fees, costs, court costs, expenses and disbursements related to death, personal injuries, property damage (including loss of use thereof) or the alleged violation of any laws, statutes, rules or ordinances brought or assumed against any of the Indemnitees by any person, entity or firm, arising out of or in connection with or as a result of or as a consequence of the performance of the work to be undertaken by the Construction Manager (the “Work”) as well as any additional work, extra work or add-on work, whether or not caused in whole or part by the Construction Manager or any person or entity employed, either directly or indirectly, by the Construction Manager including any subcontractors and sub-tier contractors thereof and their employees. The parties expressly agree that this indemnification agreement contemplates (1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim in which case, indemnification will be limited to any and all liability imposed over and above that percentage attributable to actual fault on the part of the Indemnitees whether by statute, operation of law or otherwise. Where partial indemnity is provided under this agreement, attorneys’ fees, costs, court costs, expenses and disbursements shall be indemnified on a pro rata basis. Recovery of attorneys’ fees, costs, court costs, expenses and disbursements hereunder shall include all those attorneys’ fees, costs, court costs, expenses and disbursements incurred in defense of any underlying claim, in the enforcement of this indemnity agreement, in the prosecution of any claim for indemnification hereunder and in pursuit of any claim for insurance coverage that the Construction Manager is required to procure.

### 11.2 INSURANCE



The Construction Manager shall purchase and maintain insurance of the following types of coverage and limits of liability:

- 1) Commercial General Liability (CGL) coverage with limits of Insurance of not less than \$2,000,000 each occurrence and \$2,000,000 Annual Aggregate.
  - a) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
  - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury. There shall be no exclusions to Contractual Liability for Employee Injuries (i.e. Labor Law Exclusions)
  - c) Owner shall be included as additional insured. Coverage for the additional insured shall apply as Primary and Non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds. Coverage for additional insured shall include completed operations.
  - d) Construction Manager shall maintain CGL coverage for itself and additional insured for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
- 2) Automobile Liability
  - a) Business Auto Liability with limits of at least \$2,000,000 combined single limit.
  - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - c) Owner shall be included as additional insured on the auto policy and apply as Primary and Non-Contributory Insurance.
- 3) Commercial Umbrella
  - a) Umbrella limits must be at least \$10,000,000.
  - b) Umbrella coverage must include additional insureds for all entities that are additional insureds on the CGL.
  - c) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Construction Manager.
- 4) Workers Compensation and Employers Liability
  - a) Statutory limits apply.

#### **Owners & Contractors Protective Liability Insurance**



Construction Manager is responsible to purchase an Owners & Contractors Protective Liability policy (OCP) in the name of the owner. The OCP must have a limit \$2,000,000 per occurrence / \$2,000,000 Aggregate limit of liability.

#### Waiver of Subrogation

Construction Manager waives all rights against Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance maintained per requirements stated above.

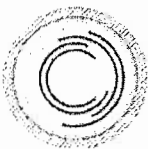
#### Certificates of Insurance

A certificate of insurance shall be provided to Owner prior to any work. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Construction Manager's Commercial General Liability Policy. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner.

### 11.3 PROPERTY INSURANCE

11.3.1 Before commencing the Work, the Owner shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name the Construction Manager, Subcontractors, Subsubcontractors, and the Design Professional as named insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure (a) at least against the perils of fire, lightning, explosion, windstorm, and hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Construction Manager) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse, however caused; and (b) damage resulting from defective design, workmanship, or material. The Owner shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Construction Manager, Subcontractors, Subsubcontractors, Material Suppliers, and the Design Professional. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this subsection.

11.3.2 If the Owner does not intend to purchase the property insurance required by this Agreement, including all of the coverages and deductibles described herein, the Owner shall give written notice to the Construction Manager before the Work is commenced. The Construction Manager may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order. The Owner shall be responsible for all of the Construction



Manager's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

11.3.2.1 If the Owner does not obtain insurance to cover the risk of physical loss resulting from Terrorism, the Owner shall give written notice to the Construction Manager before the Work commences. The Construction Manager may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors against such risk of loss, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order.

11.3.3 The Owner and Construction Manager waive all rights against each other and their respective employees, agents, contractors, subcontractors, subsubcontractors, and design professionals for damages caused by risks covered by the property insurance provided under subsection 11.3.1, except such rights as they may have to the proceeds of the insurance and such rights as the Construction Manager may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 11.3.1. To the extent of the limits of the Construction Manager's Commercial General Liability Insurance specified in subsection 11 or [ ] ( ) dollars, whichever is more, the Construction Manager shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of the Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent acts or omissions of the Construction Manager, Subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

11.3.4 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Construction Manager until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

#### 11.4 OWNER'S INSURANCE

11.4.1 BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

11.4.2 OWNER'S LIABILITY INSURANCE The Owner shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses, and expenses arising out of the Owner's acts or omissions.

#### 11.5 ADDITIONAL LIABILITY COVERAGE

11.6 ROYALTIES, PATENTS, AND COPYRIGHTS The Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Construction Manager and incorporated in the Work. The Construction Manager shall defend, indemnify, and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify, and hold



the Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by the Owner or Design Professional.

## 11.7 BONDS

### 11.7.1 Performance and Payment Bonds

X are not

required of the Construction Manager. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the Owner. The Owner's acceptance shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the GMP. Any increase in the GMP that exceeds ten percent (10%) in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond shall remain equal to one hundred percent (100%) of the original GMP. The Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though the Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time within the scope of the initial Agreement. A copy of the Construction Manager's Payment Bond for the Project, if any, shall be furnished by the Owner or the Construction Manager upon the Subcontractor's written request.

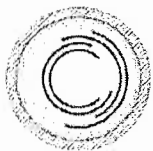
## ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION

### 12.1 SUSPENSION BY OWNER FOR CONVENIENCE

12.1.1 OWNER SUSPENSION Should the Owner order the Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for the convenience of the Owner and not due to any act or omission of the Construction Manager or any person or entity for whose acts or omissions the Construction Manager may be liable, then the Construction Manager shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by the Owner. The GMP and the Dates of Substantial or Final Completion shall be equitably adjusted by Change Document for the cost and delay resulting from any such suspension.

12.1.2 Any action taken by the Owner that is permitted by any other provision of the Contract Documents and that result in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

12.2 NOTICE TO CURE A DEFAULT If the Construction Manager persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Construction Manager may be deemed in default. If the Construction Manager fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner shall give the Construction Manager a second notice to correct the default within a three (3) Day period. If the Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing reasonable means; (c) withhold payment due to the Construction



Manager; and (d) as the Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge the Construction Manager, the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.1 In the event of an emergency affecting the safety of persons or property, the Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to the Construction Manager, but shall give prompt written notice of such action to the Construction Manager following commencement of the action.

### 12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

12.3.1 **TERMINATION BY OWNER FOR DEFAULT** If, within seven (7) Days of receipt of a notice to cure pursuant to section 12.2, the Construction Manager fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Construction Manager, and if applicable, the surety, that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen (14) additional Days. After the expiration of the additional fourteen- (14) Day period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to the Owner under section 12.2. If the Owner's costs arising out of the Construction Manager's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid GMP, the Construction Manager shall be liable to the Owner for such excess costs. If the Owner's costs are less than the unpaid GMP, the Owner shall pay the difference to the Construction Manager. If the Owner exercises its rights under this section, upon the request of the Construction Manager, the Owner shall furnish to the Construction Manager a detailed accounting of the costs incurred by the Owner.

12.3.2 If the Owner or Others perform work under this section, the Owner shall have the right to take and use any materials, supplies, and equipment belonging to the Construction Manager and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to the Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

12.3.3 If the Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if the Construction Manager or the Construction Manager's trustee rejects the Agreement, or if there has been a default and the Construction Manager is unable to give adequate assurance that the Construction Manager will perform as required by this Agreement, or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3.4 The Owner shall make reasonable efforts to mitigate damages arising from the Construction Manager's default, and shall promptly invoice the Construction Manager for all amounts due pursuant to sections 12.2 and 12.3.

12.3.5 If the Owner terminates this Agreement for default, and it is later determined that the Construction Manager was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 12.4.

### 12.4 TERMINATION BY OWNER FOR CONVENIENCE

12.4.1 Upon written notice to the Construction Manager, the Owner may, without cause, terminate this Agreement. The Construction Manager shall immediately stop the Work, follow the Owner's





instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

12.4.2 If the Owner terminates this Agreement pursuant to this section, the Construction Manager shall be paid (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred as a result of the termination but not including Overhead or profit on Work not performed; and (c) a premium set forth in a schedule below: [\_\_\_\_\_]

25% of the fee that would have been awarded if the project had been complete. .

12.4.3 If the Owner terminates this Agreement, the Construction Manager shall:

12.4.3.1 execute and deliver to the Owner all papers and take all action required to assign, transfer, and vest in the Owner the rights of the Construction Manager to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;

12.4.3.2 exert reasonable effort to reduce to a minimum the Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

12.4.3.3 cancel any subcontracts, orders and commitments as the Owner directs; and

12.4.3.4 sell at prices approved by the Owner any materials, supplies, and equipment as the Owner directs, with all proceeds paid or credited to the Owner.

## 12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.5.1 Upon seven (7) Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the Construction Manager for any of the following reasons:

12.5.1.1 under court order or order of other governmental authorities having jurisdiction;

12.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available; or

12.5.1.3 suspension by the Owner for convenience pursuant to section 12.1.

12.5.2 In addition, upon seven (7) Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Owner:

12.5.2.1 fails to furnish reasonable evidence pursuant to section 4.2 that sufficient funds are available and committed for Project financing, or

12.5.2.2 assigns this Agreement over the Construction Manager's reasonable objection, or

12.5.2.3 fails to pay the Construction Manager in accordance with this Agreement and the Construction Manager has complied with section 10.6, or

12.5.2.4 otherwise materially breaches this Agreement.



12.5.3 Upon termination by the Construction Manager in accordance with this section, the Construction Manager shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.

12.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination pursuant to this article, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

## ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If the Construction Manager continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

13.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

13.3 MITIGATION If the Parties select one of the dispute mitigation procedures below, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in section 13.5. The Parties agree that the dispute mitigation procedure shall be:

X Project Neutral, or [\_\_\_\_] Dispute Review Board.

13.3.1 MITIGATION PROCEDURES The Project Neutral/Dispute Review Board ("Neutral/Board") shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Neutral's/Board's responsibilities. The costs and expenses of the Neutral/Board shall be shared equally by the Parties. The Neutral/Board shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral/Board to address matters in dispute between the Parties promptly and knowledgeably. The Neutral/Board shall issue nonbinding findings within five (5) Business Days of referral of the matter to the Neutral/Board, unless good cause is shown.

13.3.2 If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Neutral/Board fails to issue nonbinding findings within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in section 13.5.



13.4 MEDIATION If direct discussions pursuant to section 13.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under section 13.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

13.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

X Arbitration using:

- [ X ] the current Construction Industry Arbitration Rules of the AAA and administered by the AAA;
- [ ] the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
- [ ] the current arbitration rules of [ ] and administered by [ ].

Unless the Parties mutually agree otherwise in writing, if arbitration is selected as the binding dispute resolution procedure and this Agreement does not specify the arbitration rules to be utilized, then the arbitration shall be conducted using the current Construction Industry Arbitration Rules of the AAA and the arbitration shall be administered by the AAA.

[ ] Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

13.5.1 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

13.5.2 VENUE The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

13.5.3 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

13.5.4 An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.



13.6 MULTIPARTY PROCEEDING All Parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

13.7 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by the Construction Manager which the Construction Manager may have under lien laws.

#### ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third-party.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner when the Owner has fully indemnified the Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Construction Manager than this Agreement. If such assignment occurs, the Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.6 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.7 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

14.8 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.



## ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- (a) Drawings: See Amendment #1
- (b) Specifications: See Amendment #1
- (c) Addenda: See Amendment #1
- (d) Owner Provided information: See Amendment #1

### 15.2 INTERPRETATION OF CONTRACT DOCUMENTS

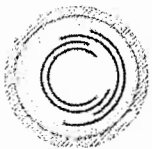
15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Construction Manager shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable.

15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Construction Manager shall immediately submit the matter to the Owner and, if directed, to its Design Professional for clarification. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Dates of Substantial or Final Completion or Contract Price or dispute mitigation and resolution.

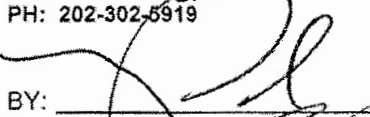
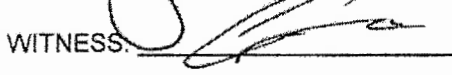
15.2.3 Where figures are given, they shall be preferred to scaled dimensions.

15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings, shall be interpreted in accordance with their well-known meanings.

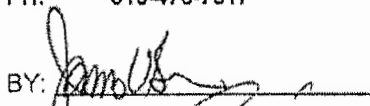
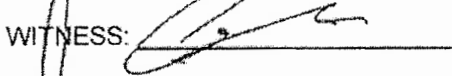
15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to subsection 15.2.2 the drawings, specifications, and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to subsection 3.15.4 or designated as a Contract Document in 15.1; (f) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.



OWNER:  
Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Mr. Mathew Paulus, Manager  
Email: Mathew@paulusdevco.com  
PH: 202-302-6919

BY:  NAME: MATHEW PAULUS TITLE: MR  
WITNESS:  NAME: Charles F. Brewer TITLE: Manager

CONSTRUCTION MANAGER:  
Hueber-Breuer Construction Co. Inc.  
148 Berwyn Avenue  
Syracuse, NY 13205  
-and-  
PO Box 515  
Syracuse, NY 13205-0515  
PH: 315-476-7517

BY:  NAME: JAMES V. BREUER TITLE: PRESIDENT  
WITNESS:  NAME: Charles F. Brewer TITLE: Principal  
END OF DOCUMENT.





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**AMENDMENT NO. 1 TO CONSENSUSDOCS 5001 STANDARD AGREEMENT AND GENERAL**  
**CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER**  
**(GMP with Option for Preconstruction Services)**

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**ENDORSEMENT.** This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. The organizations endorsing this document believe it represents a fair allocation of risk and responsibilities of all project participants.

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# AMENDMENT NO. 1 TO ConsensusDocs® 500

## STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER

(Where the Basis of Payment is a Guaranteed Maximum Price with an Option for  
Preconstruction Services)

Dated 8/25/16.

Pursuant to Section 3.3 of the Agreement dated 8/25/16 between the Owner,  
Bradford & Euclid, LLC and the Contractor, Hueber-Breuer Construction Co. Inc. for  
Rehabilitation and Conversion of R.E. Dietz Factory to Residential/Mixed use Property. (the Project), the  
Owner and the Contractor desire to establish a Guaranteed Maximum Price ("GMP") for the Work.  
Therefore, the Owner and the Contractor agree as follows:

### ARTICLE 1 GUARANTEED MAXIMUM PRICE

The Contractor's GMP for the Work, including the Cost of the Work as defined in Article 8 and the  
Contractor's Fee as set forth in Section 7.3, is Seventeen Million Six Hundred Ninety Two Dollars  
(\$17,692,000).

The GMP is for the performance of the Work in accordance with the exhibits listed below, which are part  
of this Agreement.

EXHIBIT A Drawings and Specifications, including Addenda, if any, and information furnished by  
the Owner under Section 4.3, dated 8/18/2016, 2 pages.

EXHIBIT C Assumptions and Clarifications on which the GMP is based, dated 8/22/2016, 3  
pages.

EXHIBIT D Schedule of Work, dated August 18<sup>th</sup> 2016 , 1 pages.

### ARTICLE 2 DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work is 7/1/2017.

### ARTICLE 3 DATE OF FINAL COMPLETION





The Date of Final Completion of the Work is: 10/1/2017 or within Sixty (60) Days after the Date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

This Amendment is entered into as of August 26, 2016

ATTEST: \_\_\_\_\_

OWNER:  
Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Mr. Mathew Paulus, Manager  
Email: Mathew@paulusdeyco.com  
PH: 202-302-5919

BY: \_\_\_\_\_

PRINT NAME Mathew Paulus                      PRINT TITLE Manager

ATTEST: \_\_\_\_\_

CONTRACTOR:  
Hueber-Breuer Construction Co. Inc.  
148 Berwyn Avenue  
Syracuse, NY 13205  
-and-  
PO Box 515  
Syracuse, NY 13205-0515  
PH: 315-476-7517

BY: \_\_\_\_\_

PRINT NAME James V. Breuer                      PRINT TITLE President

END OF DOCUMENT.





PROJECT: Dietz Building Development  
 OWNER: Paulus Development Co.  
 ARCHITECT: Walton Architectural Group

8/24/2016

DIVISION #	DIVISION NAME/DESCRIPTION	LOW SUB BID	NEW SCOPE ITEMS/ ALLOW	TOTAL
TWO	<b>DEMOLITION</b>			
	Aapex Proposal	\$343,000		\$343,000
	Garage - Sawcut Concrete Fdn Wall			inc
	Garage - Sawcut Masonry Fdn Wall			inc
	Garage - Demo Opening for Overhead Door / Masonry			inc
	Brick removal for steel connection B/S3.00			inc
	12 square duct in stair landing floor			inc
	4 Window removal/infill for 2hr separation			inc
	Boiler Exhaust Opening 7' x 1'			inc
	Grate Removal in Lobby			inc
	Abscope Abatement Proposal	\$70,000		\$70,000
	LEAD REMEDIATION - HB Allowance		\$15,000	\$15,000
<b>TOTAL DIVISION #2</b>			<b>\$428,009</b>	
THREE	<b>CONCRETE</b>			
	Paragon Budget Proposal: Tunnel		\$110,000	\$110,000
	(Detail 3/S3.02)		\$14,400	\$14,400
	(Detail 5/S5.01)		\$800	\$800
	(Interior SOG at courtyard entrance (Detail 5/S5.04)		\$22,130	\$22,130
	(8" Interior foundation wall at courtyard entrance (Detail 5/S5.04)		\$5,500	\$5,500
	(Lobby ceiling floor infills)		\$2,000	\$2,000
	(Lobby Pit Infill)		\$1,500	\$1,500
	(Basement Entrance)		\$5,000	\$5,000
	(Housekeeping Pads)		\$7,200	\$7,200
	(Detail 4/A6.06)		\$1,630	\$1,630
	Entry Slabs		\$4,000	\$4,000
	Stairs		\$8,300	\$8,300
	Infills at Elevators		\$8,600	\$8,600
	Roof Slab infills at Chimneys		\$3,600	\$3,600
Topping Slabs at Elevator Openings		\$2,200	\$2,200	
Concrete Slab Repair / Patch		\$6,000	\$6,000	
<b>TOTAL DIVISION #3</b>			<b>\$202,860</b>	
FOUR	<b>MASONRY</b>			
	Remlap Quote			\$560,000
	Garage - CMU Walls			inc
	Exterior Masonry			inc
	Limestone Band			inc
	Masonry Shaft Walls			inc
	Field Stone Piers (Previously in Site #)			inc
	Exterior Wall Rebuilding on Column Line 2.4		\$8,000	\$8,000
	Temp Protection/Potential Shoring of 1 Story Roof		\$5,000	\$5,000
	Subtotal New Masonry			\$573,000
	<b>MASONRY RESTORATION</b>			
	Driscoll Masonry Quote	\$147,000		\$147,000
	Driscoll Masonry: Paint Removal Loading Dock & East Courtyard		\$10,450	\$10,450
	Restoration of 1-story 1812 bldg			inc
	Restoration at Loading Dock			inc
	Brick Infills			inc
	Masonry at Elevator Openings			inc
	Restore Jambes at new garage entrance			inc
	Window Sill Restoration		\$11,100	\$11,100
	Repointing Allowance		\$30,000	\$30,000
Brick Restoration at Roof Parapet		\$4,800	\$4,800	
Steel Strapping at Roof/Brick Corbel		\$8,000	\$8,000	
Heritage Masonry Proposal: New Terra Cotta Cap	\$22,680		\$22,680	
Replace Existing Terra Cotta Cap		\$5,000	\$5,000	
Subtotal Masonry Restoration			\$239,030	
<b>TOTAL DIVISION #4</b>			<b>\$812,030</b>	
FIVE	<b>STRUCT STEEL / MISC METAL</b>			
	Raull & Sons Quote	\$289,350		\$289,350
	Garage - Parking Garage Structural Support at Openings			inc
	Exterior Wall Structural Steel Wood Attachments			inc
	New Entry Steel			inc
	Roof Top Equipment Support Steel			inc
	Framing & Deck at Elevators			inc
	Lintels			inc
	Additional Structural Steel for Canopies			inc
	Interior Railings at Elevator Entrance in Basement			inc
	Misc Interior Railings and Gates			inc
	Site Railing at Ramps			inc
	Railings at Steps			inc
	Stair Railings (4 Towers)			inc
	Railings at Retaining Walls			inc
	Stairs & Railing at North Loading Deck			inc
	Mitchell Metals: Entry Canopies w/ Cabies	\$10,000		\$10,000
	Entry Canopy Freight & Installation		\$7,500	\$7,500
	Wrought Iron Fence & Gate		\$22,160	\$22,160
	<b>TOTAL DIVISION #5</b>			<b>\$329,010</b>
SIX	<b>WOOD AND PLASTICS</b>			
	Garage - Radiant Heat Prep (Insulation)		\$2,400	\$2,400
	Repair Infill Existing Penetrations		\$7,500	\$7,500
	Repair Existing Wood Floor Framing at Perimeter		\$39,000	\$39,000
	Wall Blocking		\$2,800	\$2,800
	LVL Support for Mechanical Equipment - Detail 1/S1.02 & 2/S1.02		\$3,700	\$3,700
	Roof Deck Repairs (1500ft x \$13 Material Only)		\$19,500	\$19,500
	Roof Blocking		\$3,500	\$3,500
	2 - 60" Mechanical Doghouse at roof		\$1,540	\$1,540
Wood Base (at drywall partitions only)		\$72,000	\$72,000	
Door Casing/Trim		\$46,000	\$46,000	

	Window Casing/Trim (Included With Window Order)		\$23,680	\$23,680
	Window Sills		\$20,500	\$20,500
	<b>TOTAL DIVISION #6</b>			<b>\$242,120</b>
SEVEN	<b>THERMAL / MOISTURE PROTECTION</b>			
	Apple Roofing EPDM Roof Proposal (Includes Deck Replacement Labor)	\$649,750		\$649,750
	Canopy Roof		\$2,800	\$2,800
	Canopy Metal Panel		\$8,000	\$8,000
	Caulking / Sealant Interior		\$10,000	\$10,000
	Fire Penetrations/ Sealant		\$5,000	\$5,000
	Heritage Masonry Quote: Waterproof Tunnel	\$14,200		\$14,200
Metal Panel Installation @ courtyard		\$7,500	\$7,500	
	<b>TOTAL DIVISION #7</b>			<b>\$697,250</b>
EIGHT	<b>DOORS</b>			
	BR Johnson Material Quote: Doors, Frames, Hardware - Material & Labor	\$330,000		\$330,000
	Wayne Dalton Quote: Overhead Doors	\$14,000		\$14,000
	Refurbish Existing Fire Doors		\$10,000	\$10,000
	Aluminum Storefront & Entrances		\$39,000	\$39,000
	<b>Subtotal Doors &amp; Windows</b>			<b>\$393,000</b>
	<b>WINDOWS</b>			
	Interior Glazing		\$5,000	\$5,000
	Finger Lakes Glass Quote: Shower Glass (ADD \$41,400 for Shower Door)	\$31,798		\$31,798
	Erie Material Quote - Windows (Materials)	\$1,094,616		\$1,094,616
	ViewTech Proposal for Window Installation	\$198,000		\$198,000
	Refurbish Existing Windows		\$2,200	\$2,200
	Detail for translucent panels		\$4,000	\$4,000
	Restore Reglaze Existing Window		\$6,600	\$6,600
<b>Subtotal Windows</b>			<b>\$1,342,214</b>	
	<b>TOTAL DIVISION #8</b>			<b>\$1,735,214</b>
NINE	<b>FRAMING</b>			
	General Interiors Quote: Basement, Floors 2,3,4	\$1,482,545		\$1,482,545
	General Interiors Quote: Exterior Wall Framing/Sheathing/Air Barrier	\$131,155		\$131,155
	General Interiors Quote: First Floor Framing	\$102,390		\$102,390
	<b>Subtotal Framing</b>			<b>\$1,716,090</b>
	<b>FLOORING</b>			
	Concrete Floor Prep & Finish		\$15,000	\$15,000
	5/8" Plywood/Floor Prep		\$30,000	\$30,000
	Sposato Budget # (LVT Budget # \$3.50/sft * 95,000)	\$338,500		\$338,500
	Henderson Johnson Gycrete Proposal	\$297,000		\$297,000
	<b>Subtotal 2-4 Flooring</b>			<b>\$680,500</b>
	<b>CERAMIC TILE</b>			
	Dura Rock		\$35,000	\$35,000
	CSM Tile Quote: Waterproofing, Shower Pans, Shower Walls, & Floor Tile, Thresholds		\$259,015	\$259,015
	CSM Quote: Ceramic Tile Wainscot Walls		\$36,600	\$36,600
	Sposato Budget: Kitchen Tile		\$54,440	\$54,440
	<b>Subtotal Ceramic</b>			<b>\$385,055</b>
	<b>1ST FLOOR PREMIUM FINISHES</b>			
	1st Floor: Ceramic Tile in Bathrooms (CSM Tile Quote)	\$12,650		\$12,650
	1st Floor: Corridor Wood Floor Refinishing Budget	\$8,000		\$8,000
	1st Floor: Tenant Space 105 & 107 Wood Floor Refinishing Budget	\$29,520		\$29,520
	1st Floor: Carpet & Base in Management Office	\$870		\$870
	1st Floor: Concrete Floor Sealing & Buffing	\$2,000		\$2,000
	1st Floor - Concierge Desk	\$18,000		\$18,000
	1st Floor - Toilet Partitions (Alexander Mitchell P&I)	\$7,200		\$7,200
	1st Floor - Premium Finishes	\$42,500		\$42,500
	<b>Subtotal 1st Floor Finishes</b>			<b>\$120,740</b>
	<b>PAINT</b>			
	Garage - Paint		\$72,700	\$72,700
	Paint		\$389,100	\$389,100
	Clean Existing Interior Brick		\$40,000	\$40,000
	Prep and Paint Stair & Railings		\$33,000	\$33,000
Garage Stripping		\$7,500	\$7,500	
<b>Subtotal Paint</b>			<b>\$542,300</b>	
	<b>TOTAL DIVISION #9</b>			<b>\$3,444,685</b>
TEN	<b>SPECIALTIES</b>			
	Building Signage Allowance (Painted)		\$20,000	\$20,000
	Interior Signage		\$8,000	\$8,000
	Wire Shelving		\$25,000	\$25,000
	Alexander Mitchell & Son Quote (Provide Only)		\$55,100	\$55,100
	HB Specialties Labor		\$18,000	\$18,000
	Fire Extinguisher Cabinets		\$3,800	\$3,800
Mailboxes		\$8,000	\$8,000	
	<b>TOTAL DIVISION #10</b>			<b>\$137,900</b>
ELEVEN	<b>EQUIPMENT</b>			
	Electric Cook Top		\$50,600	\$50,600
	Dishwasher		\$44,500	\$44,500
	Refrigerator		\$97,900	\$97,900
	Over Range Microwave		\$31,200	\$31,200
	Dryer		\$50,600	\$50,600
	Washer		\$50,600	\$50,600
	Loading Dock bumpers		\$500	\$500
	<b>TOTAL DIVISION #11</b>			<b>\$325,900</b>
TWELVE	<b>FURNISHINGS</b>			
	Window Covering - Full length thermal, Manual.		\$50,000	\$50,000
	Metzger: Kitchen & Vanity Cabinets	\$214,700		\$214,700
	Metzger: Granite Tops	\$76,000		\$76,000
	<b>AMENITY ROOMS</b>			
	Furnishings 1st Floor		\$50,000	\$50,000
Furnishings Amenity Rooms		\$50,000	\$50,000	
Gym Equipment		\$40,000	\$40,000	
	<b>TOTAL DIVISION #12</b>			<b>\$585,520</b>
FOURTEEN	ELEVATORS - Schindler Proposal	\$220,000		\$220,000
	<b>TOTAL DIVISION #14</b>			<b>\$220,000</b>





PROJECT: Dietz Building Development  
OWNER: Paulus Development Co.  
ARCHITECT: Walton Architectural Group

8/17/2016  
REVISION #1

DIVISION ONE: GENERAL SERVICES

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION	REMARKS
<b>A General conditions (management)</b>					
<b>Preconstruction</b>					
1 Project Executive		hrs	\$115	\$0	
2 Project Manager		hrs	\$95	\$0	
3 Project Coordinator		hrs	\$42	\$0	
4 Scheduling		hrs	\$70	\$0	
5 Lead Estimator		hrs	\$70	\$0	
6 Accounting		hrs	\$64	\$0	
7 OCP Premium based on \$16 MM		per dollar	\$1	\$0	
<b>Construction</b>					
1 Project Executive	220	hrs	\$115	\$25,300	
2 Project Manager	2,080	hrs	\$95	\$197,600	
3 Project Superintendent	2,080	hrs	\$77	\$160,160	
4 Project Coordinator	1,040	hrs	\$42	\$43,680	
5 Scheduling	25	hrs	\$70	\$1,750	
6 Lead Estimator		hrs	\$70	\$0	
7 Accounting	104	hrs	\$64	\$6,656	
8 Safety Coordinator	416	hrs	\$80	\$33,280	
<b>Reimbursables</b>					
1 Office Supplies	11	months	\$200	\$2,200	
2 Printing	1	ls	\$2,500	\$2,500	
3 Postage/FedEx	11	months	\$100	\$1,100	
4 Travel	11	months	\$750	\$8,250	
5 Closeouts / As-builts	1	ls	\$1,100	\$1,100	
6 Cell Phone	11	months	\$300	\$3,300	
7 Computer's/ Internet	11	months	\$500	\$5,500	
8 Temp Power Connection / Usage	-		\$0	\$0	by Owner
9 Water Service	-		\$0	\$0	by Owner
10 Builder's Risk Insurance	-		\$0	\$0	by Owner
<b>B General conditions (to be billed at cost of work)</b>					
1 Building permit	1	ls	\$75,000	\$75,000	
2 Road Cut Permits	1	ls	\$10,000	\$10,000	
3 General Liability				\$0	See summary sheet
4 Temp. toilets	11	months	\$550	\$6,050	
5 Waste/Recycling Dumpster	11	months	\$1,600	\$17,600	
6 Temporary Heat and Temporary Enclosure	1	ls	\$0	\$0	
7 Project Signage	1	ls	\$1,500	\$1,500	
8 Safety Management & First Aid	11	months	\$1,500	\$16,500	
9 Snow Removal	4	months	\$800	\$3,200	
10 HB Trucking	1	ls	\$12,000	\$12,000	
11 Survey/layout	1	ls	\$15,000	\$15,000	
12 Misc / Small Tools	1	ls	\$20,000.00	\$20,000	
13 Clean up / Safety	1,980	hrs	\$60.00	\$118,800	
14 Final cleaning	155,000	sf	\$0.15	\$23,250	
<b>C Soil Borings -</b>					
					by Owner
<b>D Chapter 17 Special Inspections</b>					
					by Owner
<b>DIVISION ONE : GENERAL SERVICES</b>			<b>SUBTOTAL</b>	<b>\$ 811,276</b>	

**DIETZ BUILDING DEVELOPMENT**

18-Aug-16



**CONSTRUCTION SCHEDULE**

No.	Activity	Date/ Duration	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17		
1	GMP Development	7/1/16 8/18/16	[Gantt bar]															
2	Bank Review	8/18/16 9/5/16	[Gantt bar]															
3	Notice to Proceed	9/1/16	[Gantt bar]															
4	Abatement	9/15/16 10/31/16	[Gantt bar]															
5	Demolition	9/15/16 11/30/16	[Gantt bar]															
6	Roof	9/15/16 11/30/16	[Gantt bar]															
7	Exterior Façade	9/15/16 12/22/16	[Gantt bar]															
8	Windows	10/10/16 3/1/17	[Gantt bar]															
9	Interior Framing / Drywall /Finishing	10/1/16 6/1/17	[Gantt bar]															
10	Mechanical Rough-In	11/1/16 5/1/17	[Gantt bar]															
11	Finishes	4/15/17 7/30/17	[Gantt bar]															
12	FFE	7/1/16 8/31/17	[Gantt bar]															
13	Project Finish	8/31/17	[Gantt bar]															



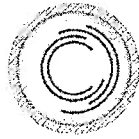
Revised 6/3/2016  
 Revised 6/23/2016  
 Revised 7/5/2016  
 Revised 7/8/2016  
 Revised 7/12/2016  
 Revised 7/22/2016  
 Revised 7/27/2016

DIETZ CURRENT DRAWING LOG

		For Construction			
Drawing #	Drawing Title	Drawing Date		Latest Drawing Revision Date	
<b>Architectural</b>					
	COVER SHEET				
A0.00	General Project Information	5/9/2016			
A0.01	NYS Building Code Notes	5/9/2016			
A0.20	Basement Floor Plan - Demolition	5/31/2016			6/17/2016
A0.20A	Basement Floor Plan - Demolition Alternate	5/31/2016			
A0.21	First Floor Plan - Demolition	5/31/2016			
A0.22	Partial First Floor Plan - Demolition	5/31/2016			
A0.23	Second Floor Plan - Demolition	5/31/2016			
A0.24	Third Floor Plan - Demolition	5/31/2016			
A0.25	Fourth Floor Plan - Demolition	5/31/2016			
A0.26	Main Roof Plan - Demolition	5/31/2016			
A0.27	North & East Elevation - Existing	5/31/2016			
A0.28	South & West Elevation - Existing	5/31/2016			
A0.29	North & East Courtyard Section - Existing	5/31/2016			
A0.30	South & West Courtyard Section - Existing	5/31/2016			
A1.00	Basement Floor Plan	5/9/2016	6/17/2016		6/30/2016
A1.01	First Floor Plan	5/9/2016			6/17/2016
A1.02	Second Floor Plan	5/9/2016	7/8/2016	7/12/2016	7/22/2016
A1.03	Third Floor Plan	5/9/2016			7/22/2016
A1.04	Fourth Floor Plan	5/9/2016			7/22/2016
A1.05	Main Roof Plan	5/9/2016			
A1.06	Single Story Storage - 1st Floor Plan	5/9/2016			
A1.07	Overall Roof Plan Layout	5/9/2016			
A2.00	Basement Reflected Ceiling	5/9/2016			6/17/2016
A2.01	First Floor Reflected Ceiling Plan	5/9/2016			6/17/2016
A2.02	Second Floor Reflected Ceilings	5/9/2016			6/17/2016
A2.03	Third Floor Reflected Ceiling Plan	5/9/2016			6/30/2016
A2.04	Fourth Floor Reflected Ceiling Plan	5/9/2016			6/30/2016
A2.05	Typical Apartment Reflected Ceiling Plans	5/9/2016			6/17/2016
A2.06	Typical Apartment Reflected Ceiling Plans	5/9/2016			6/17/2016
A2.07	Typical Apartment Reflected Ceiling Plans	5/9/2016			6/17/2016
A2.08	Typical Apartment Reflected Ceiling Plans	5/9/2016			6/17/2016
A2.09	Typical Apartment Reflected Ceiling Plans	5/9/2016			6/17/2016
A3.00	North & East Elevation	5/9/2016			
A3.01	South & West Elevation	5/9/2016			
A3.02	North & East Courtyard Section	5/9/2016			
A3.03	South & West Courtyard Section	5/9/2016			
A4.00	North, East & South Wall Sections	5/9/2016			7/22/2016
A4.01	South, West & Courtyard Wall Sections	5/9/2016			7/22/2016
A4.02	Misc Exterior Details & Sections	5/9/2016			
A4.03	Misc Exterior Details & Sections	5/9/2016	6/2/2016		
A4.04	Typical Roof Details	5/9/2016			
A5.00	Apartment Layout Plans	5/9/2016		7/12/2016	7/27/2016
A5.01	Apartment Layout Plans	5/9/2016		7/12/2016	7/27/2016
A5.02	Apartment Layout Plans	5/9/2016		7/12/2016	7/27/2016
A5.03	Apartment Layout Plans	5/9/2016		7/12/2016	7/27/2016
A5.04	Apartment Layout Plans	5/9/2016		7/12/2016	7/27/2016
A5.05	First Floor Residence Lobby & Common Area	5/9/2016			
A5.10	Enlarged Bath Plans				7/22/2016
A5.11	Enlarged Kitchen Plans				7/22/2016
A6.00	Elevator #01 (SE) - Plans	5/9/2016			6/22/2016
A6.01	Stair/Elevator #2 (NE) - Plans	5/9/2016			6/22/2016
A6.02	Stair/Elevator #3 (NW) - Plans	5/9/2016			6/22/2016
A6.03	Stair/Elevator Shaft #4 (SW) - Plans	5/9/2016			6/22/2016
A6.04	Elevator #01 & 02 - Sections	5/9/2016			6/22/2016
A6.05	Elevator #3 - Section	5/9/2016			6/22/2016
A8.00	Door, Frame & Hardware Schedule	5/9/2016	6/30/2016		
A8.01	Door, Frame & Hardware Schedule	5/9/2016	6/30/2016		
A8.02	Door & Frame Types	5/9/2016	6/30/2016		
A8.03	Door Frame Jamb & Head Details	5/9/2016			
A8.04	Interior Miscellaneous Details	5/9/2016			
A8.05	Exterior Window Types, Elevations and Details	5/9/2016			
A8.06	First Floor Residence Common Area	5/9/2016			
A8.07	First Floor Public Toilet Rooms, Plans & Elevations	5/9/2016			
A8.08	First Floor Public Toilet Rooms, Plans & Elevations	5/9/2016			
A8.09	2nd Floor Residence Common Area	5/9/2016			
A8.10	3rd Floor Residence Common Area	5/9/2016			
A8.11	4th Floor Residence Common Area	5/9/2016			
A8.12	Apartment Kitchen Layouts	5/9/2016			
A8.13	Entrance Canopy Details	5/9/2016			
A8.14	1st Floor Residential Common Area Elevations	5/9/2016			
A9.00	Finish Schedule				7/22/2016
<b>VIP DRAWINGS - JACOBSEN RUGS</b>					
G-001	Cover Sheet	4/29/2016			
G-002	General Code Information	4/29/2016			
G-101	Code Plan - Floor 01	4/29/2016			
A-101	Floor Plan - Floor 01	4/29/2016			
A-141	Reflected Ceiling Plan - Floor 01	4/29/2016			
A-401	Enig Plan, Elev, Sects, & Details	4/29/2016			
A-601	Door Types, Schedules, & Details	4/29/2016			
<b>IPD DRAWINGS</b>					
C0.01	Cover Sheet	5/9/2016			
<b>STRUCTURAL</b>					
S.100	General Notes	5/9/2016			7/8/2016
S.101	Partial Plans	5/9/2016			7/8/2016
S.102	Partial Plans	5/9/2016			7/8/2016
S2.01	Partial Plans		6/17/2017	6/29/2017	

S3.00	Wall Elevations and Plan			6/29/2017			
S3.01	Wall Sections and Details			6/29/2017			
S3.02	Wall Sections and Details			6/29/2017			
S.501	Details	5/9/2016				7/8/2016	
S.502	Details	5/9/2016				7/8/2016	
S5.04	Elevations,Details, Sections						
<b>FIRE PROTECTION</b>							
FD.01	General Information	5/9/2016					
FP7.01	Riser Diagram	5/9/2016					
<b>PLUMBING</b>							
P0.01	General Information	5/9/2016					
P1.01	Lower Level Plan - New Work	5/9/2016					
P1.01A	Lower Level Plan - New Work (Alternate)	5/9/2016					
P1.02	1st Floor Plan - New Work	5/9/2016					
P1.03	2nd Floor Plan - New Work	5/9/2016					
P1.04	3rd Floor Plan - New Work	5/9/2016					
P1.05	4th Floor Plan - New Work	5/9/2016					
P1.06	Roof Plan - New Work	5/9/2016					
P3.01	Riser Diagrams	5/9/2016					
P3.02	Riser Diagrams	5/9/2016					
P4.01	Typical Apartment Plans	5/9/2016					
P4.02	Typical Apartment Plans	5/9/2016					
P5.01	Details	5/9/2016					
P6.01	Schedules	5/9/2016					
<b>MECHANICAL</b>							
M0.01	General Information	5/9/2016					
M00.01	1st Floor Plan - Demolition	5/9/2016				7/8/2016	
M1.01	Lower Level Plan - New Work	5/9/2016					
M1.02	1st Floor Plan - New Work	5/9/2016				7/8/2016	
M1.03	2nd,3rd, & 4th Floor Plan - New Work	5/9/2016				7/8/2016	
M1.04	Roof Plan - New Work	5/9/2016					
M3.01	Ductwork Riser Diagram	5/9/2016					
M4.01	Typical Apartment Plans	5/9/2016					
M4.02	Typical Apartment Plans	5/9/2016					
M4.03	Typical Apartment Plans	5/9/2016					
M4.04	Boiler Room Plan	5/9/2016					
M5.01	Details	5/9/2016					
M5.02	Details	5/9/2016					
M6.01	Schedules	5/9/2016					
MEP6.02	MEP Schedule	5/9/2016					
M7.01	Heat Pump Loop System Schematic	5/9/2016				7/8/2016	
M7.02	Heating Water System Riser Diagram	5/9/2016					
M7.03	Heating Water System Riser Diagram	5/9/2016					
<b>ELECTRICAL</b>							
E0.01	General Information	5/9/2016					
E0.02	Specifications	5/9/2016					
E1.01	Lower Level Plan - Power & Systems	5/9/2016					
E1.02	1st Floor Plan - Power & Systems	5/9/2016				7/8/2016	
E1.03	2nd Floor Plan - Power & Systems	5/9/2016					
E1.04	3rd Floor Plan - Power & Systems	5/9/2016					
E1.05	4th Floor Plan - Power & Systems	5/9/2016					
E1.06	Roof Plan - Power & Systems	5/9/2016					
E2.01	Lower Level Plan - Lighting	5/9/2016	6/21/2016				
E2.02	1st Floor Plan - Lighting	5/9/2016	6/21/2016			7/8/2016	
E2.03	2nd Floor Plan - Lighting	5/9/2016	6/21/2016				
E2.04	3rd Floor Plan - Lighting	5/9/2016	6/21/2016				
E2.05	4th Floor Plan - Lighting	5/9/2016	6/21/2016				
E4.01	Typical Apartment Plans	5/9/2016				7/19/2016	
E4.02	Typical Apartment Plans	5/9/2016				7/19/2016	
E4.03	Boiler Room Plan	5/9/2016					
E4.04	Partial Roof Plan	5/9/2016	6/21/2016				
E5.01	Power Riser Diagram	5/9/2016					
E5.02	Details & Diagrams	5/9/2016					
E5.03	Details & Diagrams	5/9/2016					
E5.04	Site Details	5/9/2016					
E6.01	Schedules	5/9/2016	6/21/2016			7/8/2016	7/19/2016
ES1.01	Electric Site Plan	5/9/2016					
<b>SITE</b>							
L-0	Cover Page	5/9/2016	5/24/2016	6/16/2016		7/6/2016	
L-1	Site Demolition Plan	5/9/2016	5/24/2016			7/6/2016	
L-2	Erosion & Sediment Control Plan	5/9/2016	5/24/2016		7/1/2016	7/6/2016	
L-3	Grading Plan	5/9/2016	5/24/2016	6/16/2016	6/24/2016	7/6/2016	
L-4	Layout Plan	5/9/2016	5/24/2016	6/15/2016		7/6/2016	
L-5	Site Details	5/9/2016	5/24/2016		6/24/2016	7/6/2016	7/26/2016
L-6	Site Details	5/9/2016	5/24/2016			7/6/2016	
L-7	Site Details	5/9/2016	5/24/2016			7/6/2016	
L-8	Utility Details	5/9/2016	5/24/2016			7/6/2016	
Property Survey		5/9/2016	5/24/2016				
L-10	Site Cross Section			6/15/2016		7/6/2016	





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**AMENDMENT NO. 1 TO CONSENSUSDOCS 5001 STANDARD AGREEMENT AND GENERAL**  
**CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER**  
**(GMP with Option for Preconstruction Services)**

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**ENDORSEMENT.** This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. The organizations endorsing this document believe it represents a fair allocation of risk and responsibilities of all project participants.

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# AMENDMENT NO. 1 TO ConsensusDocs® 500

## STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER

(Where the Basis of Payment is a Guaranteed Maximum Price with an Option for  
Preconstruction Services)

Dated 8/25/16.

Pursuant to Section 3.3 of the Agreement dated 8/25/16 between the Owner,  
Bradford & Euclid, LLC and the Contractor, Hueber-Breuer Construction Co. Inc. for  
Rehabilitation and Conversion of R.E. Dietz Factory to Residential/Mixed use Property. (the Project), the  
Owner and the Contractor desire to establish a Guaranteed Maximum Price ("GMP") for the Work.  
Therefore, the Owner and the Contractor agree as follows:

### ARTICLE 1 GUARANTEED MAXIMUM PRICE

The Contractor's GMP for the Work, including the Cost of the Work as defined in Article 8 and the  
Contractor's Fee as set forth in Section 7.3, is Seventeen Million Six Hundred Ninety Two Dollars  
(\$17,692,000).

The GMP is for the performance of the Work in accordance with the exhibits listed below, which are part  
of this Agreement.

EXHIBIT A Drawings and Specifications, including Addenda, if any, and information furnished by  
the Owner under Section 4.3, dated 8/18/2016, 2 pages.

EXHIBIT C Assumptions and Clarifications on which the GMP is based, dated 8/22/2016, 3  
pages.

EXHIBIT D Schedule of Work, dated August 18<sup>th</sup> 2016 , 1 pages.

### ARTICLE 2 DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion of the Work is 7/1/2017.

### ARTICLE 3 DATE OF FINAL COMPLETION



The Date of Final Completion of the Work is: 10/1/2017 or within Sixty (60) Days after the Date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

This Amendment is entered into as of August 26, 2016

ATTEST: \_\_\_\_\_

OWNER:

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Mr. Mathew Paulus, Manager  
Email: Mathew@paulusdeyco.com  
PH: 202-302-5919

BY: \_\_\_\_\_

PRINT NAME Mathew Paulus                      PRINT TITLE Manager

ATTEST: \_\_\_\_\_

CONTRACTOR:

Hueber-Breuer Construction Co. Inc.  
148 Berwyn Avenue  
Syracuse, NY 13205  
-and-  
PO Box 515  
Syracuse, NY 13205-0515  
PH: 315-476-7517

BY: \_\_\_\_\_

PRINT NAME James V. Breuer                      PRINT TITLE President

END OF DOCUMENT.



**EXHIBIT "J"**  
**SECOND AMENDED AND RESTATED**  
**OPERATING AGREEMENT**  
**OF**  
**BRADFORD & EUCLID, LLC**  
**FANCHER INCENTIVE AWARD**

## INCENTIVE GRANT AWARD

THIS INCENTIVE GRANT AWARD (this “**Agreement**”) is executed and delivered as of November 18, 2015 (the “**Grant Date**”), by and between **BRADFORD & EUCLID, LLC**, a Delaware limited liability company (the “**Company**”), and **JAMES R. FANCHER** (“**Fancher**”). All capitalized terms used but not defined in this Agreement have the meaning given to such terms in the Operating Agreement of the Company, dated as of November 18, 2015, as amended, modified or supplemented from time to time (the “**LLC Agreement**”).

1. Grant of Units. Pursuant to and in accordance with the terms and provisions of Section 3.4 of the LLC Agreement, the Company hereby grants and issues to Fancher 400 Class B Units of the Company (the “**Units**”), on the terms and subject to the conditions set forth in this Agreement.

2. Distribution Threshold. The Units issued to Fancher pursuant to this Agreement are intended to qualify as “profits interests” within the meaning of Internal Revenue Service Revenue Procedures 93-27 and 2001-43, Internal Revenue Service Notice 2005-43, and any future Internal Revenue Service guidance. It is the intent of the parties that if (i) the Company were to sell all of its assets immediately after Fancher is admitted as a member, pay its liabilities and liquidate, Fancher’s share of the remaining liquidation proceeds would be 0.

3. Vesting. The Units granted and issued to Fancher shall immediately vest on the date hereof.

4. Not a Contract for Service. Neither the LLC Agreement nor this Agreement is a contract of service, and no terms of Fancher’s affiliation with the Company will be affected in any way by the LLC Agreement, this Agreement or any related instruments, except to the extent specifically expressed herein or therein. Neither the LLC Agreement nor this Agreement will be construed as conferring any legal rights on Fancher to continue to provide services to the Company, nor will it interfere with the Company’s rights to discharge Fancher or to deal with Fancher regardless of the existence of the LLC Agreement or this Agreement.

5. Section 83(b) Election; Tax Withholding. Fancher understands that he (and not the Company) shall be responsible for any tax liability that may arise as a result of the transactions contemplated by this Agreement. Fancher shall pay to the Company promptly upon request, and in any event at the time Fancher recognizes taxable income in respect of the Units (or, if Fancher makes an election under Section 83(b) of the Internal Revenue Code of 1986, as amended (the “**Code**”) in connection with such grant), an amount equal to the taxes the Company determines it is required to withhold under applicable tax laws with respect to such Units. Fancher may satisfy the foregoing requirement by making a payment to the Company in cash or check having a value equal to the minimum amount of tax required to be withheld. Fancher agrees to provide the Company with a copy of any election made pursuant to Section 83(b) of the Code within thirty (30) days of filing such election.

**FANCHER ACKNOWLEDGES THAT IT IS FANCHER’ SOLE RESPONSIBILITY AND NOT THE COMPANY’S RESPONSIBILITY TO FILE TIMELY THE ELECTION UNDER SECTION 83(b) OF THE CODE. BY SIGNING THIS AGREEMENT, FANCHER REPRESENTS THAT HE HAS REVIEWED WITH HIS OWN TAX ADVISORS THE**

**FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THAT FANCHER IS RELYING SOLELY ON SUCH ADVISORS AND NOT ON ANY STATEMENTS OR REPRESENTATIONS OF THE COMPANY OR ANY OF ITS AGENTS. FANCHER UNDERSTANDS AND AGREES THAT FANCHER (AND NOT THE COMPANY) SHALL BE RESPONSIBLE FOR ANY TAX LIABILITY THAT MAY ARISE AS A RESULT OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.**

6. Amendment of the Agreement. The Company and Fancher may amend this Agreement only by a written instrument signed by both parties.

7. Successors and Assigns. All covenants and agreements contained in this Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns, whether so expressed or not. Fancher may not assign any of the Fancher' rights or obligations under this Agreement without the prior written consent of the Company. The Company may assign its rights under this Agreement to any Person with or without the consent of Fancher.

8. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Any dispute relating hereto shall be heard in the state or federal courts of New York, and the parties agree to jurisdiction and venue therein. The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought exclusively in any United States District Court in New York or any New York state court located in Onondaga County, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in this Agreement shall be deemed effective service of process on such party.

9. Jurisdiction and Venue. ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION IN RELATION TO ANY CLAIM, DISPUTE OR DIFFERENCE CONCERNING OR ARISING OUT OF THIS AGREEMENT OR IN ANY WAY RELATING TO ANY OWNERSHIP INTEREST IN THE COMPANY OR ANY OF ITS RELATED COMPANIES (INCLUDING ANY TORTS AND OTHER NON-CONTRACTUAL CLAIMS). THE PARTIES IRREVOCABLY WAIVE ANY RIGHT THEY MAY HAVE TO OBJECT TO ANY ACTION BEING BROUGHT IN COURTS LOCATED IN THE COUNTY OF ONONDAGA, NEW YORK TO CLAIM THAT THE ACTION HAS BEEN BROUGHT TO AN INCONVENIENT FORUM OR TO CLAIM THAT THESE COURTS DO NOT HAVE

JURISDICTION. THE PREVAILING PARTY IN ANY SUCH ACTION SHALL BE ENTITLED TO ITS ATTORNEY'S FEES AND COSTS IN CONNECTION WITH SUCH ACTION.

10. Waiver of Jury Trial. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

11. Addresses and Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given or made when (a) delivered personally to the recipient, (b) telecopied (with hard copy sent to the recipient by reputable overnight courier service (charges prepaid) that same day) if telecopied before 5:00 p.m. Syracuse, New York time on a business day, and otherwise on the next business day, or (c) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid). Notices, demands and other communications to the Company shall be sent to 225 Wilkinson Street, Syracuse, NY 13204, Attn: Lawrence V. Losty, Jr.. Notices, demands and other communications to Fancher should be sent to the address set forth on the signature page below. Either party may change the person and/or address to whom the other party must give notice under this section by giving such other party written notice of such change, in accordance with the procedures described above.

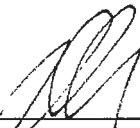
12. Entire Agreement. This Agreement and the LLC Agreement embody the complete agreement and understanding among the parties with respect to the subject matter herein and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

13. Headings. Section and other headings contained in this Agreement are for reference and convenience purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party (and any rule of construction to that effect shall not be applied) .

14. Counterparts; Binding Agreement. This Agreement may be executed simultaneously in two or more separate counterparts, any one of which need not contain the signatures of more than one party, but each of which will be deemed an original and all of which together shall constitute one and the same agreement binding on all the parties hereto. This Agreement and all of the provisions hereof shall be binding upon and effective as to each Person who (a) executes this Agreement in the appropriate space provided in the signature pages hereto notwithstanding the fact that other Persons who have not executed this Agreement may be listed on the signature pages hereto and (b) may from time to time become a party to this Agreement by executing a counterpart of or joinder to this Agreement.

*[Remainder of Page Intentionally Left Blank, Signature Page Follows]*

IN WITNESS WHEREOF, the Company and Fancher have duly executed this Agreement as of the date first written above.

  
\_\_\_\_\_  
**James R. Fancher**

Address: 222 Hancock Lane  
Syracuse, New York 13207

**BRADFORD & EUCLID, LLC**

By: \_\_\_\_\_  
Its: Manager

*Signature Page to Incentive Grant Award*



## APPENDIX "A"

### TABLE OF DEFINITIONS

**"Accepting Class Offerees"** has the meaning set forth in **Section 10.4** hereof.

**"Accountants"** means the independent accounting firm regularly engaged by the Company to provide audit, consulting, tax or similar type services to the Company. In the event the Company is not then regularly engaging the services of an independent accounting firm, "Accountants" shall mean such independent accounting firm as may be selected by the Management Committee in its discretion.

**"Act"** means the Delaware Limited Liability Company Act, as amended from time to time.

**"Additional Capital Contribution"** has the meaning set forth in **Section 3.10** hereof.

**"Additional Members"** has the meaning set forth in **Section 3.5** hereof.

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

- (a) a Transfer or attempted Transfer of all or any portion of such Unit Holder's Membership Units in the Company except as expressly permitted or required by this Agreement;
- (b) an Event of Bankruptcy occurring with respect to any Unit Holder;
- (c) any other occurrence or transaction that is expressly provided elsewhere in this Agreement as constituting an Adverse Act.

**"Adverse Unit Holder"** has the meaning set forth in **Section 10.5** hereof.

**"Affiliate"** means with respect to any Person: (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning or controlling 10 percent or more of the outstanding voting securities of such Person; (iii) any officer, director, manager or general partner of such Person; or (iv) any Person who is an officer, director, manager, general partner, trustee or holder of 10 percent or more of the voting securities of any Person described in clauses (i) through (iii) of this sentence.

**"Agreement"** or **"Operating Agreement"** means this Second Amended and Restated Operating Agreement as the same may be subsequently amended from time to time. Words such as "herein," "hereinafter," "hereof," "hereto," and "hereunder" refer to this Agreement as a whole, unless the context otherwise requires.

**"Annual Plan"** has the meaning set forth in **Section 6.4** hereof.

**"Assignee"** means a Person who is a transferee of all or part of a Member's Membership Units which Person is not admitted as a Member with respect to such Membership Units. "Assignees" means all such Persons.

**"Borrowing Unit Holder"** has the meaning set forth in **Section 3.10** hereof.

**"Braxton"** has the meaning specified in the Whereas clauses hereto.

**"Building"** means the former R.E. Dietz factory building located at 225 Wilkinson Street, Syracuse, New York.

**"Capital Contribution Loan"** has the meaning set forth in **Section 3.10** hereof.

**“Cash Flow Deficit”** means the amount, as reasonably determined by the Management Committee, required to meet the Company’s projected cash requirements for a specified period of time, not to exceed one (1) year (the **“Notice Period”**). In determining the Cash Flow Deficit, the Management Committee may include the projected cost of: (a) normal and ordinary Company operations; (b) maintenance and improvement of any Property owned by the Company; (c) retiring liabilities as they become due during the Notice Period; and (d) the establishment of any reasonable reserves for the foregoing purposes.

**“Certificate”** means the Certificate of Formation filed on behalf of the Company with the Secretary of State of the State of Delaware on April 2, 2015.

**“Class”** and **“Classes”** has the meaning set forth in **Section 3.2** hereof.

**“Class A Members”** means those Persons designated as Members of Class A.1 or Class A.2 on **Exhibit “A”** and any Person who is both (i) a permitted transferee with respect to any Class A Units of any such Persons (or any successor thereto) and (ii) admitted as a Member with respect to such Class A Units pursuant to the terms of this Agreement and has not ceased to be a Member.

**“Class A Unit Holder”** means a holder of Class A.1 or Class A.2 Units (either as a Member or as an Assignee thereof).

**“Class A Units”** means the Class A.1 and Class A.2 Units.

**“Class A.1 Members”** means those Persons designated as Members of Class A.1 on **Exhibit “A”** and any Person who is both (i) a permitted transferee with respect to any Class A Units of any such Persons (or any successor thereto) and (ii) admitted as a Member with respect to such Class A Units pursuant to the terms of this Agreement; and has not ceased to be a Member.

**“Class A.1 Unit Holder”** means a holder of Class A.1 Units (either as a Member or as an Assignee thereof).

**“Class A.1 Units”** has the meaning set forth in **Section 3.2** hereof.

**“Class A.2 Member Cost Overrun Capital Contributions”** has the meaning set forth in **Section 3.10(a)**.

**“Class A.2 Members”** means those Persons designated as Members of Class A.2 on **Exhibit “A”** and any Person who is both (i) a permitted transferee with respect to any Class A Units of any such Persons (or any successor thereto) and (ii) admitted as a Member with respect to such Class A Units pursuant to the terms of this Agreement; and has not ceased to be a Member.

**“Class A.2 Unit Holder”** means a holder of Class A.2 Units (either as a Member or as an Assignee thereof).

**“Class A.2 Units”** has the meaning set forth in **Section 3.2** hereof.

**“Class B Members”** means those Persons designated as Members of Class B on **Exhibit “A”** and any Person who is both (i) a permitted transferee with respect to any Class B Units of

any such Persons (or any successor thereto) and (ii) admitted as a Member with respect to such Class B Units pursuant to the terms of this Agreement; and has not ceased to be a Member.

**“Class Offerees”** has the meaning set forth in **Section 10.4** hereof.

**“Class Offeree Period”** has the meaning set forth in **Section 10.4** hereof.

**“Class B Unit Holder”** means a holder of Class B Units (either as a Member or as an Assignee thereof).

**“Class B Units”** has the meaning set forth in **Section 3.2** hereof.

**“Class C Members”** means those Persons designated as Members of Class C on **Exhibit “A”** and any Person who is both (i) a permitted transferee with respect to any Class C Units of any such Persons (or any successor thereto) and (ii) admitted as a Member with respect to such Class C Units pursuant to the terms of this Agreement and has not ceased to be a Member.

**“Class C Unit Holder”** means a holder of Class C Units (either as a Member or as an Assignee thereof).

**“Class C Units”** means the Class C Units.

**“Company”** means the limited liability company continued pursuant to this Agreement and the limited liability company continuing the business of this Company in the event of dissolution as herein provided.

**“Construction Loan”** means that certain loan or loans in the aggregate principal amount of \$19,242,958 made by Community Preservation Corporation utilized to finance the acquisition and development of the Project closed on or about October 20, 2016.

**“Construction Loan Documents”** means the documents setting forth the terms and conditions of the Construction Loan, including but not limited to acquisition, construction and project notes, acquisition, construction and project loan mortgages, construction loan agreement, assignment of leases and rents and payment and completion guarantees.

**“Completion”** means the date that the Project has been completed in accordance with the Renovation Plans (including all punch-list items) and the Company has received a certificate of occupancy from the City of Syracuse, New York.

**“Construction Management Agreement”** has the meaning set forth in **Section 6.4** hereof.

**“Cost Overrun”** means any and all Project Costs incurred by or on behalf of the Company in connection with the renovation, rehabilitation and development of the Project through the date of Completion (exclusive of any tenant improvement allowances negotiated with tenants with exception for the costs associated with Jacobsen Rugs, which are included in the Total Project Costs) and which result in either (a) an increase in the amount of any one cost line item set forth in the Renovation and Development Budget to an amount greater than the amount of such line item as set forth in the Renovation and Development Budget, but only to the extent any such increase in any line item is not funded out of demonstrable Project Cost savings in any other line item in the Renovation and Development Budget or from the contingency set forth in the Renovation and Development Budget, if any, or (b) an increase in the total Project

Costs to an amount greater than the total set forth in the line item entitled “Total Project Costs” in the Renovation and Development Budget.

“**Current Managers**” has the meaning set forth in **Section 6.1** hereof.

“**Deemed Value**” has the meaning set forth in **Section 6.11** herein.

“**Default**” has the meaning set forth in **Section 3.10** hereof.

“**Defaulting Unit Holder(s)**” has the meaning set forth in **Section 3.10** hereof.

“**Deficit Contribution Notice**” means a written notice given by the Management Committee to the Responsible Unit Holders which shall: (i) state the amount that the Management Committee has determined to be the Cash Flow Deficit that the Company is likely to incur during the Notice Period; (ii) summarize with reasonable particularity the basis for such determination; (iii) identify a date (the “**Contribution Date**”), not sooner than thirty (30) days after the date of the Deficit Contribution Notice upon which the Additional Capital Contribution to fund such Cash Flow Deficit shall be due; and (iv) specify the Pro-Rata Share of each Class A Unit Holder and Class B Unit Holder.

“**Designated Successor Manager**” shall have the meaning set forth in **Section 6.1** hereof.

“**Economic Rights**” has the meaning set forth in **Section 10.9** herein.

“**Electing Member**” has the meaning set forth in **Section 6.11** herein.

“**Election Notice**” has the meaning set forth in **Section 6.11** herein.

“**Election Period**” has the meaning set forth in **Section 6.11** herein.

“**Event of Bankruptcy**” means, with respect to any Unit Holder, any of the following:

(a) filing a voluntary petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code (as now or in the future amended) or an admission seeking the relief therein provided;

(b) making a general assignment for the benefit of creditors;

(c) consenting to the appointment of a receiver for all or a substantial part of such Person’s property;

(d) in the case of the filing of an involuntary petition in bankruptcy, the entry of an order for relief;

(e) the entry of a court order appointing a receiver or trustee for all or a substantial part of such Person’s property without such Person’s consent; or

(f) the assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of such Person’s property.

“**Exercise Notice**” has the meaning set forth in **Section 6.11** herein.

“**Existing Agreement**” has the meaning set forth in the Whereas clauses hereto.

“**Fair Market Value**” shall mean that amount mutually agreed upon by the Managers (exclusive of any Manager that is also a selling Member) acting on behalf of the Company (the “**Buyer**”), and the selling Unit Holder (or the selling Unit Holder’s personal representative, as

the case may be). If the parties are unable to reach agreement on Fair Market Value within thirty (30) days after notice of the Adverse Act or the date of death, as the case may be, is received by the Company the Fair Market Value shall be determined by arbitration in accordance with the rules of the American Arbitration Association except as modified below:

(a) If, within ten (10) days (the “**First Selection Period**”) of receiving a list of available arbitrators from the American Arbitration Association (the “**Panel**”), the parties are unable to agree upon the selection of a single arbitrator, the Buyer shall appoint one arbitrator, the selling Member or Assignee shall appoint one arbitrator and the two arbitrators so appointed shall select a third arbitrator. In all cases the arbitrator(s) must be appointed from the Panel, provided that all Panel members submitted by the American Arbitration Association shall be Real Estate Appraisers holding the “M.A.I.” designation and experienced in the appraisal of income producing real estate worth over \$5,000,000. The Panel list shall include detailed resumes on all persons submitted. If both the Buyer and the selling Unit Holder (or the selling Unit Holder’s personal representative, as the case may be) are each required to select arbitrators, each shall make such selection within ten (10) days of the end of the First Selection Period. If a party fails to appoint an arbitrator within such time period the arbitration shall continue with the arbitrator selected by the other party serving as the sole arbitrator.

(b) The arbitration must be commenced within forty five (45) days of the appointment of the arbitrator or arbitrators. At least ten (10) days prior to the scheduled commencement of the arbitration proceedings, the Buyer and the selling Unit Holder (or the selling Unit Holder’s personal representative, as the case may be) shall each deliver to the arbitrator(s) such Person’s estimate of the Fair Market Value of the Property together with any supporting information such party deems necessary. Any written estimate or supporting information submitted after the date prescribed above shall not be considered in determining the Fair Market Value of the Property.

(c) As soon as possible after the expiration of time for the submission of estimates and supporting information, the arbitrator(s) shall deliver a copy of all material submitted to both the Buyer and the selling Member or Assignee. During the ten (10) day period between the exchange of the written estimates and the scheduled commencement of the arbitration proceedings, the parties shall compare the written estimates of Fair Market Value for the Property. If the difference between the highest and lowest written estimate of Fair Market Value for the Property is less than five percent (5%) of the highest written estimate, then all of the written estimates submitted for the Property shall be averaged and the result shall automatically be deemed to be the Fair Market Value of such Property. If the Fair Market Value for the Property is established pursuant to the preceding sentence, the arbitration proceeding shall be discontinued and the costs of the arbitration shall be divided equally between the parties.

(d) In the event that the highest and lowest written estimates of the Fair Market Value of the Property differ by more than five percent (5%) of the highest estimate, the arbitration proceeding shall continue as scheduled with respect to the Property.

(e) The Fair Market Value of the Property shall be determined as of the Valuation Date. In making his or their determination of Fair Market Value the arbitrator or

arbitrators shall be limited to the selection of one of the written estimates of Fair Market Value submitted by the parties and the arbitrator or arbitrators may not select any other value. In making his or their determination of Fair Market Value of the Property, the arbitrator(s) shall be instructed to consider with respect to the Property only the then current use of such Property. No consideration is to be given to any higher or better use. The arbitrator or arbitrators shall be required to render his or their decision within thirty (30) days after the commencement of the arbitration proceedings.

(f) The determination of the Fair Market Value of any Property by the arbitrator(s) shall be binding and conclusive on the selling Unit Holder and the Company absent a showing of gross error or fraud. The costs and expenses associated with the arbitration shall be borne by the party that either fails to submit a written estimate of the Fair Market Value for the Property or whose estimate of Fair Market Value is not selected by the arbitrator(s) as the Property's Fair Market Value.

**"Family"** means in the case of Paulus and Losty such Member's spouse, natural or adopted lineal ancestors or descendants and trusts for his, her or their exclusive benefit.

**"Fancher"** means James R. Fancher.

**"Firm Offer"** has the meaning set forth in **Section 10.4** hereof.

**"Historic Tax Credits"** means the sum of the tax credits allowable pursuant to Section 47 of the Code and the applicable sections of New York State's Tax Law for qualified rehabilitation expenditures incurred in connection with the Project.

**"HTC Compliance Period"** means the recapture period specified in Section 50(a)(1) of the Code.

**"Impasse"** has the meaning set forth in **Section 6.11** herein.

**"Independent Third Party"** means any Person who, immediately prior to the contemplated transaction, does not directly or indirectly beneficially own in excess of five percent (5%) of any class of the Membership Units, who is not an Affiliate of any such five percent (5%) owner, or who is not the spouse or descendant (by birth or adoption) of any such five percent (5%) owner.

**"Initial Operating Period"** means the period commencing on the date hereof and ending on the last day of the HTC Compliance Period.

**"Institutional Lender"** means any banking institution (including but not limited to saving and loan associations or savings banks), insurance company, pension or profit sharing plan or fund, educational institution, or real estate investment trust.

**"Institutional Loan"** means a loan from an Institutional Lender.

**"Investor Member"** has the meaning specified in the Whereas clauses hereto.

**"Liquidating Event"** has the meaning set forth in **Section 11.1** hereof.

**"Losty"** means Lawrence V. Losty, Jr.

**“Majority Vote”** means the affirmative vote of Persons holding more than fifty percent (50%) of the total number of Membership Units then held by all those Persons entitled to vote on the matter.

**“Management Committee”** shall have the meaning set forth in **Section 6.1** hereof.

**“Manager”** means each Current Manager and each Person who becomes a Manager pursuant to the terms of this Agreement and has not ceased to be a Manager pursuant to the terms of this Agreement. “Managers” means all such Persons.

**“Master Lease”** means the Master Lease dated as of October 20, 2016 by and between the Company and the Investor Member.

**“Master Tenant Investor Member”** has the meaning set forth in Section 3.4.

**“Material Default”** has the meaning set forth in Section 6.13.

**“Members”** means all Persons set forth on **Exhibit “A”** hereof and any Person subsequently admitted to the Company as a Member pursuant to the terms hereof for so long as such Persons have not ceased to be a Member pursuant to the terms of this Agreement. “Member” means any one of the Members.

**“Membership Percentage”** means for each Person, the ratio (expressed as a percentage) at the time the Membership Percentage is being determined, of the number of Membership Units held by such Person to the total number of Membership Units outstanding. “Membership Percentages” means the total percentages held by all Persons. Except as otherwise provided herein, the calculation of Membership Percentages shall exclude any Membership Units which are not vested.

**“Membership Unit”** means an ownership interest in the Company including any and all benefits to which the holder of such Membership Units may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement.

**“Mortgage Loan”** means the loan made by Community Preservation Corporation in the principal amount of \$16,250,000 which will be secured by a first mortgage lien on the Project.

**“Net Available Cash”** means the gross cash proceeds of the Company from Company operations, less the portion thereof used to pay or establish reserves for all Company expenses, guaranteed payments, debt payments, capital improvements, replacement and contingencies, all as determined by the Management Committee. “Net Available Cash” shall not be reduced by depreciation, amortization, cost recovery deductions or similar allowances, but shall be increased by any reductions of reserves previously established.

**“Net Equity of the Company”** means the amount that would be available to be distributed to the Unit Holders if: (i) all real property (or any entity the principal asset of which is real property) owned by the Company was sold for its Fair Market Value; (ii) all of the other assets of the Company were sold for their net book value; (iii) the Company paid each and all of its liabilities; and (iv) reasonable reserves were established for any contingent liabilities. The Net Equity of the Company shall be determined, without audit or certification, from the books and records of the Company by the Accountants within thirty (30) days of the day upon which the Accountants are apprised in writing of the Fair Market Value of any real property or any interest in another entity the principal asset of which consists of real property owned by the Company.

The amount of such Net Equity of the Company shall be disclosed to the Company and the selling Unit Holder by written notice. The Net Equity of the Company determination of the Accountants shall be final and binding in the absence of gross negligence or willful misconduct.

**“Net Equity Per Membership Unit”** means the Net Equity of the Company divided by the total number of Membership Units then outstanding (which, for purposes of clarity, shall only include with respect to each Class B Unit Holder only the Vested Units held by such Class B Unit Holder).

**“Non-Economic Rights”** has the meaning set forth in **Section 10.9** hereof.

**“Notice Member”** has the meaning set forth in **Section 6.11** herein.

**“Offer Period”** has the meaning set forth in **Section 10.4** hereof.

**“Offer Price”** has the meaning set forth in **Section 10.4** hereof.

**“Offered Units”** has the meaning set forth in **Section 10.4** hereof.

**“Option Period”** has the meaning set forth in **Section 10.5** hereof.

**“Payment Terms”** has the meaning set forth in **Section 10.4** hereof.

**“Paulus”** means Matthew R. Paulus.

**“Person”** means any individual, partnership, limited liability company, corporation, trust or other entity.

**“Prime Rate”** means the prime rate (or base rate) reported in the “Money Rates” column or section of *The Wall Street Journal* as being the base rate on corporate loans at larger U.S. Money Center banks on the last business day immediately prior to the date on which it is necessary to determine such Prime Rate; provided, however, in the event *The Wall Street Journal* ceases publication of the Prime Rate, then the “Prime Rate” shall mean the “prime rate” or “base rate” announced by the bank with which the Company has its principal banking relationship (whether or not such rate has actually been charged by that bank) or as otherwise designated by the Management Committee. In the event that bank discontinues the practice of announcing that rate, Prime Rate shall mean the highest rate charged by that bank on short-term, unsecured loans to its most credit-worthy large corporate borrowers, unless otherwise designated by the Management Committee.

**“Profits” and “Losses”** means, for each fiscal year or other period, an amount equal to the Company’s taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be added to such taxable income or Loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv), and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be subtracted from such taxable income or loss;



(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to **subsections (b) or (d)** of the definition of Gross Asset Value hereof the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period; and

(f) Notwithstanding any other provision of this Section, any items which are specially allocated pursuant to **Section (b) or Section (c) of Appendix "B"** hereof shall not be taken into account in computing Profits or Losses pursuant to this Section.

**"Project"** means the redevelopment of the former R.E. Dietz factory building located at 225 Wilkinson Street, Syracuse, New York into approximately 89 luxury apartments and 36,000 square feet of commercial space.

**"Project Construction Manager"** has the meaning set forth in **Section 6.4** hereof.

**"Project Costs"** means all costs included in the Renovation and Development Budget incurred in connection with the renovation, rehabilitation and development of the Project through Completion.

**"Property"** means the property, both real, personal, tangible and intangible owned by the Company from time to time.

**"Pro-Rata Share"** means in connection with any required Additional Capital Contribution or Future Guarantee, the number of Class A Units and/or Vested Class B Units then owned by such Responsible Unit Holder divided by the number of Class A Units and Vested Class B Units then owned by all Responsible Unit Holders.

**"Purchase Note"** has the meaning set forth in **Section 10.7** hereof.

**"Purchase Offer"** has the meaning set forth in **Section 10.4** hereof.

**"Purchaser"** has the meaning set forth in **Section 10.4** hereof.

**"Recapture Event"** means any transaction, condition, occurrence or other event (or series of events) which requires the recapture of all or a portion of the Historic Tax Credits under the provisions of the Code.

**"Remaining Offer Period"** has the meaning set forth in **Section 10.4** hereof.

**"Renovation and Development Budget"** has the meaning set forth in **Section 6.4**. The Renovation and Development Budget is attached here to as **Exhibit "D"**.

**"Renovation Plans"** means the renovations to be made to the Project as described on the attached **Exhibit "E"**, as the same may be amended or modified from time to time.

**"Resigning Manager"** shall have the meaning set forth in **Section 6.1** hereof.

**“Resolution Period”** has the meaning set forth in **Section 6.11** herein.

**“Responsible Unit Holder”** has the meaning set forth in **Section 3.10** hereof.

**“Sale of the Company”** means the sale (in a single transaction or a series of related transactions) of the Company to any Independent Third Party or group of Independent Third Parties pursuant to which such Independent Third Party or group of Independent Third Parties acquires (i) a majority of the Class A Units (whether by merger, consolidation, sale, transfer, assignment, pledge, encumbrance or other disposition (irrespective of whether any of the foregoing are effected, with or without consideration, voluntarily or involuntarily, by operation of law or otherwise, or whether inter vivos or upon death) of Class A Units, reorganization, recapitalization or otherwise), or (ii) all or substantially all of the assets of the Company and its Subsidiaries, determined on a consolidated basis.

**“Secretary’s Standards”** means the United States Department of Interior’s Secretary’s Standards for Rehabilitation.

**“Seller”** has the meaning set forth in **Section 10.4** hereof.

**“Specified Payment Terms”** has the meaning set forth in **Section 6.11** herein.

**“Subsidiary”** means any Person of which the Company owns securities having a majority of the voting power in electing the board of directors directly or through one or more subsidiaries or, in the case of any limited liability company, partnership, limited liability partnership or other similar entity, securities conveying, directly or indirectly, a majority of the economic interests in such entity.

**“Successor Manager”** shall have the meaning set forth in **Section 6.1** hereof.

**“Tax Distribution”** has the meaning set forth in **Section 5.3** hereof.

**“Transfer”** means, as a noun, any transfer, sale, pledge, hypothecation or other disposition, whether voluntary, involuntary or by operation of law, and, as a verb, to transfer, sell, pledge, hypothecate or otherwise dispose of in any manner whatsoever, whether voluntarily, involuntarily or by operation of law.

**“Unit Holder”** means a Person who is the holder of Membership Units regardless of whether such Person has been admitted as a Member with respect to such Membership Units.

**“Valuation Date”** means the last day of the calendar month immediately preceding: (i) the date of the Offer Notice, in the case of a purchase pursuant to **Section 10.4** hereof; and (ii) the date of the occurrence of the Adverse Act, or the death of a Class B Unit Holder, in the case of a purchase pursuant to **Section 10.5** hereof.

**“Vested Units”** means the number of Membership Units which have vested in accordance with any incentive grant award with respect to the Membership Units in question.

**APPENDIX “B”**  
**TAX PROVISIONS**

(a) **Definitions.** For purposes of this Agreement, including this **Appendix “B”**, the following terms (as indicated by the first letter of each word being capitalized) shall, unless the context clearly requires otherwise, have the following meanings:

**“Adjusted Capital Account Deficit”** means with respect to any Unit Holder, the deficit balance, if any, in such Person’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Person is obligated to restore or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

**“Capital Account”** means with respect to any Unit Holder, the Capital Account maintained for such Person in accordance with the following provisions:

(a) To each Person’s Capital Account, there shall be credited such Person’s Capital Contributions, such Person’s distributive share of Profits, and any items in the nature of income or gain that are specially allocated pursuant to **Section (b)** or **(c)** of this **Appendix “B”**, and the amount of any Company liabilities that are assumed by such Person or that are secured by any Company asset distributed to such Person;

(b) To each Person’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Company asset distributed to such Person pursuant to any provision of this Agreement, such Person’s distributive share of Losses, any items in the nature of expenses or losses that are specially allocated pursuant to **Section (b)** or **(c)** of this **Appendix “B”**, and the amount of any liabilities of such Person that are assumed by the Company or that are secured by any property contributed by such Person to the Company;

(c) In the event any interest in the Company is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred interest; and

(d) In determining the amount of any liability for purposes of **subsections (a)** and **(b)** above, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Management Committee shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including without limitation, debits or credits

relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Unit Holders), are computed in order to comply with such Regulations, the Management Committee may make such modifications, provided it is not likely to have a material effect on the amounts distributed to any Unit Holder pursuant to **Section 12** of the Agreement upon the dissolution of the Company. The Management Committee also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Unit Holders and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event unanticipated events (for example, the acquisition by the Company of oil or gas properties) might otherwise cause this Agreement not to comply with Regulation Section 1.704-1(b).

**“Capital Contribution”** means, with respect to any Unit Holder, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company with respect to the interest in the Company held by such Unit Holder.

**“Code”** means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

**“Company Minimum Gain”** has the meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations substituting the term “company” for the term “partnership” whenever the context requires.

**“Depreciation”** means, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable under the Code with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Management Committee.

**“Gross Asset Value”** means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Unit Holder to the Company shall be the gross fair market value of such asset, as determined by the contributing Unit Holder and the Company;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Management Committee, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Unit Holder in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Unit Holder of more than a de minimis amount of assets as consideration for an interest in the Company; (iii) in connection with the grant of an interest in the Company to a Unit Holder (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Unit Holder acting in a

Member capacity or by a new Unit Holder acting in a Member capacity or in anticipation of becoming a Member; and (iv) the liquidation of the Company within the meaning of Regulations 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (i), (ii) and (iii) above shall be made only if the Management Committee reasonably determine(s) that such adjustments are necessary or appropriate to reflect the relative economic interests of the Unit Holders in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Unit Holder shall be the gross fair market value of such asset on the date of distribution; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation 1.704-1(b)(2)(iv)(m) and **Section (b)(iii)** of this **Appendix “B”**; provided, however, that Gross Asset Values shall not be adjusted pursuant to this **subsection (d)** to the extent the Management Committee determine(s) that an adjustment pursuant to **subsection (b)** is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this **subsection (d)**. If the Gross Asset Value of an asset has been determined or adjusted pursuant to **subsections (a), (b)** or **(d)** hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

**“Member Nonrecourse Debt”** has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations substituting the term “member” for the term “partner” whenever the context requires.

**“Member Nonrecourse Debt Minimum Gain”** means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations substituting the term “member” for the term “partner” whenever the context requires.

**“Member Nonrecourse Deductions”** has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

**“Nonrecourse Deductions”** has the meaning set forth in Section 1.704-2(b)(1) of the Regulations substituting the term “member” for the term “partner” whenever the context requires.

**“Nonrecourse Liability”** has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

**“Regulations”** means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

**(b) Special Allocations: Items in the Nature of Income or Gain.**

(i) In the event any Unit Holder unexpectedly receives any adjustments, allocations or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to such Unit Holder in an amount and manner sufficient to eliminate the

Adjusted Capital Account Deficit of such Unit Holder as quickly as possible; provided, however, that an allocation pursuant to this **Section (b)(i)** shall be made if and only to the extent that such Unit Holder would have an Adjusted Capital Account Deficit after all other allocations provided for in **Section 4** and this **Appendix "B"** have been tentatively made as if this **Section (b)(i)** of this **Appendix "B"** were not in this Agreement.

(ii) If, after giving effect to the allocation provisions of **Section 4** and this **Appendix "B"** (other than this **(b)(ii)**) and the distribution provisions of **Section 5** hereof for a particular fiscal year, any Unit Holder would have a deficit Capital Account at the end of such fiscal year in excess of the sum of (i) the amount such Unit Holder is obligated to restore and (ii) the amount such Unit Holder is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) such Unit Holder shall be specially allocated items of gross income in the amount of such excess as quickly as possible provided that an allocation pursuant to this **Section (b)(ii)** of this **Appendix "B"** shall be made if and only to the extent such Unit Holder would have a deficit Capital Account in excess of such sum after all other allocations provided for in **Section 4** and **Appendix "B"** have been tentatively made and as if **Sections (b)(i)** and **(b)(ii)** were not in this Agreement.

(iii) Except as otherwise provided in Section 1.704-2(f) of the Regulations and notwithstanding any other provision of **Section 4** and this **Appendix "B"** if there is a net decrease in Company Minimum Gain during any Company fiscal year, each Unit Holder shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to the portion of such Person's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Unit Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This **Section (b)(iii)** is intended to comply with the minimum gain charge back requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(iv) Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations and notwithstanding any other provision of **Section 4** and this **Appendix "B"** except **Section (b)(ii)** above, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year, each Person who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to the portion of such Person's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Unit Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This **Section (b)(iv)** is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(v) Any Member Nonrecourse Deductions for any fiscal year or other period shall be specially allocated to the Unit Holder who bears the economic risk of loss with respect to the

Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Sections 734(b) or Section 743(b) of the Code is required to be taken into account in determining Capital Accounts as the result of a distribution to a Unit Holder in complete liquidation of his interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if such adjustment increases the basis of the assets) or loss (if such adjustment decreases such basis) and such gain or loss shall be specifically allocated to the Unit Holders in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies or to the Unit Holders to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(vii) Nonrecourse Deductions for any fiscal year or other period shall be specifically allocated to the Unit Holders in proportion to their respective Membership Percentages.

(viii) All allocations to the Unit Holders made pursuant to **Section 4** and this **Appendix "B"** shall, except as otherwise provided herein, be divided among them in proportion to their respective Membership Percentages.

**(c) Curative Allocations.** The allocations set forth in **Sections (b)(i) through viii)** hereof (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Unit Holders that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deductions pursuant to this **Section (c)**. Therefore, notwithstanding any other provisions of **Section 4** and this **Appendix "B"** (other than the Regulatory Allocations) the Management Committee shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine appropriate so that after such offsetting allocations are made, each Unit Holder's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Unit Holder would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to **Section 4**. In exercising its discretion under this **Section (c)** of this **Appendix "B"** the Management Committee shall take into account future Regulatory Allocations under **Sections (b)(iii) and (b)(iv)** that, although not yet made, are likely to offset other Regulatory Allocations previously made under **Section (b)(v) and Appendix "B"**.

**(d) Other Allocations Rules.**

(i) For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly or other basis, as determined by the Management Committee using any permissible method under Code Section 706 and the Regulations thereunder.

(ii) Except as otherwise provided in this Agreement, all items of income, gain, loss, deduction and any other allocations not otherwise provided for shall be divided among the Unit Holders in the same proportions as they share Profits and Losses, as the case may be, for the year.

(iii) In the event that the Company has taxable income that is characterized as ordinary income under the recapture provisions of the Code, each Unit Holder's allocable share

of taxable gain or loss from the sale of Company Property (to the extent possible) shall include a proportionate share of this recapture income equal to that Unit Holder's prior cumulative depreciation deductions with respect to the assets that gave rise to the recapture income.

(iv) The Unit Holders are aware of the income tax consequences of the allocations made by **Section 4** and this **Appendix "B"** and hereby agree to be bound by the provisions of **Section 4** and this **Appendix "B"** in reporting their shares of income and loss for income tax purposes.

(v) Nonrecourse Liabilities will be allocated among the Unit Holders based upon any methodology permitted under Treasury Regulations §1.752-3.

(vi) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Management Committee shall endeavor to treat distributions of Net Available Cash as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Unit Holders.

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

(viii) Each Unit Holder authorizes and directs the Company to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "**Notice**") apply to any interest in the Company transferred to a service provider by the Company on or after the effective date of such Revenue Procedure in connection with services provided to the Company. For purposes of making such Safe Harbor election, the Tax Matters Partner is hereby designated as the "partner who has responsibility for federal income tax reporting" by the Company and, accordingly, execution of such Safe Harbor election by the Tax Matters Partner constitutes execution of a "Safe Harbor Election" in accordance with Section 3.03(1) of the Notice. The Company and each Unit Holder hereby agree to comply with all requirements of the Safe Harbor described in the Notice, including, without limitation, the requirement that each Unit Holder shall prepare and file all federal income tax returns reporting the income tax effects of each Safe Harbor Membership Interest issued by the Company in a manner consistent with the requirements of the Notice.

The Company and any Unit Holder may pursue any and all rights and remedies it may have to enforce the obligations of the Company and the Unit Holder in the Company (as applicable) under **Section (d)(viii)**, including, without limitation, seeking specific performance and/or immediate injunctive or other equitable relief from any court of competent jurisdiction (without the necessity of showing actual money damages, or posting any bond or other security) in order to enforce or prevent any violation of the provisions of **Section (d)(viii)**. The obligations of a Unit Holder to comply with the requirements of this **Section (d)(viii)** shall survive the cessation of such Unit Holder being a holder of a membership interest in the Company and/or the termination, dissolution, liquidation and winding up of the Company, and, for purposes of this **Section (d)(viii)**, the Company shall be treated as continuing in existence.



Each Unit Holder authorizes the Management Committee to amend **Section (d)(viii)** to the extent necessary to achieve substantially the same tax treatment with respect to any interest in the Company transferred to a service provider by the Company in connection with services provided to the Company as set forth in Section 4 of the Notice (*e.g.*, to reflect changes from the rules set forth in the Notice in subsequent Internal Revenue Service guidance), provided that such amendment is not materially adverse to such Unit Holder (as compared with the after-tax consequences that would result if the provisions of the Notice applied to all interests in the Company transferred to a service provider by the Company in connection with services provided to the Company).

(ix) If and to the extent that any Unit Holder is deemed to recognize any item of income, gain, deduction or loss as a result of any transaction between such Unit Holder and the Company pursuant to Sections 83, 482, or 7872 of the Code or any similar provision now or hereafter in effect, the Management Committee shall use their reasonable best efforts to allocate any corresponding Net Profit or Net Loss of the Company to the Unit Holder who recognizes such item in order to reflect the Unit Holders' economic interest in the Company.

**(e) Tax Allocations: Code Section 704(c).** In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Unit Holders so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

In the event the Gross Asset Value of any asset is adjusted pursuant to the provisions of this **Appendix "B"** hereof dealing with the definition of Gross Asset Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the Management Committee in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this **Section (e)** are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

## EXHIBIT C

### Resolutions

**RESOLVED**, that Bradford & Euclid, LLC ("*B&E*") is hereby authorized to undertake a project (the "*Project*") consisting of the renovation and redevelopment of the RE Dietz building located at 225 Wilkinson Street, Syracuse, New York pursuant to general plans and specifications submitted to and approved by CPC Funding SPE I LLC ("*Lender*") and Chase Community Equity, LLC ("*HTC Investor*"); and be it further

**RESOLVED**, that B&E is hereby authorized to partially finance the Project through a construction loan or loans in the aggregate amount of approximately \$19,250,000 from Lender pursuant to the general terms and conditions of a commitment letter dated July 26, 2016, as such maybe modified from time to time; and be it further

**RESOLVED**, that B&E is hereby authorized to partially finance the Project through the issuance of a 10% membership interest combined with a master lease of the RE Dietz building to RE Dietz Building Master Tenant, LLC pursuant to the general terms and conditions of HTC Investor's letter of intent dated May 24, 2016, as such maybe modified from time to time; and be it further

**RESOLVED**, that B&E is hereby authorized to enter into a lease/leaseback transaction with the City of Syracuse Industrial Development Agency ("*SIDA*") so as to facilitate the financing of the Project through available mortgage, real property and sale tax exemptions (the "*SIDA Transaction*"); and be it further

**RESOLVED**, that in connection with the foregoing transactions, Matthew R. Paulus or his designee (the "*Authorized Signatory*") be, and hereby is, authorized, directed and empowered, in the name and on behalf of B&E, to execute and deliver all necessary and proper documents reasonably required by Lender, the HTC Investor and/or SIDA, each such document to be in such form and substance as he may approve, such approval to be conclusively evidenced by his execution and delivery thereof and as so executed shall be binding upon B&E; and be it further

**RESOLVED**, that all prior action taken by B&E in connection with the SIDA Transaction including, without limitation, the execution and delivery of its verified application, is hereby ratified and approved; and it is further

**RESOLVED**, that the Authorized Signatory be, and hereby is, authorized, directed and empowered, in the name and on behalf of B&E, to take all such other actions which in his judgment may be necessary or appropriate in connection with the foregoing transactions.

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October 20, 2016

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Matthew R. Paulus

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Bradford & Euclid, 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 in one or more phases (the “*Project*”) undertaken by the Agency at the request of Bradford & Euclid, LLC (the “*Company*”) consisting of: (A)(i) the acquisition of an interest in approximately 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “*Existing Building*”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “*Land*”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from real property taxes, State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

The Company has also requested that the Agency grant the Financial Assistance to the Project. Capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Agency Lease.

As counsel to the Agency, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, and documents as we have deemed necessary or appropriate for the purposes of the opinion expressed below. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies, and have assumed the accuracy and truthfulness of the factual information, expectations, conclusions, representations, warranties, covenants and opinions of the Company and its counsel and representatives as set forth in the various documents executed and delivered by them or any of them and identified in the Closing Memorandum in connection with the Project.

We are of the opinion that:

1. The Agency is a duly organized and existing corporate governmental agency constituting a public benefit corporation of the State of New York.

2. The Agency is duly authorized and empowered by law to acquire, construct, 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 one or more bills of sale; to sublease the Project Facility back to the Company pursuant to the Agency Lease and to appoint the Company as its agent for completion of the Project.

3. The Agency Documents have been authorized by and lawfully executed and delivered by the Agency and (assuming the authorization, execution, and delivery by the other respective parties thereto) are valid and legally binding obligations enforceable against the Agency in accordance with their respective terms.

In rendering this opinion, we advise you of the following:

The enforceability of the Agency Documents may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law or enactment now or hereafter enacted by the State of New York or the Federal government affecting the enforcement of creditors' rights generally and the general principles of equity, including limitations on the availability of the remedy of specific performance which is subject to discretion of the court.

This opinion is rendered to the addressees named above and their successors and/or assigns, and may not be relied upon by any other person without our prior, express written consent.

Very truly yours,

BARCLAY DAMON, LLP



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October 21, 2016

Bradford & Euclid, LLC  
225 Wilkinson Street  
Syracuse, New York 13204  
Attn: Matthew R. Paulus

City of Syracuse Industrial Development Agency  
333 West Washington Street, Suite 130  
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency  
Lease/Leaseback Transaction  
Bradford & Euclid, LLC Project  
225-303 Wilkinson Street & Leavenworth Avenue

Ladies and Gentlemen:

We have acted as counsel to Bradford & Euclid, 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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the "**Existing Building**") located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the "**Land**"); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

The Agency has acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of October 1, 2016 (the "*Company Lease*") and transfer its interest in the Equipment to the Agency pursuant to a bill of sale by the Company, dated as of October 1, 2016 (the "*Company Bill of Sale*") and a bill of sale by the Corporation, dated as of October 1, 2016 (the "*Corporation Bill of Sale*" and together with the Company Bill of Sale, the "*Bill of Sale*") and the Agency will (sub)sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of October 1, 2016 (the "*Agency Lease*"). Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

In that regard, we have examined the Company Lease, the Agency Lease, the Bill of Sale, the Mortgage, the Environmental Compliance and Indemnification Agreement and the other documents identified in the Closing Memorandum and defined in the Agency Lease to which the Company is a party (collectively, the "*Company Documents*").

We have also examined organizational documents and records of the Company and made such investigation of law and/or fact that we deem necessary or advisable in order to render this opinion. For purposes of such examination, we have assumed the genuineness of all certificates and the authenticity of all documents submitted to us as original counterparts or as certified or photostatic copies; the genuineness of all signatures of all parties to the Company Documents other than on behalf of the Company; and the due authorization, execution and delivery of the Company Documents by and the enforceability thereof against all parties thereto other than the Company.

As to questions of fact material to our opinion, we have relied upon the representations and warranties made by the Company in the Company Documents and upon one or more certificates of officers of the Company. Whenever the phrase "to the best of our knowledge" is used in this opinion, it refers to actual knowledge of members of this firm obtained from our representation of the Company and inquiries of responsible officers of the Company made in connection with this opinion, but no further investigation or review has been conducted.

Based upon the foregoing, it is our opinion that:

1. The Company is a validly existing Delaware limited liability company which is qualified to do business in New York and possesses full power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.
2. The execution, delivery and performance of the Company Documents have been duly authorized by the Company and the Company Documents have been duly executed and delivered by an Authorized Signatory of the Company.
3. The Company Documents constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting



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Attorneys at Law

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, to the best of our knowledge, under 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, to the best of our knowledge, 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,

SHULMAN GRUNDNER  
ETOLL & DANAHER, P.C.



Stephen G. Etoll

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**CLOSING MEMORANDUM**  
**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**  
**BRADFORD & EUCLID, LLC PROJECT**

**DATE AND TIME OF CLOSING:** October 20, 2016

**PLACE OF CLOSING:** Barclay Damon, LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202

**I. Action Taken Prior to Closing**

At the request of Bradford & Euclid, 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 2.70 acres of real property improved by an existing approximately 208,082 square foot building (the “*Existing Building*”) located at 225-303 Wilkinson Street & Leavenworth Avenue, in the City of Syracuse, New York (the “*Land*”); the reconstruction and renovation of the Existing Building for use as a mixed-use complex consisting of approximately 92 market-rate apartments, approximately 36,000 square feet of commercial space and on-site parking, all located on the Land (the “*Facility*”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the “*Equipment*”) and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility; and (D) the sublease of the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a (sub)sublease agreement.

The Company also requested that the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

The Company is, or will be at the time of closing, the operator of the Project Facility.

Park Avenue Lantern Corporation (the “**Corporation**”) is the current owner of the Land and the Facility and has leased the Land and the Facility to the Company pursuant to a forty-nine (49) year ground lease dated as of January 1, 2016 (the “**Ground Lease**”) between Syracuse Business Center, Inc. (“**SBCI**”) and the Company as assigned to the Corporation pursuant to an Assignment and Assumption Agreement between SCBI and the Corporation dated as of August 9, 2016; and

The financing of the Project includes the infusion of capital by RE Dietz Building Master Tenant, LLC, a New York limited liability company, as the tax credit investor (“**TCI**”). To accommodate such structure, the Company must transfer certain of its membership interests in the Company to the TCI and transfer certain of its leasehold interests in the Project Facility to an entity controlled by the TCI (the “**Title and Membership Transfers**”); and

The Company will enter into an approximately twenty-two year master lease of the Project Facility (the “**Master Lease**”) with the TCI as the master tenant (the “**Master Tenant**”). Chase Community Equity, LLC (“**Chase**”) holds ninety-nine (99%) percent of the membership interests in the Master Tenant and RE Dietz Building Master Tenant, LLC holds the remaining one (1%) percent of the membership interests in the Master Tenant. The Company will grant a ten (10%) percent of its membership interests to the Master Tenant as the TCI; and

The Agency will acquire a leasehold interest in the Land and Facility from the Company pursuant to a Company Lease Agreement dated as of October 1, 2016 (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 October 1, 2016 (the “**Company Bill of Sale**”) and pursuant to a bill of sale from the Corporation dated as of October 1, 2016 (the “**Corporate Bill of Sale**”). The Agency will sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of October 1, 2016 (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:

- |                   |                                                                                                                                                                                                                                                                   |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| December 1, 2015  | The Company submitted an application for financial assistance for the project.                                                                                                                                                                                    |
| December 15, 2015 | A resolution determining that the acquisition, construction and equipping of a mixed-use project constitutes a project; describing the financial assistance in connection therewith; and authorizing a public hearing (the “ <b>Public Hearing Resolution</b> ”). |

- January 8, 2016 Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions pursuant to Section 859-a of the Act.
- January 10, 2016 Notice of the Public Hearing was published in the Post-Standard pursuant to Section 859-a of the Act.
- January 26, 2016 The Agency conducted the Public Hearing pursuant to Section 859-a of the Act.
- January 26, 2016 A resolution classifying a certain project as an Unlisted Action pursuant to SEQRA, declaring the Agency lead agency for purposes of an uncoordinated review thereunder and determining that the action will not have a significant effect on the environment (the “**SEQRA Resolution**”).
- January 26, 2016 A resolution authorizing the undertaking of the acquisition, reconstruction, renovation and equipping of a Project; appointing the Company agent of the Agency for the purpose of the acquisition, reconstruction, renovation and equipping of the Project Facility; and authorizing the execution and delivery of an agreement between the Agency and the Company (the “**Inducement Resolution**”).
- January 26, 2016 A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the “**Final Approving Resolution**”).
- July 19, 2016 A resolution approving an increase in the amount of financial assistance awarded by the Agency not exceeding \$100,000 (the “**Additional Financial Assistance**”) in connection with a certain project undertaken at the request of the Company (the “**Approving Resolution**”).
- September 20, 2016 A resolution describing the request for additional financial assistance in connection with a Project; clarifying interests; authorizing the transfer of certain membership interests; and authorizing a public hearing (the “**Second Public Hearing Resolution**”).
- September 29, 2016 Notice of the Second Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions pursuant to Section 859-a of the Act.
- October 2, 2016 Notice of the Second Public Hearing was published in the Post-Standard pursuant to Section 859-a of the Act.

October 18, 2016

The Agency conducted the Second Public Hearing pursuant to Section 859-a of the Act.

October 18, 2016

A resolution approving a payment in lieu of tax schedule and authorizing the execution and delivery of certain documents by the Agency in connection with a PILOT Agreement (the “*PILOT Resolution*”).

## II. Action To Be Taken At Closing

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency (A), Agency's Counsel (AC), the Company (C), Company's Counsel (CC), Lender's Counsel (LC), Park Avenue Lantern Corporation (Inc.) and Syracuse Business Center, Inc. (SBCI) as follows:

<b>A. Basic Documents</b>	<b>Responsible Party</b>	<b>Signatories</b>
1. Project Agreement	AC	C, A
2. Ground Lease and Memorandum of Ground Lease	CC	C, Inc.
3. Assignment and Assumption (Ground Lease)	CC	SBCI, Inc.
4. Company Lease Agreement	AC	C, A
5. Memorandum of Company Lease Agreement with TP-584	AC	C, A
6. Corporate Bill of Sale	AC	Inc.
7. Company Bill of Sale	AC	C
8. Agency Lease Agreement	AC	C, A
9. Memorandum of Agency Lease Agreement with Form TP-584	AC	C, A
10. Company Certification re: Local Labor Policy	AC	C
11. Certificates of casualty, liability, workers' compensation and other required insurance	AC	
12. Environmental Compliance and Indemnification Agreement	AC	C
13. Corporation Certificate	AC	Inc.
14. Closing Receipt	AC	C, A
15. Sales Tax Exemption Letter	AC	A

16.	Form ST-60 indicating appointment of the Company to act as the agent of the Agency	AC	A
17.	PILOT Agreement	AC	A, C
18.	412-a	AC	A
19.	Acquisition Loan Mortgage	LC	C, A
20.	Construction Loan Mortgage	LC	C, A
21.	Project Loan Mortgage	LC	C, A
22.	Assignment of Leases and Rents	LC	C, A
23.	UCC-1 Financing Statement(s)	LC	
24.	Survey	CC	

**B. Items To Be Delivered By The Agency**

1.	General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits:	AC	A
	Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended	A	
	Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members	A	
	Exhibit "C" - By-laws	A	
	Exhibit "D" - Public Hearing Resolution	AC	
	Exhibit "E" - Notice of Public	AC	



	Hearing with evidence of publication and copies of letters to affected tax jurisdictions		
	Exhibit “F” – SEQRA Resolution	AC	
	Exhibit “G” – Inducement Resolution	AC	
	Exhibit “H” – Final Approving Resolution	AC	
	Exhibit “I” – Approving Resolution	AC	
	Exhibit “J” – Second Public Hearing Resolution		
	Exhibit “K” - Notice of Second Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions	AC	
	Exhibit “L” – PILOT Resolution	AC	
2.	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” - Articles of Organization	C	
	Exhibit “B” - Operating Agreement	C	C
	Exhibit “C” Certificate of Good Standing (NY & DE)	C	
	Exhibit “D” Company Resolution	C	
	Exhibit “E” Local Access Agreement	C	

Exhibit "F" Ground Lease

Exhibit "G" Master Lease and  
Memorandum of Master Lease

- |                                                                                                                          |    |    |
|--------------------------------------------------------------------------------------------------------------------------|----|----|
| <b>D. Opinions of Counsel</b>                                                                                            | C  |    |
| 1. Opinion of Barclay Damon, LLP, counsel to the Agency, addressed to the Company and the Agency                         | AC | AC |
| 2. Opinion of Shulman, Grundner, Etoll & Danaher, P.C., counsel to the Company, addressed to the Agency and the Company. | AC | CC |

**III. Action To Be Required Concurrently With Or After Closing**

Memorandum of Company Lease Agreement, Memorandum of Agency Lease Agreement, Acquisition Loan Mortgage, Construction Loan Mortgage, Project Loan Mortgage and Assignment of Leases and Rents are to be filed with the Onondaga County Clerk and the UCC-1 Financing Statement(s) are to be filed as appropriate under the Uniform Commercial Code.

**IV. Post-Closing**

Scan copy of Local Access Agreement to SIDA.

**SCHEDULE "A"**

**PERSONS APPEARING**

For the Agency:	City of Syracuse Industrial Development Agency William M. Ryan, Chairman
For the Company:	Bradford & Euclid, LLC Lawrence V. Losty, Jr.
Company Counsel:	Shulman, Grunder, Etoll & Danaher, P.C. Stephen G. Etoll, Esq.
For the Lender:	Community Preservation Corporation
Lender's counsel:	Cannon Heyman & Weiss, LLP Constance C. Giessert, Esq.
Agency's Counsel:	Barclay Damon, LLP Susan R. Katzoff, Esq.